

I assent.

(L.S.)

**MARIE LOUISE  
COLEIRO PRECA  
President**

2nd April, 2015

**ACT No. IX of 2015**

*AN ACT to make provision for the rights, support and protection of victims, and for matters connected therewith or incidental thereto.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

**Part I - Of Victims of Crime**

Short title.           **1.** The short title of this Act is the Victims of Crime Act, 2015.

Interpretation.       **2.** In this Act, unless the context otherwise requires:

"family members" means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependents of the victim;

"Minister" means the Minister responsible for the welfare of victims of crime;

"Ministry" means the Ministry responsible for the welfare of victims of crime;

"minor" means a person of either sex who has not yet attained the age of eighteen years;

"restorative justice" means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party;

"victim" means:

(a) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(b) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

**3.** (1) In relations with any competent authority in the context of criminal proceedings, all communications between the said authority and any victim shall be conducted in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

Right to understand and to be understood.

(2) Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, a victim may be accompanied by a person of his choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

**4.** The following information shall be offered to an injured party, without unnecessary delay and as may be applicable, from his first contact with a competent authority in order to enable him to access the following rights set out in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA:

Right to receive information from a competent authority.

(a) the type of support which can be obtained and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and the victim's role in connection with such procedures;

(c) how and under what conditions the victim can

obtain protection, including protection measures;

(d) how and under what conditions the victim can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions the victim can access compensation;

(f) how and under what conditions the victim is entitled to interpretation and translation;

(g) if the victim is resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect his interests in Malta;

(h) the available procedures for making complaints where the victim's rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about the victim's case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of the victim's participation in the criminal proceedings can be reimbursed.

Right of victims  
when complaint  
is made.  
Cap. 9.

**5. (1)** Where a complaint is made by the victim in terms of article 546 of the Criminal Code, the Executive Police shall deliver to the victim a written acknowledgement of his complaint stating the basic elements of the criminal offence concerned.

(2) It shall be lawful for a victim, who requests to make a complaint with regard to a criminal offence and who does not understand or speak Maltese or English, to make the complaint in a language that he understands or by receiving the necessary linguistic assistance of an interpreter.

(3) A victim who does not understand or speak Maltese or English shall, if he so requests, receive a translation into a language he understands, which translation shall be free of charge, of the written acknowledgement of the complaint referred to in sub-article (1).

Right to receive  
information on  
the case.

**6. (1)** A victim shall be notified without unnecessary delay of his right to receive the following information about the criminal

proceedings instituted as a result of the complaint made by him and upon request, the victim shall receive information on:

- (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
- (b) the time and place of the trial, and the nature of the charges against the offender;
- (c) any final judgement in a trial;
- (d) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification:

Provided that in the circumstances cited in paragraphs (a) and (c) and unless in the case of a verdict in a trial by jury or where prohibited by law, the information shall include reasons or a brief summary of reasons for the decision concerned:

Provided further that it shall not be necessary to furnish such information in cases where the victim, as injured party, has been served with the notice of first hearing or admitted into the proceedings as provided in article 410(4) and (5) of the Criminal Code. Cap. 9.

(2) A victim shall be offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning the said victim is released from or has escaped detention and of any relevant measures issued for his protection in case of release or escape of the offender.

(3) A victim shall, upon request, receive the information provided for in sub-article (2) at least in cases where there is a danger or an identified risk of harm to him, unless there is an identified risk of harm to the offender which would result from the notification.

7. (1) Where the injured party does not understand the language in which the criminal proceedings are conducted or any evidence is adduced, such proceedings or evidence shall be interpreted to him either by the court or by a sworn interpreter.

Right to  
interpretation  
and translation.

(2) An injured party who does not understand or speak the language of the court shall, upon request, be provided with translations of information essential to the exercise of his rights in the criminal proceedings in a language he understands, free of charge, to

the extent that such information is made available to the injured party.

(3) Translations of the information cited in sub-article (2) shall include at least any decision ending the criminal proceedings, and upon the injured party's request, reasons or a brief summary of reasons for such decision, except in the case of a verdict in a trial by jury.

Cap. 9.

(4) Saving the provisions of articles 410(4) to (6), 414(1) and 421(1) of the Criminal Code, an injured party who is entitled to information about the time and place of the trial in accordance with article 6(1)(b) and who does not understand the language of the court shall, upon request, be provided with a translation of the information to which he is entitled.

(5) An injured party may submit a reasoned request to consider a document as essential although there shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling the injured party to actively participate in the criminal proceedings.

(6) Notwithstanding the provisions of sub-articles (1) and (2), an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

(7) The court shall assess whether victims need interpretation or translation as provided for under sub-articles (1) and (2).

Rights in  
decision not to  
prosecute.

**8.** The injured party shall be notified of any decision by the Executive Police not to institute proceedings against the offender without unnecessary delay. Such notification shall at least contain the reasons on which the decision not to institute proceedings was taken:

Provided that the disclosure of such information would not be contrary to the public policy or the internal public law of Malta or if the ends of justice would be prejudiced if such disclosure is made.

Restorative  
justice  
measures.  
Cap. 516.

**9.** Restorative justice measures provided for under the Restorative Justice Act or under any other law shall be exercised subject to the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and shall not be subsequently disclosed, except with the agreement of the parties or as may be required by law due to an overriding public interest.

**10.** Where the injured party, who has been served with the notice of first hearing or admitted into the proceedings as provided in article 410(4) and (5) of the Criminal Code, or in cases where the prosecution lies with the injured party, wishes to avail himself of the benefit of legal aid, the provisions of article 570 of the Criminal Code shall *mutatis mutandis* apply:

Right to legal aid.

Cap. 9.

Provided that, for the purpose of such proceedings, any reference in those provisions to the accused shall be construed as being a reference to the injured party.

**11.** (1) A victim of a criminal offence committed in another Member State and who resides in Malta, if unable to file a complaint in that Member State, may file a complaint in terms of article 546 of the Criminal Code.

Rights of victims of criminal offences committed in another Member State.  
Cap. 9.

(2) A complaint filed under this article shall be transmitted by the Executive Police without unnecessary delay to the competent authority of the Member State in which the criminal offence was committed, unless proceedings would have been instituted by the Executive Police.

**12.** The Ministry or any other entity or agency which the Minister may designate for the purpose, shall, make provision for:

Assessment of and assistance to victims of crime.

(a) the timely and individual assessment of victims who suffered from severe crimes, including crimes committed with a bias or discriminatory motive which could in particular, be related to their particular characteristics, and victims whose relationship to and dependence on the offender make them

particularly vulnerable such as:

- (i) minors;
- (ii) victims of terrorism;
- (iii) victims of organised crime;
- (iv) victims of human trafficking;
- (v) victims of gender-based violence;
- (vi) victims of violence in a close relationship;
- (vii) victims of sexual violence;
- (viii) victims of exploitation or hate crime; and
- (ix) victims with disabilities:

Provided that the individual assessment shall, in particular, take into account the personal characteristics of the victim, the type or nature of the crime and the circumstances of the crime;

(b) victim support services which shall, as a minimum, provide:

(i) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(ii) information about or direct referral to any relevant specialist support services in place;

(iii) emotional and, where available, psychological support;

(iv) advice relating to financial and practical issues arising from the crime;

(v) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

Support services.

**13.** (1) Victim support services provided under article 12 shall, in assessing the specific needs of victims who have suffered considerable harm due to the severity of the crime and in accordance

with their needs, provide such services in a confidential manner and free of charge. It shall be the duty of any service designated to provide victim support to act in the interests of the victims before, during and for an appropriate time after criminal proceedings:

Provided that family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

(2) Upon receiving a complaint by a person that the said person is a victim of a crime, any authority shall, upon becoming aware of this fact and without any undue delay, refer the victim to victim support services.

(3) Where necessary, victim support services shall include free of charge and confidential specialist support services and nothing shall preclude victim support organisations to call on existing specialised entities providing such specialist support. Victims shall have access to such services in accordance with their specific needs and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

(4) Access to any victim support service as provided under this Act shall not be dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

**14.** Where a victim is identified as a minor and:

(a) the holders of parental responsibility are precluded from representing the said minor as a result of a conflict of interest between the said holders and the minor; or

(b) where the minor is unaccompanied or separated from the family; or

(c) there is, or there may be, a conflict of interest between the minor and the holders of parental responsibility,

the Court shall, *ex officio*, or upon a request by the prosecution or upon an application by any person, appoint a child advocate in terms of the Code of Organization and Civil Procedure or an advocate for legal aid, to represent the interests of the minor, and the provisions of article 10 shall apply.

Assistance,  
support and  
protection to  
victims who are  
minors.

Cap. 12.

(2) A child advocate appointed in terms of the Code of Organization and Civil Procedure or an advocate for legal aid, as the

case may be, may be appointed in any case if the Court considers that this is in the best interests of the minor.

(3) Where the age of the victim is uncertain and there are reasons to believe that the victim is a minor, the victim shall for purposes of this Act be presumed, saving proof to the contrary, to be a minor.

## **Part II - Of Victims of Trafficking in Persons**

Assistance and  
support.  
Cap. 9.

**15.** (1) A victim of an offence of trafficking in persons as defined under articles 248A to 248F, both inclusive, of the Criminal Code, as soon as he is identified as such, shall be entitled to receive assistance and support before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable him to exercise the rights set out in the Directive and Framework Decision:

Provided that such assistance and support shall not be conditional on the victim's willingness to cooperate in the investigation or criminal proceedings.

(2) For purposes of this article:

(a) the Framework Decision shall mean the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings;

(b) the Directive shall mean the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

(3) The assistance and support measures referred to in this article shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate:

Provided that the information shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status

of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status or pursuant to other international instruments or other similar national rules.

**16.** (1) Without prejudice to the provisions of article 10, a victim of trafficking in persons shall, without delay, have access to legal advice. Protection of victims.

(2) Where the victim does not possess sufficient financial resources to afford such advice this service shall be afforded free of charge by the advocate for legal aid.

**17.** (1) An advocate appointed in the interests of a minor in terms of The Civil Court (Family Section), The First Hall of the Civil Court and The Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations shall assist and represent the interests of a minor who is a victim of trafficking in persons. Minors victims of trafficking. S.L. 12.20

(2) In cases where the age of the person cannot be determined with certainty and there are reasons to believe that the person is a minor, that person shall be presumed to be a minor and shall be entitled to receive immediate access to assistance, support and protection in accordance with article 18.

**18.** (1) Where a victim of trafficking in persons is an unaccompanied minor, a care order shall be issued in terms of the Children and Young Persons (Care Orders) Act to ensure that the minor is afforded all the assistance, protection and support in terms of the Directive. Unaccompanied victims who are minors. Cap. 285.

(2) For purposes of this article "the Directive" shall have the same meaning assigned to it under article 15.

### **Part III - Regulations**

**19.** The Minister may - Regulations.

(a) by regulations prescribe, subject to the provisions of this Act, for any matter which may be prescribed under this Act; and

(b) make regulations generally for the purpose of giving full effect to this Act and to the provisions of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012.

A 228

Passed by the House of Representatives at Sitting No. 255 of the  
25th March, 2015.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*

