

South Australia

Victims of Crime (Statutory Compensation) Regulations 2004

under the *Victims of Crime Act 2001*

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1—Short title

These regulations may be cited as the *Victims of Crime (Statutory Compensation) Regulations 2004*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

Act means the *Victims of Crime Act 2001*;

allied health practitioner means a health practitioner other than a dentist or medical practitioner;

dentist means a person who is registered in this or any other State or a Territory of the Commonwealth as a dentist;

hospital report, in relation to a victim, includes a report on the victim written by a member of the hospital's medical personnel, the whole of the victim's record from the hospital or the written summary given to the victim on the victim's discharge from the hospital;

limited claim—a claim for statutory compensation is a *limited claim* if it is limited to a claim for compensation for one or both of the following:

- (a) for grief suffered in consequence of the commission of a homicide (see section 17(2) of the Act);
- (b) for funeral expenses (see section 17(4) of the Act),

and *limited application* has a corresponding meaning;

medical practitioner means a person who is registered in this or any other State or a Territory of the Commonwealth as a medical practitioner;

period for negotiation—see section 18(5) of the Act;

related claim—a claim for statutory compensation is a *related claim* if—

- (a) in proceedings under the Act, the same legal practitioner represents more than one victim of an offence claiming compensation in respect of injury arising from the offence; or
- (b) in proceedings under the Act, the same legal practitioner represents more than one victim of a series of offences claiming compensation in respect of injury arising from the series of offences;

series of offences means—

- (a) offences committed consecutively by one offender, or offences committed simultaneously or consecutively by offenders acting in concert; or
- (b) offences committed in circumstances in which those offences constitute a single offence,

(see section 23 of the Act).

4—Requirements for applications for statutory compensation (section 18 of Act)

- (1) For the purposes of section 18(4)(a)(i) of the Act, the information required to be included in an application for statutory compensation is set out in Part 1 of Schedule 1.

- (2) For the purposes of section 18(4)(a)(iii) of the Act, a list of the documents required to accompany an application for statutory compensation is set out in Part 2 of Schedule 1.

Note—

See also section 18(4)(a)(ii) of the Act which requires an application for statutory compensation to be accompanied by any medical reports relevant to the injury in the possession of, or accessible to, the claimant.

- (3) If a claimant seeks to be exempted under section 18(4)(c)(ii) of the Act from serving a copy of an application on the offender, the claimant must include in the application (in addition to the other required information) full details of the attempts made by the claimant to locate the offender.

Note—

Section 18(4)(b) of the Act requires the information contained in an application to be verified by statutory declaration.

5—Prescribed scale of costs (section 25 of Act)

- (1) For the purposes of section 25(1) of the Act, the prescribed scale of costs is set out in Schedule 2.
- (2) No fee is payable in proceedings under the Act except as set out in Schedule 2.
- (3) However, subregulation (2) does not prevent the Crown from recovering its costs in respect of proceedings under the Act.

6—Legal practitioner not negligent if relies on certain reports

For the avoidance of doubt, a legal practitioner who relies on a report obtained under these regulations in the course of, or in connection with, giving advice about a claim for compensation in respect of the claimant will be taken not to have acted negligently in so doing.

Schedule 1—Requirements for applications for statutory compensation

Part 1—Information to be included in application

1—Claimant information

A claimant must include in an application for statutory compensation the following information:

- (a) the name, address and date of birth of the claimant;
- (b) the name, address and date of birth of the victim of the offence (if not the claimant);
- (c) the date, time and place of the offence;
- (d) the nature of the offence and the details surrounding the occurrence of the offence;
- (e) when and where the offence was reported to the police or, if not reported, the reason for not reporting the offence;

- (f) details of the nature and extent of the injury;
- (g) if the victim of the offence is dead—
 - (i) the relationship of the claimant to the victim; and
 - (ii) the date of death; and
 - (iii) the date of the funeral.

Note—

Failure to report an offence to the police within a reasonable time after its commission may result in a claimant being refused statutory compensation unless the claimant can establish good reason for the failure—see section 20(7) of the Act.

2—Offender information

A claimant must include in an application for statutory compensation the following information about the offender:

- (a) the name and address of the offender (if known);
- (b) if the offender was charged with an offence—
 - (i) details of the charges laid; and
 - (ii) details of the court in which the charges were laid; and
 - (iii) the date of the trial (if any);
- (c) the outcome of the prosecution of any offence, including, if the offender was convicted of an offence—
 - (i) details of the conviction recorded; and
 - (ii) details of the court in which the conviction was recorded; and
 - (iii) the date of the conviction; and
 - (iv) details of any appeal lodged against the conviction by the offender;
- (d) whether the claimant gave evidence for the prosecution at the trial of the offender and, if not, the reasons why the claimant did not give evidence;

Note—

Failure of or refusal by the victim to give evidence in the prosecution of an offender may result in a claimant being refused statutory compensation unless the claimant can establish good reason for the failure or refusal—see section 20(7) of the Act.

- (e) if the claimant seeks an exemption from the requirement to serve the application on the offender on the ground that the whereabouts of the offender are unknown and cannot be readily ascertained (see section 18(4)(c) of the Act)—details of attempts by the claimant to locate the offender.

3—Information about action taken to ascertain defendant's assets

A claimant must include in an application (other than a limited application) for statutory compensation details, and results, of any searches carried out by the claimant in order to ascertain any assets of the defendant.

4—Information about statutory compensation being claimed

- (1) A claimant must include in an application for statutory compensation that is limited to compensation for funeral expenses an itemised list of funeral expenses.

Note—

Section 17(4) of the Act sets out who is eligible to claim statutory compensation for funeral expenses.

- (2) A claimant must include in an application for statutory compensation the following information about the compensation being claimed:
- (a) particulars of any special damages being claimed, including—
 - (i) an itemised list of expenses in relation to any treatment and the name of the person or institution to whom the expense was paid or is payable;
 - (ii) as to each item, details of any refund or entitlement to refund of treatment costs from Medicare, an insurer or any other source;
 - (iii) an itemised list of funeral expenses;
 - (b) particulars of any loss of earnings as follows:
 - (i) if past loss of earnings is being claimed, details of the period off work or any period of reduced work and the amount that would have been earned had the claimant worked during that period (showing how this is calculated);
 - (ii) if an ongoing loss of earnings or a loss of earning capacity is being claimed, details of—
 - (A) the occupation or business of the claimant at the time of the injury and during the 12 months prior to the injury;
 - (B) the gross income received from the occupation or business during the 12 month period ending on 30 June last prior to the injury;
 - (C) any disability (including mental disability) from which the claimant is suffering or has suffered in consequence of the injury and which is preventing or has prevented (wholly or in part) the claimant from carrying on his or her occupation or business;
 - (D) the periods since the injury during which the claimant has been unable (wholly or in part) to perform his or her usual occupation or business, together with the periods during which the incapacity has been total and the periods during which it has been partial;
 - (E) where there has been partial incapacity, the nature and extent of the partial incapacity;
 - (F) the periods since the injury during which the claimant has been employed or otherwise engaged in an occupation or business and, in respect of each such occupation or business—

- the nature of the occupation or business;
- the address at which it was conducted or performed;
- the name of the employer;
- the gross income received by the claimant.

5—Formulated claim

- (1) A claimant must include in an application (other than a limited application) for statutory compensation a formulated claim showing the amount of compensation for which the claimant proposes the claim be settled.
- (2) The formulated claim must set out separately—
 - (a) the number of points claimed for non-financial loss (see section 20(3)(a)(ii) of the Act); and
 - (b) the amount claimed for—
 - (i) any closed period of past loss of earnings; and
 - (ii) any loss of earning capacity; and
 - (iii) special damages.
- (3) The formulated claim must include a statement of all amounts received, or likely to be received, by or on behalf of the claimant from the offender, an insurer or any other source, and details of any steps taken to obtain payment or compensation from the offender or any other person, body corporate or government department or agency in respect of the injury.

Part 2—Documents required to accompany application

6—Police records, statements etc

An application for statutory compensation must be accompanied by a copy of any record, statement or evidence relating to the offence provided to the claimant by the police.

7—Hospital reports and reports from general medical practitioner or dentist

The claimant's application (other than a limited application) for statutory compensation must be accompanied by at least one of the following reports:

- (a) if the victim was treated for the injury in a hospital—the hospital report (up to 20 pages) relating to the victim;
- (b) a report from a general medical practitioner or dentist summarising—
 - (i) the history taken from the victim; and
 - (ii) the nature and extent of the injury; and
 - (iii) the history of the treatment of the injury; and
 - (iv) whether there is a need for any future treatment and, if so, the nature of the future treatment; and
 - (v) the prognosis; and

- (vi) the nature and extent of any permanent disability resulting from the injury.

Note—

See also clause 4(2) of Schedule 2.

8—Photographs

- (1) If an application for statutory compensation includes a claim for a permanent disability in the nature of scarring, deformity or disfigurement resulting from an injury caused by an offence, the application must be accompanied by—
 - (a) any relevant photographs, which must be dated, of the victim taken before the victim was injured; and
 - (b) photographs of the injury taken at or about the time of the making of the application.
- (2) A photograph taken for the purposes of subclause (1)(b) must, on the reverse of the photograph, be signed and dated by a legal practitioner or justice certifying that—
 - (a) he or she has seen, and is satisfied as to the identity of, the victim; and
 - (b) the photograph is a true photograph of the victim.

9—Statement of loss of earnings etc

- (1) If an application for statutory compensation includes a claim for past loss of earnings—
 - (a) by the claimant as an employee, the application must be accompanied by—
 - (i) a letter from the employer or employer's insurer; or
 - (ii) some other written evidence,confirming the period during which the claimant lost earnings and the amount lost during the period;
 - (b) by the claimant as a self-employed person, the application must be accompanied by written evidence confirming the period during which the claimant lost earnings and the amount lost during the period.
- (2) If an application for statutory compensation includes a claim for loss of earnings as a result of the claimant being unable, as a consequence of the injury, to enter into, or carry out, a contract with a particular person, the application must be accompanied by—
 - (a) a letter from the person confirming the availability of work for the claimant during the relevant period and the value of that work; or
 - (b) some other written evidence supporting the claim.
- (3) If an application for statutory compensation includes a claim for loss of earning capacity by the claimant, the application must be accompanied by a copy of the claimant's income tax return—
 - (a) for each of the 5 financial years immediately preceding the commission of the offence resulting in the injury; and

- (b) for the financial year during which the offence resulting in the injury was committed; and
- (c) for each of the financial years occurring since the financial year referred to in paragraph (b).

Note—

Copies of tax returns may be obtained from the Australian Taxation Office.

10—Documents relating to amounts received by claimant from other sources

An application for statutory compensation must be accompanied by copies of any documents relating to any amounts received, or likely to be received, by or on behalf of the claimant from the offender, an insurer or any other source, and details of any steps taken to obtain payment or compensation from the offender or any other person, body corporate or government department or agency in respect of the injury.

Schedule 2—Prescribed scale of costs

1—Solicitors fee

A solicitor may charge a fee for a claim for compensation as follows:

- (a) a fee of \$500 for a limited claim where the identity of the offender is known and compensation is agreed;

Note—

A solicitor is not entitled to a fee in respect of a limited claim for compensation where the identity of the offender is unknown and compensation is agreed.

- (b) a fee of \$1 000 for any other claim that is not a related claim;
- (c) if the claim is a related claim—a fee of \$1 000 for the first claim and, for each of the other related claims, a fee of \$800.

2—Counsels fee

- (1) Counsel may charge a fee of not more than \$750 for all work preparatory to an application to the court for compensation (including advice on evidence and any other legal advice on the application, conferences and proofing witnesses) and for the first 5 hours of the hearing of the application.
- (2) Counsel may charge an additional fee of 1/5 of the preliminary fee actually charged for each hour or part of an hour after the first 5 hours of the hearing of the application.
- (3) Subject to subclause (4), counsel may charge a fee of \$500 for an opinion as to the compromise of a minor's claim for compensation.
- (4) Counsel may charge a fee of \$350 for each opinion as to the compromise of a minor's related claim for compensation.

3—Fee for an appeal

The fee that may be charged for an appeal is \$500.

4—Disbursements

- (1) Subject to this clause, if—
 - (a) an application for statutory compensation is made to the court, a legal practitioner may recover all disbursements reasonably incurred under the Act as certified by the court;
 - (b) an application for statutory compensation is settled without any such application being made, a legal practitioner may recover all disbursements reasonably incurred as certified by the Crown Solicitor.
- (2) A legal practitioner may recover the reasonable cost of obtaining the following reports relating to a claim for statutory compensation:
 - (a) a hospital report (up to 20 pages);
 - (b) the report of a general medical practitioner or dentist.
- (3) A legal practitioner may not recover the cost of obtaining a report relating to a claim for statutory compensation—
 - (a) in the case of a hospital report that is longer than 20 pages, unless—
 - (i) the Crown Solicitor has given prior agreement; or
 - (ii) the court is satisfied that the whole of the victim's record from the hospital is, in the circumstances, necessary for the determination of the matter;
 - (b) in the case of a report from more than one expert in the same specialty, unless—
 - (i) the Crown Solicitor has given prior agreement; or
 - (ii) the court is satisfied that the report from more than one expert in the specialty is necessary to provide the court with the evidence required for the determination of the matter;
 - (c) in the case of a report from an allied health practitioner, unless—
 - (i) the Crown Solicitor has given prior agreement that the report is necessary, having regard to—
 - (A) the nature of the claimant's injury; and
 - (B) the qualifications and field of practice of the allied health practitioner; and
 - (C) whether the claimant was referred to the allied health practitioner for treatment by a medical practitioner; and
 - (D) whether a report from a general medical practitioner or dentist could provide the evidence necessary for the determination of the matter; and
 - (E) the estimated cost of the report from the allied health practitioner; and
 - (F) whether obtaining the report from the allied health practitioner would likely avoid the need to obtain a more costly report from a medical practitioner or dentist; and

- (G) whether the claimant has obtained, or proposes to obtain, a report from a medical practitioner or dentist; and
 - (H) any other matter that, in the circumstances, may compromise (or give the appearance of compromising) the independence of the allied health practitioner or undermine the reliability of the report; or
- (ii) the court is satisfied that the report of a medical practitioner or dentist would not provide the court with the evidence necessary for the determination of the matter;
- (d) in the case of any other report, unless—
 - (i) application for statutory compensation was made to the Crown Solicitor in accordance with section 18 of the Act but no acceptable settlement offer was made within the period for negotiation; or
 - (ii) the Crown Solicitor has given prior agreement that the additional report is necessary, having regard to—
 - (A) the nature of the claimant's injury; and
 - (B) whether the person proposed to provide the report has treated the claimant for the injury; and
 - (C) whether a report from a general medical practitioner or dentist would provide the evidence necessary for the determination of the matter.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 21 October 2004

No 222 of 2004

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