



CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT ACT 1993

No. 48 of 1993

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ELIZABETHAE II REGINAE

A.D. 1993

No. 48 of 1993

An Act to amend the Criminal Injuries Compensation Act 1978.

[Assented to 20 May 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Injuries Compensation (Miscellaneous) Amendment Act 1993*.

(2) The *Criminal Injuries Compensation Act 1978* is referred to in this Act as “the principal Act”.

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended by inserting after the definition of “juvenile offender” the following definition:

“non-financial loss” means—

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement:.

Repeal of s. 6

4. Section 6 of the principal Act is repealed.

Amendment of s. 7—Application for compensation

5. Section 7 of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsections:

(3) A person must, not less than three months before making an application under this section, cause notice in writing containing the prescribed particulars of the proposed application to be served on the Crown Solicitor.

(4) The court may, for any reason it considers sufficient, dispense with the requirement—

(a) that an application be made within a period fixed by this section;

or

(b) that notice of a proposed application be served on the Crown Solicitor within the period fixed by this section.

(4a) The costs of an application to dispense with a requirement under subsection (4) will be borne by the applicant unless the court otherwise orders.;

(b) by striking out subparagraphs (i) and (ii) of subsection (8)(a) and substituting the following subparagraphs:

(i) where financial loss is to be compensated and the amount that would, but for this subparagraph, be awarded for the financial loss exceeds \$2 000, the amount awarded will, subject to subparagraph (iii), be \$2 000 plus three-quarters of the excess;

(ii) where non-financial loss is to be compensated—

(A) the total non-financial loss must be assigned a numerical value on a scale running from 0 to 50 (the greater the severity of the non-financial loss, the greater the number);

and

(B) the amount awarded will be the amount arrived at by multiplying the number so assigned by \$1 000;

and

(iii) in any case, where an amount arrived at to compensate financial loss, or the aggregate of amounts arrived at to compensate financial loss and non-financial loss, would, but for this subparagraph, exceed \$50 000, the amount awarded will be \$50 000.;

(c) by inserting in subsection (9)(a) “(whether or not forming part of the circumstances immediately surrounding the offence or injury)” after “on the part of the victim”;

(d) by striking out subsection (9a) and substituting the following subsection:

(9a) The court must not make an order for compensation in favour of a claimant if it appears to the court that the claimant, without good reason—

- (a) failed to report the offence to the police within a reasonable time after its commission;
 - (b) refused or failed to provide information to the police that was within the claimant's knowledge as to the offender's identity or whereabouts;
 - (c) refused or failed to give evidence in the prosecution of the offender;
- or
- (d) otherwise refused or failed to co-operate properly in the investigation or prosecution of the offence,

and in consequence investigation or prosecution of the offence was not commenced or was terminated or hindered to a significant extent.;

(e) by inserting after subsection (9b) the following subsection:

(9c) Notwithstanding any other Act, no interest may be awarded by the court in respect of the whole or any part of the amount of any compensation ordered under this Act.;

(f) by striking out from subsection (10) "\$100" and substituting "\$1 000";

(g) by inserting in subsection (13)(b) "or death" after "injury";

(h) by inserting after subsection (13) the following subsection:

(14) If—

- (a) the offender is insured in respect of liability incurred in respect of the injury or death by a policy of insurance—
 - (i) that complies with Part IV of the *Motor Vehicles Act 1959*;
- or
- (ii) that complies with the law of another State or a Territory of the Commonwealth that is declared under that Part to be a proclaimed State or Territory;

or

- (b) there is, by virtue of that Part, a right of action against the nominal defendant in respect of the injury or death,

no compensation may be awarded under this Act.

Insertion of s. 10a

6. The following section is inserted in Part II after section 10 of the principal Act:

Representation of Crown in proceedings

10a. The Crown may be represented by any person nominated by the Attorney-General in preliminary or interlocutory proceedings under this Act or at a hearing for an order under this Act to be made by consent.

Amendment of s. 11—Payment of compensation, etc., by the Attorney-General

7. Section 11 of the principal Act is amended by inserting after paragraph (c) of subsection (3) the following paragraph:

- (ca) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a person in the following circumstances:
- (i) the person suffers injury, financial loss or grief in consequence of an offence committed outside this State;
 - (ii) the victim is at the time of the commission of the offence ordinarily resident in this State;
 - (iii) some person is convicted of the offence;
 - (iv) where the law of the place where the offence is committed establishes a right to compensation—the applicant has taken reasonable steps to obtain compensation under that law;
 - (v) the applicant would, in the Attorney-General's opinion, probably have been awarded compensation under this Act if the offence had been committed in this State;
 - (vi) the applicant is, in the Attorney-General's opinion, in necessitous circumstances;

Amendment of s. 13—Imposition of levy

8. Section 13 of the principal Act is amended—

- (a) by striking out from subsection (3)(a)(i) “\$5” and substituting “\$6”;
- (b) by striking out from subsection (3)(a)(ii) “\$20” and substituting “\$25”;
- (c) by striking out from subsection (3)(b) “\$30” and substituting “\$40”;

- (d) by striking out from subsection (4) "\$10" twice occurring, and substituting, in each case, "\$13".

Insertion of s. 14b

9. The following section is inserted after s. 14a of the Principal Act:

Delegation

14b. (1) The Attorney-General may, by instrument in writing, delegate to a specified person, or the holder of a specified position, power to make a payment under section 11(3) to a person—

- (a) by whom or on whose behalf notice of a proposed application has been given to the Crown Solicitor under this Act;

and

- (b) who would be likely to be awarded compensation under this Act.

(2) A delegation under this section—

- (a) may be made subject to conditions or limitations;

and

- (b) is revokable at will and does not derogate from the power of the Attorney-General to act in any matter.

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

ROMA MITCHELL Governor