

As in force at 1 January 2003.

South Australia

VICTIMS OF CRIME REGULATIONS 2002

REGULATIONS UNDER THE VICTIMS OF CRIME ACT 2001

Victims of Crime Regulations 2002

being

No. 231 of 2002: *Gaz* 19 December 2002, p. 4801¹

¹ Came into operation 1 January 2003: reg. 2.

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Requirements for Applications for Statutory Compensation

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Citation

1. These regulations may be cited as the *Victims of Crime Regulations 2002*.

Commencement

2. These regulations will come into operation on the day on which the *Victims of Crime Act 2001* comes into operation.

Revocation

3. (1) The *Criminal Injuries Compensation Regulations 2002* (see *Gazette* 29 August 2002 p. 3313), as varied, are revoked.

(2) The *Criminal Injuries Compensation (Fund) Regulations 1997* (see *Gazette* 21 August 1997 p. 431) are revoked.

Interpretation

4. In these regulations—

"**Act**" means the *Victims of Crime Act 2001*;

"**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;

"**period for negotiation**"—in relation to a claim for statutory compensation, the **period for negotiation** is 3 months from the making of the application or a longer period agreed between the Crown Solicitor and the claimant (*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 offences committed consecutively by one offender, or offences committed simultaneously or consecutively by offenders acting in concert (*see* section 23 of the Act).

Requirements for applications for statutory compensation (s. 18 of Act)

5. (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 A of Schedule 1.

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(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 B 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 for statutory compensation 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.

Prescribed scale of costs (s. 25 of Act)

6. (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.

Prescribed proportion to be paid into Fund (s. 30 of Act)

7. For the purposes of section 30(3) of the Act, the prescribed proportion of the aggregate amount paid into General Revenue by way of fines that is to be paid into the Victims of Crime Fund is 20 per cent.

Imposition of levy (s. 32 of Act)

8. For the purposes of section 32 of the Act, the levy to be imposed for the purpose of providing a source of revenue for the Victims of Crime Fund is fixed by Schedule 3.

Review of operation of these regulations

9. (1) The Minister must, at the end of 2 years from the commencement of these regulations, review their operation.

(2) A report on the review must be prepared and laid before the Legislative Review Committee of the Parliament.

Schedule 1—Requirements for applications for statutory compensation

PART A: INFORMATION TO BE INCLUDED IN APPLICATION

Claimant information

1. 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 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.

Offender information

2. 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 any 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;

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- (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;
- (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 (*see* section 18(4)(c) if the Act)—details of attempts by the claimant to locate the offender.

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.

Information about action taken to ascertain defendant's assets

3. 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 the assets (if any) of the defendant.

Information about statutory compensation being claimed

4. (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 (*see* section 17(4) of the Act).

(2) A claimant must include in an application for statutory compensation the following information about the compensation being claimed:

- (a) particulars of special damages, 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 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 performing 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;

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- (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.

Formulated claim

5. (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 B: DOCUMENTS REQUIRED TO ACCOMPANY APPLICATION

Police records, statements, etc.

1. 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.

General medical practitioner's report

2. If there is no other medical or psychological report relevant to an injury caused by an offence, the claimant's application (other than a limited application) for statutory compensation must be accompanied by a report from the claimant's usual or treating general medical practitioner summarising—

- (a) the history taken from the claimant; and
- (b) the nature and extent of the injury; and
- (c) the history of the treatment of the injury; and
- (d) whether there is a need for any future treatment and, if so, the nature of the future treatment; and

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- (e) the prognosis; and
- (f) the nature and extent of any permanent disability as a result of the injury.

Note—

See also clause 4(2) of Schedule 2.

Photographs

3. (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 claimant taken before the claimant 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 claimant; and
- (b) the photograph is a true photograph of the claimant.

Statement of loss of earnings, etc.

4. (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 a letter from the employer or employer's insurer 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 supporting the claim.

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

Note—

A claimant may obtain copies of tax returns by making an application under the Freedom of Information Act to the Australian Taxation Office.

Documents relating to amounts received by claimant from other sources

5. An application for statutory compensation must be accompanied by—

- (a) 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; and
- (b) details of any potential claim (apart from this claim) that the claimant may have against the offender or any other person for compensation or damages arising out of the injury, including details of the steps taken to pursue such a claim.

Schedule 2—Prescribed scale of costs

1. Solicitor's fee for claim for statutory compensation

(1) For a limited claim where the identity of the offender is known, compensation is agreed and an application is made to the court to obtain a consent order \$500

Note—

No fee is payable for a limited claim where the identity of the offender is unknown and compensation is agreed during the period for negotiation.

(2) For any other claim—

(a) in the case of a claim that is not a related claim \$1 000

(b) in the case of related claims—

(i) for one of the related claims \$1 000

(ii) for each of the other related claims \$800

2. Counsel's fee

(1) *Preliminary fee*

For all work preparatory to an application to the court for statutory 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 Not more than \$750

(2) *Additional fee*

For each hour or part of an hour after the first 5 hours of the hearing of the application 1/5 of the preliminary fee actually charged

(3) *Compromise of minor's claim*

Subject to subclause (4), for an opinion as to the compromise of a minor's claim for statutory compensation \$500

(4) *Compromise of minor's related claim*

For an opinion as to the compromise of a minor's related claim for statutory compensation \$350 for each opinion

3. **On appeal** \$500

4. Disbursements

(1) 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 during the period for negotiation, a legal practitioner may recover all disbursements reasonably incurred as certified by the Crown Solicitor.

(2) However—

- (a) a legal practitioner may not recover the cost of obtaining a copy of a hospital record before the end of the period for negotiation unless the Crown Solicitor has agreed that it is necessary to obtain a copy of the record; and
- (b) a legal practitioner may not recover the cost of obtaining a medical or psychological report (other than a report from the claimant's usual or treating general medical practitioner) before the end of the period for negotiation unless the Crown Solicitor has agreed that it is necessary to obtain the report; and
- (c) a legal practitioner may not recover the cost of obtaining a report from more than one expert in the same specialty unless the Crown Solicitor has agreed that it is necessary to obtain the additional report.

(3) For the purposes of subclause (2)(c), psychiatrists and psychologists will be taken to be experts in the same specialty.

Schedule 3—Victims of crime levy

(1) Subject to this clause, the amount of the levy is—

- (a) in relation to a summary offence—
 - (i) if the offence is expiated—\$10;
 - (ii) in any other case—\$35;
- (b) in relation to an indictable offence—\$60.

(2) If a summary or an indictable offence appears in the following list, the levy in relation to that offence is twice the levy that would otherwise be payable under subclause (1):

- (a) an offence under the *Aircraft Offences Act 1971*;
- (b) an offence against section 11, 12, 12A, 13, 19, 19AA, 20, 21, 23, 25, 27, 29, 30, 33A, 39, 40, 41, 42, 43, 44, 47A, 48, 49, 56, 58, 58A, 59, 64, 74, 80, 81, 82, 85(1), 155, 158, 167, 168, 169, 170, 170A, 206, 207, 208, 209 or 270A of the *Criminal Law Consolidation Act 1935*;
- (c) an offence under the *Kidnapping Act 1960*;
- (d) an offence against section 6 of the *Summary Offences Act 1953*.

(3) If, but for this subclause, the amount of the levy payable by a youth—

- (a) under subclause (1) would exceed \$20, the amount of the levy will be \$20;
- (b) under subclause (2) would exceed \$40, the amount of the levy will be \$40.