

# **CRIMINAL INJURIES COMPENSATION ACT, 1969-1974**

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## CRIMINAL INJURIES COMPENSATION ACT, 1969-1974

being

Criminal Injuries Compensation Act, 1969, No. 97 of 1969 [Assented to 18th December, 1969]<sup>1</sup>;

as amended by

Criminal Injuries Compensation Act Amendment Act, 1972, No. 6 of 1972 [Assented to 23rd March, 1972]<sup>2</sup>;

and

Criminal Injuries Compensation Act Amendment Act, 1974, No. 24 of 1974 [Assented to 11th April, 1974].

**An Act to make provision for the payment, in certain circumstances, of compensation to persons who suffer injury by reason of the commission of offences; and for other purposes.**

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

1. This Act may be cited as the "Criminal Injuries Compensation Act, 1969-1974".

Short title.  
Citation  
amended by 24,  
1974, s. 1 (3).

2. This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

Commence-  
ment.

3. In this Act, unless the contrary intention appears—

Interpretation.

"injury" means physical or mental injury sustained by any person, and includes pregnancy, mental shock and nervous shock:

"offence" means a felony, misdemeanor or other offence proceedings in respect of which are disposed of summarily or upon information and includes conduct on the part of any person that would constitute an offence but for the insanity of that person, or for the fact that grounds of excuse or justification exist at law in respect of that conduct:

Def. amended  
by 6, 1972, s. 3.

"the Master" means the Master or a Deputy Master of the Supreme Court.

4. (1) Subject to this section, where a person is convicted of an offence or adjudged guilty of an offence and released without conviction pursuant to the provisions of the Offenders Probation Act, 1913-1963, as amended<sup>3</sup>, the court by which he was tried may, at any time after his conviction or release on the application of a person who has suffered injury in consequence of the commission of the offence, order that a sum, not exceeding two thousand dollars, be paid by the person convicted, or adjudged guilty, of the offence out

Court may  
order  
compensation  
for injury.  
Subsec. (1)  
amended by 24,  
1974,  
s. 2 (a), (b).

<sup>1</sup> Came into operation 22nd January, 1970: *Gaz.* 22nd January, 1970, p. 258.

<sup>2</sup> Came into operation 18th May, 1972: *Gaz.* 18th May, 1972, p. 1927.

<sup>3</sup> Now Offenders Probation Act, 1913-1971.

of his property to the other person, by way of compensation for injury sustained by that other person by reason of the commission of the offence.

Subsec. (1a)  
inserted by 24,  
1974, s. 2 (c).

(1a) Where a person suffers injury in consequence of an offence committed by two or more persons acting in concert, an order may be made under subsection (1) of this section in proceedings in which any one or more of those persons is tried and the persons convicted, or adjudged guilty, of the offence shall (whether they are convicted, or their guilt is established, in the same or separate proceedings) be jointly and severally liable to satisfy that order.

Subsec. (1b)  
inserted by 24,  
1974, s. 2 (c).

(1b) Where an offence is committed by two or more persons acting in concert, only one order may be made under this section in relation to that offence.

(2) In determining whether or not to make an order pursuant to subsection (1) of this section, the court shall have regard to any behaviour of the other person that contributed, directly or indirectly, to the injury sustained by him, and to such other circumstances as it considers relevant (including whether the aggrieved person is or was a relative of the convicted person, or was, at the time of the commission of the offence, living with the convicted person as his wife, or her husband, or as a member of the convicted person's household) and shall have regard to the provisions of this Act.

(3) This section shall be construed as being in addition to, and not in derogation of, the provisions of any other Act.

Subsec. (4)  
substituted by  
24, 1974,  
s. 2 (d).

(4) A court by which an order is made under subsection (1) of this section may—

(a) give such directions as to the satisfaction and enforcement of the order as it thinks fit;

and

(b) exercise any of the powers that it has to secure compliance with an order for the payment of a fine for the purpose of securing compliance with the order or with any direction under paragraph (a) of this subsection.

Subsec. (5)  
inserted by 24,  
1974, s. 2 (d).

(5) No order shall be made under this section in respect of an injury—

(a) where the person convicted, or adjudged guilty, of the offence from which the injury arises is insured under Part IV of the Motor Vehicles Act, 1959-1973<sup>1</sup>, against his liability for damages arising from the injury;

or

(b) where the injured person is entitled to proceed against the nominal defendant under Part IV of the Motor Vehicles Act, 1959-1973<sup>1</sup>, for damages in respect of the injury.

Application for  
payment of  
compensation  
out of general  
revenue.  
S. 5 amended by  
6, 1972, s. 4.

5. Where an order for the payment of a sum in excess of one hundred dollars by way of compensation for injury sustained by reason of the commission of an offence has been made pursuant to section 4 of this Act, or pursuant to any provision of any other Act in the course of proceedings for the trial of a person for an offence, the person in whose favour the order has been made may make application, in writing, to the Attorney-General for the payment of the sum, or so much thereof as is payable pursuant to this Act, out of the General Revenue of the State.

<sup>1</sup> Now Motor Vehicles Act, 1959-1975.

6. (1) On the acquittal of a person accused of an offence, or the dismissal of a complaint or information against him, the court before which that person was, or would have been, tried, may on application by a person claiming to be aggrieved by reason of the alleged commission of the alleged offence, grant a certificate stating the sum to which he would have been entitled pursuant to an order under section 4 of this Act if the accused person had been convicted of the alleged offence, or of an offence of which he could have been convicted upon the charge laid against him, and an order had been made under that section.

Certificate may be granted upon acquittal.

(2) A certificate shall not be granted under subsection (1) of this section if the sum referred to in that subsection would amount to less than one hundred dollars.

(3) Before a certificate is granted under this section, the court must be satisfied that the person claiming to be aggrieved by reason of the alleged commission of the alleged offence has in fact sustained injury by reason of an offence committed by some person.

(4) A person to whom a certificate has been granted under this section may make application, in writing, to the Attorney-General for payment to him of the sum specified in the certificate out of the General Revenue of the State.

Subsec. (4) amended by 6, 1972, s. 5.

7. (1) A person claiming to be aggrieved by reason of the commission of an offence may, subject to the appropriate rules of court, apply to a court before which the alleged offence could have been tried for a certificate under this section.

Claim where offence has not been tried.

(2) An application shall not be made under this section if a person has been brought to trial charged with the commission of the alleged offence.

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Subsec. (3) struck out by 6, 1972, s. 6 (a).

(4) If the court is satisfied that the applicant has sustained injury by reason of the commission of an offence (being the alleged offence, or an offence arising from the circumstances alleged to constitute that offence), it may, in its discretion, grant a certificate to the applicant under this section stating the sum to which he would have been entitled pursuant to an order under section 4 of this Act if the person who committed the offence had been tried and convicted of the offence and an order had been made under that section.

Subsec. (4) amended by 24, 1974, s. 3.

(5) A certificate shall not be granted under subsection (4) of this section if the sum first mentioned in that subsection would amount to less than one hundred dollars.

(6) An application under this section must be made within twelve months of the alleged date of the commission of the offence.

(7) A person to whom a certificate has been granted under this section may make application, in writing, to the Attorney-General for payment to him of the sum specified in the certificate out of the General Revenue of the State.

Subsec. (7) amended by 6, 1972, s. 6 (b).

7a. (1) Where an application is made under this Act to a court of summary jurisdiction constituted of justices or of a special justice, the court shall not proceed to hear and determine the application but shall, by memorandum, refer the application to a court of summary jurisdiction constituted of a special magistrate by which it may be conveniently heard and determined.

Justices not to determine proceedings under this Act. S. 7a enacted by 6, 1972, s. 7.

(2) The court to which an application is so referred shall proceed to hear and determine the application.

Right of Crown  
to be heard  
upon  
application.  
S. 7b enacted by  
6, 1972, s. 7.

**7b.** The Crown shall be entitled to be heard upon any application under this Act.

Service.  
S. 7c enacted by  
6, 1972, s. 7.

**7c.** (1) An applicant for an order or certificate in respect of compensation under this Act should cause notice of his application to be served at least seven days before the day on which the application is to be heard—

(a) upon the Crown Solicitor;

and

(b) where an order is sought against any person, upon that person.

(2) The court may, by order dispense with service of the notice under paragraph (b) of subsection (1) of this section on the ground that—

(a) the whereabouts of the person against whom the order is sought, is unknown to, and not readily ascertainable by, the applicant;

or

(b) there is no reasonable likelihood of that person satisfying the order for which application is made.

Costs.  
S. 7d enacted by  
24, 1974, s. 4.

**7d.** An order or certificate granted under this Act may, if the court thinks fit, include, in addition to a sum to which the applicant is entitled by way of compensation, a further sum that represents, in the opinion of the court, the reasonable costs of, and incidental to, the application.

Enquiry by  
Master.  
Subsec. (1)  
amended by 6,  
1972, s. 8 (a).

**8.** (1) The Attorney-General shall, as soon as practicable after receiving an application under section 5, 6 or 7 of this Act, refer the application to the Master.

Subsec. (2)  
amended by 6,  
1972, s. 8 (b);  
24, 1974,  
s. 5 (a).

(2) The Master shall furnish the Attorney-General with a statement in writing specifying—

Para. (a)  
amended by 24,  
1974, s. 5 (a).

(a) the amount or amounts to which the applicant is entitled pursuant to an order under section 4 of this Act, or an order made in respect of injury sustained by him under any provision of any other Act in the course of proceedings for the trial of a person for an offence, or the amount or amounts specified in the certificate granted to the applicant under sections 6 or 7 of this Act;

and

(b) any amount that, in the opinion of the Master, the applicant has received, or would, in the circumstances, be likely to receive, independently of this Act, as compensation for the injury to which the application relates, if he exhausted all relevant rights of action that he is able, or might reasonably be expected, to exercise.

(3) The Master shall make such inquiry as may be necessary for the purposes of this section.

Subsec. (4)  
amended by 6,  
1972, s. 8 (c);  
24, 1974,  
s. 5 (b).

(4) Where the Attorney-General, after receiving the statement of the Master, considers that in all the circumstances of the case he is justified in so doing, the Attorney-General may pay to the applicant out of the general revenue of the State an amount equal to the difference between the amount or amounts referred to in paragraph (a) of subsection (2) of this section and the amount referred to in paragraph (b) of subsection (2) of this section.

9. Any proceedings relating to the recovery of compensation under this Act shall not prejudice or debar any right or claim to recover compensation or damages otherwise than in pursuance of this Act, but where compensation has been recovered under this Act by any person in respect of injury sustained by him, the amount of that compensation shall be taken into account in assessing the compensation or damages to be awarded in respect of the injury in any other proceedings.

Proceedings under this Act do not debar civil remedies.

10. (1) Where any payment is made under section 8 of this Act in pursuance of an application made under section 5 of this Act the Attorney-General—

Subrogation of rights to Attorney-General.

(a) shall, to the extent of the payment, be subrogated to the rights of the person to whom the payment was made against the person convicted, or adjudged guilty, of the offence;

Subsec. (1) amended by 6, 1972, s. 9 (a); substituted by 24, 1974, s. 6.

and

(b) shall, to the extent of the payment, be subrogated to the rights of the person convicted, or adjudged guilty, of the offence against any insurer or other person from whom that person is entitled to indemnity or contribution in respect of liability arising from the injury to which the payment relates.

(2) Any moneys paid to the Attorney-General in full or partial satisfaction of his rights under subsection (1) of this section, shall be paid into the General Revenue of the State.

Subsec. (2) amended by 6, 1972, s. 9 (b).

11. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Financial provision.