



ANNO VICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1978

No. 2 of 1978

An Act to provide for the compensation of persons who suffer injury in consequence of the commission of offences; to repeal the Criminal Injuries Compensation Act, 1969-1974; and for other purposes.

[Assented to 23rd February, 1978]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Criminal Injuries Compensation Act, 1977-1978". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. The following Acts are repealed:—

Criminal Injuries Compensation Act, 1969	<small>Repeal of Criminal Injuries Compensation Act, 1969-1974.</small>
Criminal Injuries Compensation Act Amendment Act, 1972	
Criminal Injuries Compensation Act Amendment Act, 1974.	

4. In this Act, unless the contrary intention appears— Interpretation.
 - "claimant" means a person by or on whose behalf a claim for compensation under this Act is made:
 - "dependants" in relation to a victim means any spouse, putative spouse, parents or children of that victim who are dependent upon him financially:
 - "injury" means physical or mental injury sustained by any person, and includes pregnancy, mental shock and nervous shock:
 - "offence" means any offence, whether indictable or not, committed by one or more persons, and includes conduct on the part of any person—

(a) that would constitute an offence but for his age, or the existence of a defence of—

(i) insanity;

(ii) automatism;

(iii) duress;

or

(iv) drunkenness;

or

(b) that would constitute rape, but for lack of *mens rea*:

“offender”, in relation to an offence, means the person who committed the offence:

“the repealed Act” means the Criminal Injuries Compensation Act, 1969-1974, repealed by this Act:

“victim”, in relation to an offence, means a person who suffers injury in consequence of the commission of the offence.

Transitional provision.

5. (1) This Act shall apply in relation to injury arising from any offence committed after the commencement of this Act.

(2) The repealed Act shall continue to apply in relation to injury arising from any offence committed before the commencement of this Act.

Application of this Act.

6. This Act does not apply to, or in relation to, death or injury arising out of the use of a motor vehicle—

(a) where there is in force in relation to that motor vehicle a policy of insurance—

(i) that complies with Part IV of the Motor Vehicles Act, 1959-1976;

or

(ii) that complies with the law of some other State or Territory of the Commonwealth and under which the owner and driver are insured against liability that might be incurred by either or both of them in respect of the death of, or bodily injury to, any person caused by, or arising out of the use of, the motor vehicle in this State;

or

(b) where there is, by virtue of Part IV of the Motor Vehicles Act, 1959-1976, a right of action against the nominal defendant in respect of that death or injury.

Applications for compensation.

7. (1) A victim of an offence may, within twelve months of the day on which the offence was committed, apply to the appropriate court for an order for compensation in respect of the injury suffered by him.

(2) Where, before an order for compensation under this Act is made in favour of a victim of an offence, the victim dies as the result of the injury suffered by him, a person who, in the opinion of the court, is a suitable person to represent the interests of the dependants of the victim may, within twelve months of the date of death, apply to the appropriate court on behalf of the dependants of the victim for an order for compensation in respect of the financial loss suffered by them.

(3) The appropriate court may, for any reason that it considers sufficient, extend the time for making an application under subsection (1) or subsection (2) of this section.

(4) For the purposes of this section, "the appropriate court" means—

(a) subject to paragraph (b) of this subsection, the court before which the offender was brought to trial;

(b) where the offender was brought to trial before a court of summary jurisdiction constituted of one or more justices of the peace, a court of summary jurisdiction constituted of a magistrate;

(c) where the offender was dealt with by a juvenile aid panel, a juvenile court;

or

(d) where the offender has not been brought to trial—

(i) in any case in which it is known that the offender was under the age of eighteen years at the time the offence is alleged to have been committed, a juvenile court;

or

(ii) in any other case, a District Criminal Court.

(5) The applicant for an order under this section shall cause a copy of his application to be served not less than fourteen days prior to the day on which the application is to be heard—

(a) upon the Crown Solicitor;

and

(b) where the identity of the offender is known, upon that offender,

and the Crown and, if his identity is known, the offender shall be parties to the proceedings.

(6) The court may, by order, dispense with service of the application upon an offender where the whereabouts of the offender is unknown to, and not readily ascertainable by, the applicant.

(7) Subject to this Act, on an application under this section the court may order—

(a) that the victim be paid by the Crown such amount as the court thinks fit by way of compensation for the injury suffered by him;

or

(b) that the dependants of a dead victim be paid by the Crown such amount as the court thinks fit by way of compensation for the financial loss suffered by them (to be proportioned between the various claimants as the court thinks fit),

together with such amount (if any) by way of costs as the court thinks fit.

(8) In awarding compensation under this section, the court shall observe the following provisions:—

(a) where the amount of compensation would, but for this paragraph, exceed two thousand dollars, the amount awarded shall, subject to paragraph (b) of this subsection, be two thousand dollars plus three-quarters of the excess;

and

(b) where the amount of compensation would, but for this paragraph, exceed ten thousand dollars, the amount awarded shall be ten thousand dollars.

(9) In determining an application for, and the quantum of, compensation, the court shall have regard to—

(a) any conduct on the part of the victim that contributed, directly or indirectly, to the commission of the offence, or to the injury suffered by him;

and

(b) such other circumstances as it considers relevant.

(10) The court shall not make an order for compensation where the amount of compensation would be less than one hundred dollars.

(11) Where the court has made an order for compensation under this section—

(a) it shall, where the offender has been convicted, or adjudged or found guilty, of the offence, endorse upon or annex to the order a statement of his means (so far as they are ascertainable by the court);

and

(b) it shall endorse upon or annex to the order a statement of any payments that the claimant has received, or is likely to receive, in respect of the injury or the death of the victim, otherwise than under this Act.

Proof and evidence.

8. (1) Any fact to be proved by a claimant in proceedings under this Act shall be sufficiently proved if it is proved on the balance of probabilities.

(2) In any proceedings under this Act, the court may receive in evidence any transcript of evidence in proceedings in any other court, and may draw any conclusions of fact therefrom that it considers proper.

Joint offences.

9. (1) Where a victim suffers injury in consequence of an offence committed by more than one offender, the court may make only one order for compensation under this Act in respect of that injury.

(2) Where a victim suffers injury in consequence of a series of offences committed consecutively by one offender, or a series of offences committed simultaneously or consecutively, by offenders acting in concert, or in circumstances in which those offences constitute a single incident, the court may make only one order for compensation under this Act in respect of the injury.

Legal costs.

10. (1) Notwithstanding any Act or law to the contrary a legal practitioner, shall not charge nor seek to recover by way of his costs in respect of proceedings under this Act any amount in excess of the amount allowable under the prescribed scale.

(2) The Governor may, by regulation, prescribe a scale of costs for the purposes of subsection (1) of this section.

11. (1) Subject to subsection (2) of this section, the Attorney-General shall, within twenty-eight days of an order for compensation under this Act being made, satisfy that order by payment from the General Revenue of the State. Satisfaction of orders by Attorney-General.

(2) The Attorney-General may decline to satisfy an order in pursuance of subsection (1) of this section, or may reduce the payment to be made in pursuance of that subsection, if in his opinion it is just to do so in view of any payments that the claimant has received, or is likely to receive, in respect of the injury or the death of the victim, otherwise than under this Act.

(3) The Attorney-General may recover summarily from an offender who has been convicted, or adjudged or found guilty, of an offence the amount of any payment made from the General Revenue of the State in pursuance of an order for compensation in respect of injury arising from the offence.

(4) Where the Attorney-General pays any moneys in pursuance of an order for compensation under this Act, he shall be subrogated to the rights of—

(a) the claimant, as against the offender;

and

(b) the offender as against any insurer or other person from whom the offender is entitled to indemnity or contribution in respect of liability arising from the injury or death to which the order for compensation relates.

12. Any moneys recovered by the Attorney-General under this Act shall be paid into the General Revenue of the State. Moneys recovered by Attorney-General to be paid into General Revenue.

13. Nothing in, or done in pursuance of, this Act shall prejudice or debar any right or claim to recover compensation or damages otherwise than in pursuance of this Act, but where compensation has been recovered by any person under this Act, the amount of that compensation shall be taken into account in assessing the compensation or damages to be awarded in any other proceedings. Proceedings under this Act do not debar civil remedies.

14. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes. Financial provision.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. SEAMAN, Governor