



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 16 of 1986

An Act to amend the Criminal Injuries Compensation Act, 1978, the Criminal Law Consolidation Act, 1935, the Local and District Criminal Courts Act, 1926, and the Workers Compensation Act, 1971.

[Assented to 20 March 1986]

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

PART I

PRELIMINARY

1. This Act may be cited as the "Statutes Amendment (Victims of Short title. Crime) Act, 1986".
2. (1) This Act shall come into operation on a day to be fixed by Commencement. proclamation.
 (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

PART II

AMENDMENT OF CRIMINAL INJURIES COMPENSATION ACT, 1978

3. The Criminal Injuries Compensation Act, 1978, is in this Part referred Interpretation. to as "the principal Act".
4. The long title to the principal Act is amended by striking out the Amendment of long title. passage "for the compensation of persons who suffer injury" and substituting

the passage "compensation for injury or, in certain cases, financial loss or grief, suffered".

Amendment of
s. 4—
Interpretation.

5. Section 4 of the principal Act is amended—

- (a) by striking out the definition of "appropriate court";
- (b) by inserting after the definition of "claimant" the following definition:

"the court" means a District Criminal Court;

and

- (c) by inserting after the definition of "dependants" the following definition:

"homicide" means murder or manslaughter.

Amendment of
s. 7—
Applications for
compensation.

6. Section 7 of the principal Act is amended—

- (a) by striking out from subsection (1) the word "appropriate";
- (b) by striking out subsection (2) and substituting the following subsections:

(2) Where—

- (a) the victim of an offence dies as a result of the injury arising from the offence;

and

- (b) no previous order for compensation has been made under this Act in respect of that injury,

a person who, in the opinion of the court, is a suitable person to represent the interests of the dependants of the victim may, within 12 months of the date of death, apply to the court on behalf of the dependants of the victim for an order for compensation in respect of the financial loss suffered by them.

(2a) Where a person is killed by homicide, any of the following persons may, within 12 months of the date of death, apply to the court for an order for compensation in respect of the grief suffered by that person in consequence of the death:

- (a) the spouse of the deceased;
- (b) a putative spouse of the deceased;
- (c) where the deceased was less than 18 years of age at the date of death, a parent of the deceased.;

- (c) by striking out from subsection (3) the word "appropriate";
- (d) by striking out from subsection (3) the passage "or subsection (2) of this section" and substituting the passage ", (2) or (2a)";
- (e) by striking out subsections (4) and (4a);
- (f) by striking out from subsection (5) the word "fourteen" and substituting the figure "28";
- (g) by striking out the word "or" between paragraphs (a) and (b) of subsection (7);

(h) by inserting in subsection (7) after paragraph (b) the following word and paragraph:

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 a putative spouse 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.;

(i) by inserting in subsection (7a) after the passage "service of the application" the passage " , or a party who, although having been served with the application, fails to appear at the hearing of the application";

(j) by striking out subsection (8) and substituting the following subsection:

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

(a) in relation to an application under subsection (1) for compensation for injury, or an application under subsection (2) for compensation for financial loss—

(i) if the amount of the compensation to be awarded on the application would, but for this subparagraph, exceed \$2 000, the amount awarded shall, subject to subparagraph (ii), be \$2 000 plus three-quarters of the excess;

and

(ii) if the amount arrived at in accordance with subparagraph (i) would, but for this subparagraph, exceed \$10 000, the amount awarded shall be \$10 000;

(b) in relation to an application under subsection (2a) for compensation for grief—

(i) where both the spouse and the putative spouse of a person killed by homicide have made such an application, the aggregate of the amounts awarded to them by way of such compensation shall not exceed \$4 200;

(ii) where both of the parents of a child killed by homicide have made such an application, the aggregate of the amounts awarded to them by way of such compensation shall not exceed \$3 000;

(c) in relation to an application under subsection (1) for compensation for injury and an application under subsection (2a) for compensation for grief where both have been made by the one claim-

ant—if the aggregate of the amounts to be awarded on those applications would, but for this paragraph, exceed \$10 000, the aggregate amount awarded to the claimant shall be \$10 000.;

(k) by inserting after subsection (9a) the following subsection:

(9b) In awarding compensation under this section, the court shall not make any award in respect of those hospital or medical expenses incurred by the claimant, or that part of hospital or medical expenses incurred by the claimant, that the claimant would, if an award were not made under this Act, recover from any health fund or scheme.;

and

(l) by striking out from paragraph (b) of subsection (11) the passage “is likely” and substituting the passage “would, if the claimant were to exhaust all other available remedies, be likely”.

Amendment of
s. 8—
Proof and
evidence.

7. Section 8 of the principal Act is amended by striking out subsection (1a) and substituting the following subsection:

(1a) No order for compensation shall be made (except by consent) on an application under this Act (whether the application is made before or after the commencement of Part II of the Statutes Amendment (Victims of Crime) Act, 1986) unless—

(a) the commission of the offence to which the application relates has been proved beyond reasonable doubt;

and

(b) a causal connection between the commission of the offence and the injury or death to which the application relates has been proved on the balance of probabilities.

Amendment of
s. 9—
Joint offences.

8. Section 9 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “a victim suffers injury” and substituting the passage “an application is made under this Act for compensation in respect of injury suffered by a victim, financial loss suffered by a dependant or grief suffered by a spouse, putative spouse or parent”;

(b) by inserting in subsection (1) after the passage “that injury” the passage “, loss or grief”;

(c) by striking out from subsection (2) the passage “a victim suffers injury” and substituting the passage “an application is made under this Act for compensation in respect of injury suffered by a victim, financial loss suffered by a dependant or grief suffered by a spouse, putative spouse or parent”;

and

(d) by inserting in subsection (2) after the passage “the injury” the passage “, loss or grief”.

Amendment of
s. 9a—
Appeals.

9. Section 9a of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsection:

(1) A party to proceedings under this Act may appeal to the Full Court of the Supreme Court against any final order made by the court in those proceedings.

10. Section 11 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

Amendment of
s. 11—
Attorney-General
to pay
compensation
under this Act.

(1) Subject to subsection (2), the Attorney-General shall satisfy any order made under this Act in favour of a claimant for compensation or for 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.;

(b) by striking out from subsection (2) the passage “is likely” and substituting the passage “would, if the claimant were to exhaust all available remedies, be likely”;

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

(3) 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 compensation under this Act;

or

(b) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a person who would, in the opinion of the Attorney-General, have been likely to have been awarded compensation under this Act in respect of injury, financial loss or grief suffered in consequence of the commission of an offence but for the fact that the offender was acquitted of the offence, if the acquittal appears to the Attorney-General to have been given—

(i) in the case of rape, on the ground of a lack of *mens rea*;

or

(ii) in any other case, on the ground of a lack of *mens rea* by reason of duress, drunkenness or automatism.;

and

(d) by striking out subsection (4).

Insertion of new
s. 11a.

11. The following section is inserted after section 11 of the principal Act:

Right of
Attorney-General
to recover
moneys paid out.

11a. (1) Where the Attorney-General makes any payment under this Act to a claimant, the Attorney-General shall be 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) Where the Attorney-General has made an interim payment of compensation under this Act to a claimant and no order for 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 may require, from the claimant as a debt in a court of competent jurisdiction.

(3) Where the Attorney-General has made any payment under this Act to a claimant and the claimant subsequently is paid compensation or damages by some other person for the injury, financial loss or grief in respect of which the payment under this Act was made, the Attorney-General may, if the subsequent award was not reduced by virtue of the payment under this Act, recover from the claimant, as a debt in a court of competent jurisdiction, the amount paid by the Attorney-General, to an extent not exceeding the amount of the subsequent award.

(4) The Attorney-General may recover, as a debt, from an offender who has been convicted or adjudged or found guilty of an offence the amount of any payment made by the Attorney-General under this Act in respect of injury or death arising from the offence, except an amount that is recoverable under subsection (2).

(5) For the purposes of subsection (4), where the Attorney-General lodges with the clerk of a court of competent jurisdiction a copy of an order for compensation or costs made in favour of a claimant, together with a certificate signed by the Attorney-General certifying—

(a) the amount paid under this Act to the claimant;

and

(b) the amount (if any) recovered from the offender or recovered pursuant to subsection (1),

the clerk of the court shall register the order, and enforcement proceedings may then be taken upon it as if it were a judgment of that

court against the offender for the amount specified in the Attorney-General's certificate as having been paid but not recovered.

12. Section 12 of the principal Act is repealed and the following section is substituted:

Repeal of s. 12
and substitution
of new section.

12. (1) The Treasurer shall establish and maintain a fund entitled the "Criminal Injuries Compensation Fund".

The Criminal
Injuries
Compensation
Fund.

(2) There shall be paid into the Fund—

(a) any amounts recovered by the Attorney-General under section 11a;

(b) any moneys provided by Parliament under section 14;

(c) any moneys required or authorized to be paid into the Fund under any other Act;

and

(d) in each financial year, the prescribed percentage of the amount paid into the General Revenue in the preceding financial year by way of fines imposed in respect of offences.

(3) Any amount to be paid by the Attorney-General pursuant to section 11 shall be paid out of the Fund.

(4) The Governor may, by regulation, prescribe a percentage for the purposes of subsection (2) (d).

PART III

AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT, 1935

13. The Criminal Law Consolidation Act, 1935, is in this Part referred to as "the principal Act".

Interpretation.

14. Section 46 of the principal Act is amended by striking out subsections (3) and (4).

Amendment of
s. 46—
Summary
proceedings for
assault.

15. Section 101 of the principal Act is amended by striking out from subsection (1) the passage "the amount of the damage and".

Amendment of
s. 101—
Damaging trees,
etc.

16. Section 102 of the principal Act is amended by striking out the passage "the amount of the damage and".

Amendment of
s. 102—
Destroying fences,
etc.

17. Section 116 of the principal Act is amended by striking out the passage "the amount of the damage and".

Amendment of
s. 116—
Killing, etc., other
animals.

18. Section 127 of the principal Act is amended by striking out from subsection (1) the passage "and to pay such amount by way of compensation to the party aggrieved not exceeding ten dollars as the justice may think fit".

Amendment of
s. 127—
Summary
proceedings for
other malicious
damage.

19. Section 139 of the principal Act is amended by striking out from subsection (1) the passage "and to pay the value of the dog".

Amendment of
s. 139—
Stealing dogs.

Amendment of
s. 141—
Killing pigeons.

20. Section 141 of the principal Act is amended by striking out the passage “the value of the bird and”.

Amendment of
s. 142—
Stealing birds and
animals not the
subject of larceny
at common law.

21. Section 142 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “the value of the bird, beast, animal or fish and”;

and

(b) by striking out from subsection (2) the passage “the value of the bird, beast, fish or other animal and”.

Amendment of
s. 149—
Other trees.

22. Section 149 of the principal Act is amended by striking out from subsection (1) the passage “the value of the article stolen and”.

Amendment of
s. 151—
Plants, etc., in
gardens, etc.

23. Section 151 of the principal Act is amended by striking out from subsection (1) the passage “the value of the articles stolen or the amount of the damage and”.

Amendment of
s. 201—
Restitution of
stolen property.

24. Section 201 of the principal Act is amended by striking out subsection (3).

Repeal of s. 299
and substitution
of new section.

25. Section 299 of the principal Act is repealed and the following section is substituted:

Compensation.

299. (1) Subject to this section, a court convicting a person of an offence or adjudging or finding a person guilty of an offence may make an order requiring the person to pay compensation for injury, loss or damage resulting from the offence or any offence taken into consideration by the court in determining sentence.

(2) An order for compensation may be made under this section—

(a) either on application by the prosecutor or on the court’s own initiative;

and

(b) instead of, or in addition to, dealing with the offender in any other way.

(3) Compensation under this section shall be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the offender.

(4) Where any property of which a person was dispossessed as a result of the offence is recovered, any damage to the property while it was out of the person’s possession shall be treated for the purposes of this section as having resulted from the offence.

(5) No order for compensation shall be made under this section in respect of injury, loss or damage caused by, or arising out of the use of, a motor vehicle, except damage that is treated by virtue of subsection (4) as having resulted from an offence.

(6) In determining whether to make an order for compensation under this section, and in determining the amount to be paid under such an order, the court shall have regard to the offender’s means so far as they are known to the court.

(7) Where the court considers—

(a) that it would be appropriate both to impose a fine and to make an order for compensation under this section;

but

(b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (although a fine may be imposed as well).

(8) A court of summary jurisdiction may not make an order for compensation under this section of an amount exceeding \$10 000.

(9) Compensation may be ordered under this section in relation to an offence notwithstanding that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence.

(10) Any compensation ordered under this section shall be taken into account in assessing compensation to be ordered in any other proceedings.

(11) The provisions of this Act or any other Act relating to proceedings in respect of the offence shall apply in relation to an order for compensation under this section and its enforcement as if it were a fine imposed by the court as a penalty for the offence, but any amount paid to or recovered by the Crown in pursuance of the order shall be paid to the person in whose favour the order was made.

(12) In this section—

“injury” in relation to an offence includes mental injury, pregnancy, shock, fear, grief, distress or embarrassment resulting from the offence:

“offence” means any offence whether an indictable or summary offence.

26. The following section is inserted in Part IX of the principal Act after the heading “*Sentence*”:

Insertion of new section.

301. (1) Where, in order to assist it in determining the sentence for an offence, a court requests that a written report be prepared on the character, antecedents, age, health or mental condition of the offender, the report must also contain particulars of any injury, loss or damage suffered by any person as a result of the offence, being particulars not already known to the court and reasonably ascertainable by the person preparing the report.

Pre-sentence reports to include information about victims.

(2) Subsection (1) does not apply in relation to a report to be prepared by a medical practitioner.

(3) In this section—

“court” means a court to which this section is declared, by proclamation, to apply:

“injury” in relation to an offence includes mental injury, pregnancy, shock, fear, grief, distress or embarrassment resulting from the offence:

“offence” means any offence whether an indictable or summary offence.

(4) The Governor may, by proclamation—

(a) declare a court to be a court to which this section applies;

(b) vary or revoke a proclamation under this subsection.

PART IV

AMENDMENT OF LOCAL AND DISTRICT CRIMINAL COURTS ACT, 1926

Interpretation. 27. The Local and District Criminal Courts Act, 1926, is in this Part referred to as “the principal Act”.

Insertion of new s. 5ac. 28. The following section is inserted after section 5ab of the principal Act:

Criminal Injuries Compensation Division.

5ac. (1) There shall be a division of each District Criminal Court entitled the “Criminal Injuries Compensation Division”.

(2) The jurisdiction of a District Criminal Court to hear and determine proceedings under the Criminal Injuries Compensation Act, 1978, is vested in the Criminal Injuries Compensation Division of that court.

PART V

AMENDMENT OF WORKERS COMPENSATION ACT, 1971

Interpretation. 29. The Workers Compensation Act, 1971, is in this Part referred to as “the principal Act”.

Amendment of s. 84—Remedies against employer and stranger. 30. Section 84 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Subsection (1) does not apply in relation to any payment made to a worker under the Criminal Injuries Compensation Act, 1978.

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

D. B. DUNSTAN, Governor