

South Australia

## **Victims of Crime Act 2001**

An Act to lay down principles to govern the treatment of victims of crime in the criminal justice system; to provide limited rights to statutory compensation for injury suffered as a result of the commission of criminal offences; to repeal the *Criminal Injuries Compensation Act 1978*; and for other purposes.

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### Legislative history

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Victims of Crime Act 2001*.

#### 3—Objects

The objects of this Act are—

- (a) to give statutory recognition to victims of crime and the harm that they suffer from criminal offending; and
- (b) to establish principles governing how victims of crime are to be treated in the criminal justice system; and
- (c) to help victims of crime recover from the effects of criminal offending and to advance their welfare in other ways; and
- (d) to provide from public funds limited monetary compensation to victims most directly affected by criminal offending.

## 4—Interpretation

In this Act, unless the contrary intention appears—

**child**—a reference to a child is not limited to biological and adopted children—it extends to a person in relation to whom another (who is not a biological parent) stands in the position, and undertakes the responsibilities, of a parent; but a reference to a child does not, in the absence of an indication to the contrary, extend to an adult child;

**claimant** means a person by whom, or on whose behalf, an application for statutory compensation is made;

**conviction** includes a formal finding of guilt and **to convict** has a corresponding meaning;

**court** means the District Court;

**dependants**, in relation to a victim, means any spouse, domestic partner, parents or children (including adult children) of the victim who are financially dependent on the victim;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**harm** means injury, damage or loss;

**homicide** means murder or manslaughter;

**immediate family** of a person means any one or more of the following:

- (a) a spouse or domestic partner;
- (b) a parent;
- (c) a grandparent;
- (d) a child (including an adult child);
- (e) a grandchild (including an adult grandchild);
- (f) a brother or sister;

**immediate victim**, in relation to an offence, means a victim of any of the following classes:

- (a) a person who suffers physical injury as a result of the commission of the offence;
- (b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences;
- (c) if the offence was committed against a child—a parent or guardian of the child;
- (d) if the offence was committed against a person who dies as a result of the offence—a member of the immediate family of the deceased;

**injury** means physical or mental injury, and includes pregnancy, mental shock and nervous shock;

*non-financial loss* means—

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

*offence* includes conduct on the part of a person that would constitute an offence if it were not for that person's age or mental impairment;

*offender*, in relation to an offence, means the person who committed the offence;

*parent* includes a person who stands in the position, and undertakes the responsibilities, of a parent;

*spouse*—a person is the spouse of another if they are legally married;

*statutory compensation* means compensation under this Act;

*victim*, in relation to an offence, means a person who suffers harm as a result of the commission of the offence (but does not include a person who was a party to the commission of the offence).

## **Part 2—Victims of crime in the criminal justice system**

### **Division 1—Explanatory provisions**

#### **5—Reasons for declaration and its effect**

- (1) In this Part, Parliament seeks to declare the principles that should govern the way victims are dealt with in the criminal justice system.
- (2) The need for the declaration arises out of national and international concern about the position of victims of crime in the criminal justice system.
- (3) The principles—
  - (a) are not enforceable in criminal or civil proceedings; and
  - (b) do not give rise to any right to damages for breach; and
  - (c) do not affect the conduct of criminal proceedings.
- (4) However, public agencies and officials are authorised and required to have regard, and to give effect, to the principles so far as it is practicable to do so having regard to the other obligations binding on them.

### **Division 2—Declaration of principles governing treatment of victims in the criminal justice system**

#### **6—Fair and dignified treatment**

A victim should be treated—

- (a) with courtesy, respect and sympathy; and
- (b) with due regard to any special need that arises—

- (i) because of the victim's—
  - age; or
  - sex; or
  - race or ethnicity; or
  - cultural or linguistic background; or
- (ii) for any other reason.

### **7—Right to have perceived need for protection taken into account in bail proceedings**

If a victim feels a need for protection from the alleged offender, a person representing the Crown in bail proceedings should ensure that the perceived need for protection is brought to the attention of the bail authority<sup>1</sup>.

**Note—**

- 1 See also section 10(4) of the *Bail Act 1985* which requires that where there is a victim of an offence, the bail authority must, in determining whether an applicant for bail should be released on bail, give primary consideration to the need that the victim may have, or perceive, for physical protection from the applicant.

### **8—Right to information about criminal investigation and prosecution**

- (1) A victim should be informed, on request, about the following:
  - (a) the progress of investigations into the offence;
  - (b) the charge laid and details of the place and date of proceedings on the charge;
  - (c) if a person has been charged with the offence—the name of the alleged offender<sup>1</sup>;
  - (d) if an application for bail is made by the alleged offender—the outcome of the application and, in particular, any condition imposed to protect the victim from the alleged offender;
  - (e) if the prosecutor decides not to proceed with the charge, to amend the charge, or to accept a plea to a lesser charge or agrees with the defendant to make or support a recommendation for leniency—the reasons for the prosecutor's decision;
  - (f) the outcome of the proceedings based on the charge and of any appeal from those proceedings;
  - (g) details of any sentence imposed on the offender for the offence;
  - (h) if the offender is sentenced to imprisonment and later makes an application for release on parole—the outcome of the proceedings and, in particular, any condition imposed to protect the victim from the offender.
- (2) A victim should be informed, on request, about the following:
  - (a) if the alleged offender absconds before trial—the fact that he or she has absconded;
  - (b) if the offender escapes from custody—the fact that he or she has escaped;

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- (c) if the offender, having escaped from custody, is returned to custody—the fact that he or she has been returned to custody;
  - (d) if the release of the offender into the community is imminent—details of when the offender is to be released.
- (3) However, a victim is not entitled to information that might jeopardise the investigation of an offence.
- (4) A victim should be informed, on request, about procedures that may be available to deal with a grievance the victim may have for non-recognition or inadequate recognition of the victim's rights under this Part.

**Note—**

- 1 Section 64 of the *Young Offenders Act 1993* provides a mechanism for exercising this right in relation to a young offender.

**9—Victim to be advised on role as witness**

- (1) A victim who is to be a witness for the prosecution at the trial of the offence should be informed by the prosecution about the trial process and the victim's rights and responsibilities as a witness for the prosecution.
- (2) The information should be given (if practicable) so as to allow the victim sufficient time to obtain independent advice, and arrange independent support, in relation to the exercise of those rights or the discharge of those responsibilities.

**10—Victim entitled to have impact of offence considered by sentencing court and to make submissions on parole**

- (1) A victim is entitled to have any injury, loss or damage suffered as a result of the offence considered by the sentencing court before it passes sentence<sup>1</sup>.
- (2) A victim of an offence is entitled to make written submissions to the Parole Board on questions affecting the parole of a person imprisoned for the offence.<sup>2</sup>

**Notes—**

- 1 Section 7A of the *Criminal Law (Sentencing) Act 1988* provides a mechanism for exercising this right. See also section 7 of that Act under which the prosecutor is obliged to place before the sentencing court details of injury, loss or damage resulting from the offence.
- 2 See section 77(2)(ba) of the *Correctional Services Act 1982*.

**11—Victim to be informed about access to health and welfare services**

A victim should be informed about health and welfare services that may be available to alleviate the consequences of injury suffered as a result of the offence.

**12—Rights in relation to compensation and restitution**

- (1) A victim should have access to information about how to obtain compensation or restitution for harm suffered as a result of the offence.
- (2) If the prosecutor is empowered to make an application for restitution or compensation on behalf of a victim in criminal proceedings—
- (a) the prosecutor should bring that fact to the attention of the victim; and
  - (b) should, if asked to do so by the victim—

- (i) make the application on the victim's behalf; and
- (ii) bring to the attention of the court any relevant information provided by the victim in connection with the application.

### **13—Return of property**

If a victim's property is taken for investigation or for use as evidence, the property should, if practicable, be returned to the victim as soon as it appears that it is no longer required for the purposes for which it was taken.

### **14—Protection of privacy**

- (1) There should be no unnecessary intrusion on a victim's privacy.
- (2) In particular, a victim's residential address should not be disclosed unless it is material to the prosecution or defence.
- (3) A victim should be protected as far as practicable from unnecessary contact with the alleged offender and defence witnesses during the course of the trial and in proceedings under this Act<sup>1</sup>.
- (4) A victim should only be asked to attend proceedings related to the offence if the victim's attendance is genuinely necessary.

**Note—**

- 1 See also section 13 of the *Evidence Act 1929* which contains special provisions for the protection of a person who is a vulnerable witness within the meaning of that section.

## **Part 3—Victims of crime advisory committee and co-ordinator**

### **15—Power to establish advisory committee**

- (1) The Attorney-General may establish an advisory committee to advise on—
  - (a) practical initiatives that the Government might take—
    - (i) to ensure that victims of crime are treated with proper consideration and respect in the criminal justice system; and
    - (ii) to help victims of crime to recover from harm suffered by them; and
    - (iii) to advance the interests of victims of crime in other ways; and
  - (b) any other matter referred to the advisory committee by the Attorney-General for advice.
- (2) A member of the advisory committee will be appointed and hold office for a term and on conditions determined by the Attorney-General.

### **16—Victims of Crime Co-ordinator**

- (1) The Governor may appoint a suitable person to be the Victims of Crime Co-ordinator.
- (2) The Victims of Crime Co-ordinator has the following responsibilities:
  - (a) to advise the Attorney-General on marshalling available government resources so they can be applied for the benefit of victims of crime in the most efficient and effective way;

- (b) to carry out other functions related to the objects of this Act assigned by the Attorney-General.
- (3) The Victims of Crime Co-ordinator is a member *ex officio* of the advisory committee.
- (4) The Victims of Crime Co-ordinator is to be appointed, and is to hold office, on a basis determined by the Governor.

## Part 4—Compensation

### 17—Eligibility to make claim

- (1) A person is eligible to claim statutory compensation for injury caused by an offence if—
  - (a) the person is an immediate victim of the offence; and
  - (b) at least one of the following conditions is satisfied:
    - (i) the offence involved the use of violence or a threat of violence against the person or a member of the person's immediate family;
    - (ii) the offence created a reasonable apprehension of imminent harm to the person or a member of the person's immediate family;
    - (iii) the offence is a sexual offence;
    - (iv) the offence caused death or physical injury.
- (2) A person is eligible to claim statutory compensation for grief suffered in consequence of the commission of a homicide if the person is—
  - (a) a spouse or domestic partner of the deceased victim; or
  - (b) where the deceased victim was a child—a parent of the deceased victim.
- (3) A person is eligible to claim statutory compensation for financial loss suffered by the dependants of a deceased victim if—
  - (a) the victim died as a result of the injury caused by the offence; and
  - (b) no previous order for statutory compensation has been made in respect of the injury; and
  - (c) the person is, in the opinion of the court, a suitable person to represent the interests of the dependants.
- (4) A person is eligible to claim statutory compensation for funeral expenses if—
  - (a) a victim dies in consequence of the offence; and
  - (b) the person has paid, or is responsible for payment of, the victim's funeral expenses.
- (5) However—
  - (a) a person is not entitled to statutory compensation if the injury arises from a breach of statutory duty by the person's employer that occurs in the course of the person's employment; and



- (b) a person is not entitled to statutory compensation if the person has received, or is entitled to receive, workers compensation for the same harm under Division 5 or 6 of Part 4 of the *Workers Rehabilitation and Compensation Act 1986*; and
  - (c) a person is not entitled to statutory compensation if the injury is caused by, or arises out of the use of, a motor vehicle in circumstances in which the injury falls within the ambit of a compulsory third-party insurance scheme covering the motor vehicle (whether the vehicle is in fact insured under the scheme or an action for damages lies against a nominal defendant); and
  - (d) a person is not entitled to statutory compensation for hospital or medical expenses that would, if no award for compensation were made, be recoverable from a health fund or scheme; and
  - (e) a prisoner is not entitled to statutory compensation for psychological injury resulting from an offence committed in the prison unless the prisoner was assaulted or suffered physical injury.
- (6) If workers compensation and statutory compensation are paid for the same harm<sup>1</sup>, the payment of statutory compensation does not give rise to a right to recovery under a law relating to workers compensation.

**Note—**

- 1 Note that this provision will only apply in the comparatively rare cases where the payment of, or right to, workers compensation does not operate to the exclusion of a right to statutory compensation under subsection (5)(b) above.

## **18—Application for compensation**

- (1) A person who is eligible to claim statutory compensation may, within the initial application period, apply for statutory compensation.
- (2) The initial application period is—
  - (a) for an application by a victim—3 years after the commission of the offence;
  - (b) for an application arising from the death of a victim—12 months after the date of death.
- (3) An application is to be made in the first instance to the Crown Solicitor.
- (4) The following requirements apply to and in relation to the application:
  - (a) the application must—
    - (i) contain the information required by the regulations; and
    - (ii) be accompanied by any medical reports relevant to the injury in the possession of, or accessible to, the claimant; and
    - (iii) be accompanied by any further documents required under the regulations; and
  - (b) the information contained in an application must be verified by statutory declaration; and
  - (c) a copy of the application must be served on the offender unless—
    - (i) the identity of the offender is unknown; or

- (ii) the Crown Solicitor exempts the applicant from this requirement on the ground that the whereabouts of the offender are unknown and cannot be readily ascertained.
- (5) If a claim for statutory compensation has not been settled by agreement between the Crown Solicitor and the claimant within 3 months after the application is made or a longer period agreed between the Crown Solicitor and the claimant (the *period for negotiation*), the claimant may apply to the court for an order for statutory compensation.
- (6) An application to the court under subsection (5) must be made on or before the later of the following:
  - (a) the end of the initial application period; or
  - (b) the end of the period of 6 months that follows immediately after the end of the period for negotiation.
- (7) The court may, for any proper reason, extend a period of limitation fixed by this section.

### **19—Joinder of offender as party to court proceedings**

- (1) If an application for statutory compensation is made to the court, the offender is (subject to this section) to be a party to the proceedings before the court.
- (2) A claimant who makes an application to the court must (subject to this section) serve a copy of the application on the offender.
- (3) The above requirements are subject to the following qualifications:
  - (a) if the identity of the offender is not known, there is no need to serve a copy of the application on the offender and the offender does not, in that case, become a party to the proceedings;
  - (b) if the whereabouts of the offender are not known and cannot be readily ascertained, the court may, on application by a claimant, exempt the claimant from the obligation to serve a copy of the application on the offender and, if such an exemption is granted, the offender is not a party to the proceedings.

### **20—Orders for compensation**

- (1) Subject to this Act, on an application for statutory compensation, 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 arising from the offence; 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); or
  - (c) in the case of an application for compensation for grief—that a claimant be paid by the Crown such amount (not exceeding \$4 200 in the case of a spouse or domestic partner or \$3 000 in the case of a parent) as the Court thinks fit by way of compensation for the grief suffered by the claimant; or

- (d) in the case of an application for compensation for funeral expenses—that the claimant be paid—
- (i) the amount of funeral expenses incurred by the claimant; or
  - (ii) \$5 000,
- whichever is the lesser.
- (2) If the Crown consents to the making of an order for statutory compensation, the court may, without further inquiry, make an order on terms agreed by the claimant and the Crown but—
- (a) the settlement does not bind the offender in any way unless the offender was a party to the settlement agreement; and
  - (b) the settlement does not limit rights that the claimant may have independently of this Act against the offender (whether or not the offender is a party to the settlement).
- (3) In awarding statutory compensation, the court must observe the following rules:
- (a) in the case of an award under subsection (1)(a) or (b)—
    - (i) if financial loss is to be compensated and the amount that would, but for this subparagraph, be awarded exceeds \$2 000, the amount awarded will, subject to subparagraph (iii), be \$2 000 plus three-quarters of the excess; and
    - (ii) if a claim for non-financial loss is made—
      - 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
      - if the numerical value so assigned is 2 or less, no award will be made for non-financial loss but, if the numerical value exceeds 2, the amount awarded will be 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;
  - (b) in the case of an award of compensation for grief—
    - (i) if both the spouse and the domestic partner of a person killed by homicide have applied for such compensation, the aggregate of the amounts awarded to them by way of such compensation will not exceed \$4 200;
    - (ii) if both parents of a child killed by homicide have applied for such compensation, the aggregate of the amounts awarded to them by way of such compensation will not exceed \$3 000;
  - (c) subject to the following qualifications, statutory compensation amounting in aggregate to more than \$50 000 cannot be awarded to any single claimant.

**Qualifications—**

- 1 If the claimant claims both as a dependant or representative of the dependants of a deceased victim and in some other capacity, the limitation applies separately to each capacity in which the claimant claims.
  - 2 An amount to which an applicant is entitled by way of funeral expenses will not be brought into account in determining whether the limitation has been exceeded.
- (4) In determining an application for, and the quantum of, statutory compensation, the court must have regard to—
- (a) any conduct on the part of the victim (whether or not forming part of the circumstances immediately surrounding the offence or injury) that contributed, directly or indirectly, to the commission of the offence, or to the injury to the victim; and
  - (b) such other circumstances as it considers relevant.
- (5) The court must not make an order for compensation in favour of a claimant if the court—
- (a) is satisfied beyond reasonable doubt that the injury to the claimant occurred while the claimant was engaged in conduct constituting an indictable offence; and
  - (b) is satisfied on the balance of probabilities that the claimant's conduct contributed materially to the risk of injury to the claimant,
- (unless the court is satisfied that, in the circumstances of the particular claim, failure to compensate would be unjust).
- (6) For the purposes of subsection (5)(a), a relevant conviction or acquittal is to be regarded as conclusive of the claimant's guilt or innocence of the indictable offence.
- (7) 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; or
  - (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; or
  - (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.
- (8) In deciding the amount of compensation to be awarded, the court must take into account—
- (a) any failure by the claimant to avail himself or herself of proper medical treatment or rehabilitative therapy; or
  - (b) any other failure to take proper steps to mitigate his or her loss.

- (9) No interest may be awarded by the court in respect of the whole or any part of the amount of statutory compensation ordered.
- (10) If the court has made an order for compensation under this section—
  - (a) it must, where the offender has been convicted, or adjudged or found guilty, of the offence, endorse on or annex to the order a statement of the offender's means (so far as they are ascertainable by the court); and
  - (b) it must endorse on or annex to the order a statement of any payments that the claimant has received, or would, were the claimant to exhaust all other available remedies, be likely to receive, in respect of the injury or the death of the victim, apart from this Act.
- (11) The court may make such orders for the costs of proceedings under this Act as the court thinks fit.

## **21—Medical examination of claimant**

- (1) A claimant must, if the Crown so requires, submit himself or herself for medical examination by a medical practitioner nominated by the Crown.
- (2) The costs of the medical examination, and any expenses reasonably incurred by the claimant in complying with the request for the examination, must be borne by the Crown.
- (3) If an offender is a party to proceedings under this Act, the court may, on application by the offender, order a claimant to submit himself or herself for medical examination by an appropriate medical practitioner (at the offender's expense).
- (4) The court may order that the proceedings on an application for statutory compensation be stayed until a medical examination has been completed.
- (5) A party must, on receiving the report of the medical practitioner on the results of the examination, furnish the other parties with a copy of the report.

## **22—Evidence and proof**

- (1) Subject to this Act, any fact to be proved by a claimant in proceedings under this Act is sufficiently proved if it is proved on the balance of probabilities.
- (2) No order for statutory compensation may be made (except by consent of the Crown) on an application unless—
  - (a) the commission of the offence to which the application relates—
    - (i) has been admitted, or proved beyond reasonable doubt, in proceedings before a court; or
    - (ii) has been admitted in statutory proceedings related to the offence or can be reasonably inferred from admissions made in any such proceedings; and
  - (b) the other facts on which the application is based have been proved on the balance of probabilities.
- (3) If an order for compensation is sought in respect of an offence, and no person has been brought to trial charged with the offence, the evidence of the claimant as to the commission of the offence, unless supported in a material particular by corroborative evidence, is not sufficient to establish the commission of the offence.

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

### 23—Joint offences

- (1) If an application is made for statutory compensation in respect of injury suffered by a victim, financial loss suffered by a dependant, or grief suffered by a spouse, domestic partner or parent, in consequence of an offence committed by more than one offender, the court may make only one order for statutory compensation in respect of that injury, loss or grief.
- (2) If an application is made for statutory compensation in respect of injury suffered by a victim, financial loss suffered by a dependant, or grief suffered by a spouse, domestic partner or parent—
- (a) 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
  - (b) in circumstances in which those offences constitute a single incident,
- the court may make only one order for statutory compensation in respect of the injury, loss or grief.

### 24—Appeals

- (1) A party to proceedings under this Act may, subject to the rules of the Supreme Court, appeal to the Full Court of the Supreme Court against any final order made by the court in those proceedings.
- (2) However, if an order for statutory compensation is made by consent of the Crown, the offender cannot appeal against that order<sup>1</sup>.
- (3) The Supreme Court may—
- (a) dismiss the appeal; or
  - (b) quash the order and, if it thinks fit, substitute any other order that the court in the first instance could have made; or
  - (c) vary the order in any respect; or
  - (d) remit the subject matter of the appeal for rehearing,
- and may make such other ancillary orders (including, subject to this Act, orders relating to the costs of the appeal) as it thinks fit.

**Note—**

- 1 Note that in these circumstances, the order does not necessarily bind the offender when the Crown applies for reimbursement—see section 28.

### 25—Legal costs

- (1) Despite any Act or law to the contrary—
- (a) costs awarded in proceedings under this Act must not exceed the amount allowable under the prescribed scale (plus GST); and

- (b) a legal practitioner must neither charge nor seek to recover in respect of proceedings under this Act an amount by way of costs in excess of the amount allowable under the prescribed scale (plus GST).
- (2) The Governor may, by regulation, prescribe a scale of costs for the purposes of subsection (1).
- (3) In this section—

*GST* means the tax payable under the GST law;

*GST law* means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things.

## 26—Representation of Crown in proceedings

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.

## Part 5—Payment of compensation

### 27—Payment of compensation etc by Attorney-General

- (1) Subject to subsection (2), the Attorney-General must satisfy an order for statutory compensation (or for statutory compensation and costs) within 28 days of—
  - (a) the day on which a copy of the order is lodged by the claimant with the Attorney-General; or
  - (b) if an appeal has been instituted against the order, the day on which the appeal is withdrawn or determined,

whichever is the later.

- (2) If—
  - (a) the claimant has received or is entitled to payments apart from this Act in respect of the injury or loss (*other payments*); and
  - (b) the Attorney-General is satisfied that, in view of the other payments, it is just to exercise the powers conferred by this subsection,

the Attorney-General may decline to satisfy an order for statutory compensation (or for statutory compensation and costs), or may reduce the payment to be made to the extent it appears just to do so.

- (3) In the exercise of the discretion conferred by subsection (2), the Attorney-General—
  - (a) should have regard to the extent to which the other payments represent an adequate compensation for the injury or loss; and
  - (b) should (in appropriate cases) have regard to the extent to which the other payments compensate (or would compensate) the claimant for pain, suffering and other non-economic loss; and

- (c) if the other payments do not, in the Attorney-General's opinion, represent an adequate compensation for pain, suffering and other non-economic loss, should not reduce the amount to be paid under this Act below the lesser of the following two amounts:
- (i) the amount that represents the extent of the deficiency;
  - (ii) \$10 000.
- (4) The Attorney-General has an absolute discretion to make the following payments:
- (a) an interim payment of compensation (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a claimant who, in the opinion of the Attorney-General, is in necessitous circumstances and is likely to be awarded statutory compensation; or
  - (b) 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 conduct alleged to constitute an offence;
    - (ii) the alleged offender is acquitted of the offence;
    - (iii) the acquittal appears to the Attorney-General to have arisen—
      - in a case of rape—from lack of *mens rea*;
      - in any other case—from duress, drunkenness or automatism;
    - (iv) the person would, in the Attorney-General's opinion, probably have been awarded statutory compensation if the offence had been established; or
  - (c) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to the victim of conduct capable of constituting the objective elements of an offence if it appears to the Attorney-General that, because of lack of evidence, absence of capacity to incur criminal responsibility or other matters personal to the perpetrator, or for any other reason that does not reflect adversely on the victim, an offence has not been, or cannot be, established; or
  - (d) 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) if the law of the place where the offence is committed establishes a right to compensation—the claimant has taken reasonable steps to obtain compensation under that law but without success;



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- (v) the claimant would, in the Attorney-General's opinion, probably have been awarded statutory compensation if the offence had been committed in this State;
  - (vi) the claimant is, in the Attorney-General's opinion, in necessitous circumstances; or
  - (e) such other *ex gratia* payments (not exceeding, in any particular case, the limits prescribed by this Act in relation to an order for compensation) as the Attorney-General considers necessary, and consistent with the objects and policy of this Act, to compensate harm resulting from criminal conduct or conduct of the kind described above.
- (5) A decision by the Attorney-General in the exercise of a discretion under this section cannot be challenged or called in question before any court.

## **28—Right of Attorney-General to recover money paid out from offender etc**

- (1) If the Attorney-General makes a payment to a claimant, the Attorney-General is subrogated, to the extent of the payment, to the rights of—
- (a) the claimant, as against the offender or any other person liable at law to compensate the claimant for the injury, financial loss or grief in respect of which the payment was made; 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 in respect of which the payment was made.
- (2) The Attorney-General may—
- (a) bring a claim against an insurer or other person against whom the subrogated right lies by way of third party proceedings in the proceedings founded on the application for statutory compensation; or
  - (b) bring such a claim in separate proceedings against the person against whom the subrogated right lies (including an offender who was not a party to the proceedings founded on the application for statutory compensation).
- (3) If the offender is a party to proceedings founded on an application for statutory compensation—
- (a) the Attorney-General may file in the court a certificate certifying—
    - (i) the amount of the statutory compensation paid out on the claim; and
    - (ii) the applicant's costs (so far as they have been or are to be paid by the Crown); and
  - (b) judgment must then be entered in favour of the Crown and against the offender for the aggregate amount so certified.
- (4) However, if the claim was settled by agreement between the Crown and the claimant, and the offender was not a party to the agreement for settlement—
- (a) the offender may, within 1 month after the offender receives notice of a judgment entered under subsection (3), apply to have the judgment set aside or varied as may be reasonable in the circumstances of the case; and
  - (b) the court may set aside the judgment or vary it accordingly.

- (5) If an application for statutory compensation is settled without court proceedings, or proceedings were brought in court but the offender was not a party to those proceedings, the Attorney-General may—
  - (a) file in the court a certificate certifying—
    - (i) the amount of the statutory compensation paid out on the claim; and
    - (ii) the applicant's costs (so far as they have been or are to be paid by the Crown); and
  - (b) apply for summary judgment in favour of the Crown and against the offender for the aggregate amount so certified.
- (6) The court must, on an application by the Attorney-General under subsection (5), enter summary judgment in accordance with the application unless the offender satisfies the court, on application made by the offender within 1 month after receiving notice of the Attorney-General's application, that there is good reason for not entering judgment in accordance with the Attorney-General's application.

## 29—Recovery from claimant

- (1) If the Attorney-General makes an interim payment of statutory compensation to a claimant and no order for statutory compensation is subsequently made in favour of that claimant, or an order is made but for a lesser amount, the Attorney-General may recover the amount so paid or the amount of the excess (as the case requires) from the claimant as a debt.
- (2) If—
  - (a) the Attorney-General makes a payment under this Act to a claimant; and
  - (b) the claimant is subsequently paid compensation or damages by some other person for the injury, financial loss or grief for which the payment under this Act was made; and
  - (c) the compensation or damages received from the other source was not taken into account by the Attorney-General in making the payment or exceeds the amount taken into account by the Attorney-General,

the Attorney-General may recover from the claimant, as a debt, the amount of the payment or the amount of the excess (as the case requires) but may not recover more than the amount received from the other source.

## Part 6—Victims of Crime Fund

### 30—Victims of Crime Fund

- (1) The Fund previously known as the *Criminal Injuries Compensation Fund* continues in existence as the *Victims of Crime Fund*.
- (2) The Fund consists of—
  - (a) the money provided by Parliament for the purposes of the Fund; and
  - (b) any amounts paid into the Fund under subsection (3); and
  - (c) any amounts recovered by way of levy under this Part; and
  - (d) any amounts recovered by the Attorney-General under this Act; and

- (e) any money paid into the Fund under any other Act.
- (3) In each financial year, the prescribed proportion of the aggregate amount paid into General Revenue by way of fines will be paid into the Fund.
- (4) A payment made by the Attorney-General under this Act will be debited to the Fund.
- (5) A deficiency in the Fund will be met from the Consolidated Account.

### **31—Power to make discretionary payments from Fund**

- (1) The Attorney-General has an absolute discretion to make payments from the Fund to a government or non-government organisation or agency for a purpose that will, in the Attorney-General's opinion, assist in the prevention of crime or advance the interests of victims of crime.
- (2) The Attorney-General also has an absolute discretion to make other payments from the Fund to or for the benefit of victims of crime that will, in the Attorney-General's opinion, help them to recover from the effects of crime or advance their interests in other ways.
- (3) A decision by the Attorney-General in the exercise of a discretion under this section cannot be challenged or called in question before any court.

### **32—Imposition of levy**

- (1) A levy is imposed for the purpose of providing a source of revenue for the Fund.
- (2) Subject to subsection (3) and any exceptions prescribed by the regulations, the levy is imposed on—
  - (a) all persons convicted of offences after the commencement of this section (whether the offence was committed before or after the commencement of this section); and
  - (b) all persons who expiate offences under expiation notices issued after the commencement of this section.
- (3) A levy is not imposed on a person convicted of an offence if the person has paid the levy under an expiation notice issued for the same offence.
- (4) The amount of the levy is to be fixed by regulation.
- (5) The amount of the levy may vary according to any one or more of the following factors:
  - (a) the nature of the offence;
  - (b) whether the offence is a summary or an indictable offence;
  - (c) whether or not the offence is expiated;
  - (d) whether or not the offender is an adult;
  - (e) variations in the consumer price index.
- (6) If a levy is payable under this section by a person who expiates an offence—
  - (a) the amount of the levy must be shown on the expiation notice; and
  - (b) despite any other law, the offence will not be regarded as expiated, and no immunity from prosecution will arise, unless the levy has been paid.

- (7) If a levy is payable under this section by a person who is convicted of an offence—
- (a) the amount of the levy must be shown in—
    - (i) any formal record of the conviction and sentence; and
    - (ii) any notice of the conviction and sentence given to the defendant; and
    - (iii) any warrant of commitment issued for the imprisonment of the defendant for the offence; and
  - (b) the court may not, at the time of convicting or sentencing the defendant for the offence, reduce the levy or exonerate the defendant from liability to pay it; and
  - (c) the levy is recoverable under the *Criminal Law (Sentencing) Act 1988*.
- (8) Despite any other provision of this section, the Governor may remit a levy, or a part of a levy, payable by a person under this section.

## Part 7—Miscellaneous

### 33—Interaction between this Act and other laws

This Act does not exclude or derogate from rights to damages or compensation that exist apart from this Act.

### 34—Date as at which compensation is to be assessed

If a person is entitled to statutory compensation, the amount of the compensation must be assessed in accordance with the provisions of this Act as in force at the time of the commission of the offence from which the injury arose.

### 35—Delegation

- (1) The Attorney-General may, by instrument in writing, delegate to a specified person, or the holder of a specified position, any of the Attorney-General's powers or functions under this Act.
- (2) A delegation under this section—
- (a) may be made subject to conditions or limitations; and
  - (b) is revocable at will and does not derogate from the power of the Attorney-General to act in any matter.
- (3) However, a delegation cannot be made under this section of the Attorney-General's power to decline to satisfy an order for statutory compensation (or for statutory compensation and costs) or to reduce the payment to be made under such an order<sup>1</sup>.

**Note—**

<sup>1</sup> See section 27(2).

### 36—Annual report

- (1) The administrative unit of the Public Service responsible, under the Attorney-General, for the administration of this Act must, on or before 30 September in each year, present a report to the Attorney-General on the operation and administration of this Act during the previous financial year.

- (2) A report required under this section may be incorporated in the annual report of the relevant administrative unit.
- (3) The Attorney-General must, within 12 sittings days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### **37—Regulations**

The Governor may make regulations for the purposes of this Act.

## **Schedule 1—Repeal and transitional provisions**

### **1—Repeal of *Criminal Injuries Compensation Act 1978***

The *Criminal Injuries Compensation Act 1978* (the *repealed Act*) is repealed.

### **2—Transitional provision**

- (1) Subject to subclause (2), the repealed Act applies to an application for compensation in respect of an injury arising from an offence committed before the commencement of this Act.
- (2) However, if compensation (other than interim compensation) had not been paid under the repealed Act before the commencement of this Act, Part 5 of this Act applies to the exclusion of the corresponding provisions of the repealed Act as if the order for compensation were an order under this Act.
- (3) This Act applies to a claim for statutory compensation for an injury caused by an offence committed on or after the commencement of this Schedule.

### **3—Operation of certain amendments**

An amendment made by a provision of the *Statutes Amendment (Domestic Partners) Act 2006* to this Act applies only in relation to a claim for statutory compensation for an injury caused by an offence committed after the commencement of the amendment.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Victims of Crime Act 2001* amended the following:

*Correctional Services Act 1982*  
*Criminal Assets Confiscation Act 1996*  
*Criminal Law (Sentencing) Act 1988*  
*District Court Act 1991*  
*Expiation of Offences Act 1996*  
*Stamp Duties Act 1923*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2001	58	<i>Victims of Crime Act 2001</i>	15.11.2001	1.1.2003 ( <i>Gazette 19.12.2002 p4736</i> )
<b>2006</b>	<b>43</b>	<b><i>Statutes Amendment (Domestic Partners) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 92 (ss 218—222)—1.6.2007 (<i>Gazette 26.4.2007 p1352</i>)</b>
2007	47	<i>Victims of Crime (Commissioner for Victims' Rights) Amendment Act 2007</i>	8.11.2007	Pt 2 (ss 4—8)—uncommenced
2007	48	<i>Statutes Amendment (Victims of Crime) Act 2007</i>	8.11.2007	Pt 5 (ss 7—17)—uncommenced

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
dependants	amended by 43/2006 s 218(1)	1.6.2007
domestic partner	inserted by 43/2006 s 218(2)	1.6.2007
immediate family	amended by 43/2006 s 218(3)	1.6.2007

spouse	substituted by 43/2006 s 218(4)	1.6.2007
Pt 4		
s 17		
s 17(2)	amended by 43/2006 s 219	1.6.2007
s 20		
s 20(1)	amended by 43/2006 s 220(1)	1.6.2007
s 20(3)	amended by 43/2006 s 220(2)	1.6.2007
s 23		
s 23(1)	amended by 43/2006 s 221(1)	1.6.2007
s 23(2)	amended by 43/2006 s 221(2)	1.6.2007
Sch 1		
cl 3	inserted by 43/2006 s 222	1.6.2007
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	