

1991

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CRIMINAL INJURIES COMPENSATION (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by the Authority of
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CRIMINAL INJURIES COMPENSATION (AMENDMENT) BILL 1991

OUTLINE

The Criminal Injuries Compensation Act 1983 (the Principal Act) provides a scheme of monetary compensation for the victims of violent crime and in the case of death, certain of their relatives. The scheme is administered by the Registrar of the Supreme Court of the Australian Capital Territory. Once it is established that a prescribed injury has occurred, the court assesses the extent and nature of the injury suffered by the victim.

The Criminal Injuries Compensation (Amendment) Bill 1991 (the Bill) amends the Principal Act to increase the maximum compensation payable from \$20,000 to \$50,000. Another significant amendment is the obligation cast on the offender who is found guilty of the relevant offence by a court to pay the Territory an amount equal to the compensation awarded under the Act. Where a person recovers damages or compensation for the relevant injury or property damage under any other law, the Bill envisages the repayment to the offender of the lesser of the amount paid by the offender to the Territory or the amount recovered under any other law.

Other amendments in the Bill include the extension of the definition of "court" to include the Registrar of the Supreme Court, removal of the discretion vested in the court to refuse to determine an application where an applicant has not taken steps to enforce rights or pursue remedies and the inclusion of receipt of medicare benefits as a matter the court should have regard to in determining the amount of compensation.

The procedural amendments in the Bill require an application to be supported by an affidavit and relevant documents and to be filed in the appropriate forum. The copies of the application and its attachments are required to be served on the Government Solicitor.

FINANCIAL IMPLICATIONS

It is estimated that increasing the maximum award to \$50,000 will cost an additional \$60,000 this year and \$150,000 in subsequent years.

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CLAUSE NOTES

Clause 1: Short Title

Clause 1 contains the short title.

Clause 2: Principal Act

Clause 2 defines the "Principal Act" as the Criminal Injuries Compensation Act 1983.

Clause 3: Interpretation

Clause 3(a) amends the definition of "court" to include the Registrar of the ACT Supreme Court who has jurisdiction to determine applications under subsection 11(3) of the Principal Act.

Clause 3(b) adds a new subsection 2(2) and explains the reference in the Act to "a person having been convicted of an offence" as including a person having been charged with an offence which the court found to be proved but dismissed without proceeding to a conviction. This clause accordingly defines "conviction" as including the finding by the court that the offence was proved.

Clause 4: Evidence of criminal conduct

This clause omits subsection 3(2) of the Principal Act in view of clause 3(b) which inserts subsection 2(2), which covers the same matters.

Clause 5: Maximum amount of compensation

This clause amends section 7 of the Principal Act and raises the maximum amount of compensation to be awarded from \$20,000 to \$50,000.

Clause 6: Application for compensation

Clause 6(a) amends paragraph 10(1)(a) of the Principal Act and requires an application to be supported by affidavit.

Clause 6(b) omits paragraph 10(1)(c) of the Principal Act and substitutes a new paragraph. The new paragraph requires the application to be accompanied by copies of any relevant medical report, statement made to a police officer, document showing receipt of compensation under any other law for the relevant injury or property damage and other relevant documents.

Clause 6(c) inserts a new subsection 10(1A) and provides for lodging the application and accompanying documents with the Registrar of the Supreme Court or the Clerk of the Magistrate's Court, depending on whether the Supreme Court, its Registrar or the Magistrate's Court has jurisdiction to determine the application under section 11 of the Principal Act.

Clause 6(d) omits subsection 10(4) of the Principal Act and substitutes a new subsection. This amendment enables the Registrar or the Clerk, as the case requires, to forward the copy of the application and each accompanying document to the Government Solicitor and to fix, by a notice in writing to the applicant and to the Government Solicitor, a date, time and place for the determination of the application.

Clause 7: Repeal

This clause repeals section 14 of the Principal Act. Section 14 enables the court to refuse to determine an application if an applicant has not taken steps to enforce rights or pursue remedies as the court considers it reasonable for the applicant to have taken.

Clause 8: Consideration relevant to the determination of compensation

Clause 8(a) omits from paragraph 15(2)(d) of the Principal Act the reference to "Part XVA" of the Crimes Act 1900 (NSW) in its application to the Australian Capital Territory and substitutes "section 437" of that Act. (The new Part XVA of the Crimes Act relates to community service orders.) The amendment enables the court, in determining the amount of compensation, to have regard to any order for reparation or restitution made in favour of the applicant under section 437 of the Crimes Act.

Clause 8(b) also amends paragraph 15(2)(d) of the Principal Act and changes the reference to the Crimes Act (NSW) in its application from "to the Territory" to "in the Territory".

Clause 8(c) amends paragraph 15(2)(e) of the Principal Act and allows the court, in awarding compensation, to have regard to any amount received or entitled to be received by the applicant under Medicare.

Clause 8(d) omits paragraph 15(2)(f) of the Principal Act in view of clause 7 which repeals section 14 of the Principal Act. Paragraph 15(2)(f) requires the court in awarding compensation to have regard to any amount the applicant would have received if he had taken such steps to enforce rights or pursue remedies as the court considers reasonable.

Clause 9: Recovery of compensation from offenders

Clause 9 inserts a new sections 29A and 29B. Proposed section 29A applies to cases where no person takes any action to recover damages or compensation from the offender in relation to the relevant prescribed injury under any other law. This amendment makes the offender who is found guilty of the relevant offence liable to pay the Territory an amount equal to the amount of the award of compensation.

Where a victim (or dependent) recovers damages or compensation for the relevant prescribed injury or prescribed property damage under any other law, proposed section 29B requires the Territory to pay the offender out of the amount paid by him or her to the Territory, an amount equal to that amount or the amount recovered by the victim, whichever is less. The amendment also permits the Territory to pay this amount at the offender's written request to his or her nominee.

Clause 10: The Schedule

Clause 10 makes a number of formal amendments to the form of application in the Schedule to take account of amendments proposed in this Bill.

Clause 11: Additional amendments

Clause 11 amends certain provisions in the Principal Act by omitting references to "administrative head" and "Attorney-General" and substituting references to "Government Solicitor".

Clause 12: Transitional

Clause 12 states that the new amendments do not apply to applications which have been made but not determined at the time the amendments come into effect.