
Criminal Injuries Compensation Ordinance 1983

No. 11 of 1983

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 June 1983.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Minister of State for Trade
for and on behalf of the Attorney-General

An Ordinance relating to compensation for victims of crime and certain other persons

Short title

1. This Ordinance may be cited as the *Criminal Injuries Compensation Ordinance 1983*.¹

Interpretation

2. In this Ordinance, unless the contrary intention appears—

“application” means an application for compensation under this Ordinance;

“Clerk” means the Clerk or a Deputy Clerk of the Court of Petty Sessions;

“court”, in relation to an application, means the court that has jurisdiction under section 11 to determine that application;

“criminal conduct” means an act or omission that constitutes, or is an element of, an offence;

“damage”, in relation to any property, includes the loss or destruction of that property;

“dependant”, in relation to a person who died as a result of having sustained a prescribed injury, means—

- (a) a person who was wholly or partly dependent for economic support upon the deceased person at the time of the death of the deceased person, or who would have been so dependent but for an incapacity of the deceased person due to the prescribed injury; or
- (b) a child of the deceased person born after the death of the deceased person who, if he had been born before that death, would have been, or would but for that incapacity have been, so dependent;

“injury” means any physical or mental injury, and includes—

- (a) mental shock and nervous shock;
- (b) pregnancy;
- (c) the aggravation, acceleration or recurrence of any physical or mental injury;
- (d) the contraction, aggravation, acceleration or recurrence of a disease; and
- (e) damage to spectacles, a contact lens, a hearing aid, artificial teeth, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance;

“inquiry” means an inquiry held by the Registrar under section 21;

“offence” means an offence against a law in force in the Territory;

“prescribed injury”, in relation to a person, means an injury sustained by the person in the Territory after the commencement of this Ordinance—

- (a) as a result of the criminal conduct of another person; or
- (b) in the course of assisting a police officer in the exercise of the officer’s power to arrest a person or to take action to prevent the commission of an offence by a person;

“prescribed property damage”, in relation to a person, means damage to the property of the person sustained while the person was assisting a police officer in the exercise of the officer’s power to arrest a person or to take action to prevent the commission of an offence by a person;

“Registrar” means the Registrar of the Supreme Court;

“Secretary” means the Secretary to the Attorney-General’s Department.

Evidence of criminal conduct

3. (1) Where a person has been convicted of an offence and the conviction has not been set aside, then, unless an appeal from the conviction has been instituted and not determined, the conviction shall, for the purpose of an application made by any person, be conclusive evidence that the

first-mentioned person did every act, and made every omission, that constituted or was an element of the offence.

(2) In sub-section (1)—

- (a) a reference to a person having been convicted of an offence shall be read as including a reference to a person having been charged before a court with an offence, being an offence that the court found to be proved but in respect of which the court did not proceed to conviction; and
- (b) a reference to a conviction shall, in relation to an offence referred to in paragraph (a), be read as including a reference to the finding by the court that the offence was proved.

Legal capacity not material

4. For the purposes of this Ordinance, a person shall be taken to have intended an act or omission that, if done or made with intent, would have constituted criminal conduct notwithstanding that, by reason of age, mental condition, intoxication or otherwise, he was legally incapable of forming that intent.

Persons to whom court may award compensation

5. (1) Where a person sustains a prescribed injury, the court may, by order, award compensation—

- (a) to, or for the benefit of, that person; and
- (b) to any person who is responsible for the maintenance of the first-mentioned person and who has suffered pecuniary loss or incurred expense as a consequence of the injury.

(2) Where a person dies as a result of having sustained a prescribed injury, the court may, by order, award compensation to—

- (a) any person who was, immediately before the death of the first-mentioned person, responsible for the maintenance of that person and who has suffered pecuniary loss or incurred expense as a consequence of the injury or death; and
- (b) any dependant of the first-mentioned person or, if there is no such dependant, any person who has incurred expense as a consequence of the death.

(3) The court may, by order, award compensation to a person who sustains prescribed property damage.

(4) Where a person has incurred expense (other than by way of fees paid to a solicitor or barrister) in making his application, the court may, in addition to any compensation awarded, by order, award to him an amount not exceeding the amount of that expense.

Amount of compensation

6. (1) The compensation that may be awarded to a person who has sustained a prescribed injury is an amount that is equal to the sum of—

- (a) the expense reasonably incurred by him as a consequence of the injury;

- (b) the pecuniary loss suffered by him as a consequence of total or partial incapacity for work due to the injury; and
- (c) an amount that will reasonably compensate him for pain or suffering resulting from the injury.

(2) The compensation that may be awarded to a person first referred to in paragraph 5 (1) (b) or 5 (2) (a) is an amount that is equal to the sum of the pecuniary loss suffered by him, and the expense reasonably incurred by him, as a consequence of the injury or death.

(3) The compensation that may be awarded to a dependant of a person who died as a result of having sustained a prescribed injury is an amount that is equal to the sum of the pecuniary loss suffered by him, and the expense reasonably incurred by him, as a consequence of the death.

(4) The compensation that may be awarded to a person last referred to in paragraph 5 (2) (b) is an amount that is equal to the expense reasonably incurred by him as a consequence of the death.

(5) The compensation that may be awarded to a person referred to in sub-section 5 (3) is an amount that will reasonably compensate him for the damage to his property.

(6) Compensation awarded shall not include any amount in the nature of exemplary, vindictive or aggravated damages.

Maximum amount of compensation

7. The compensation that may be awarded in respect of—

- (a) a prescribed injury sustained by a person;
- (b) the death of a person as a result of having sustained a prescribed injury; or
- (c) prescribed property damage sustained by a person,

is an amount that does not, or amounts that in the aggregate do not, exceed \$20,000.

Civil onus of proof for compensation

8. Compensation shall not be awarded unless the court is satisfied, on the balance of probabilities, that—

- (a) the relevant injury is a prescribed injury; or
- (b) the relevant property damage is prescribed property damage.

Matters in respect of which compensation not payable

9. (1) Compensation shall not be awarded—

- (a) in respect of injury or death arising out of the use of a motor vehicle; or
- (b) where the relevant prescribed injury was pregnancy—in respect of the maintenance of any child born as a result of that pregnancy.

(2) Compensation shall not be awarded to a person if the amount of compensation that would, but for this sub-section, have been awarded is an amount that is less than \$100.

(3) Sub-section (2) does not apply in relation to compensation that may be awarded in respect of prescribed property damage sustained by a person.

Application for compensation

10. (1) An application shall—

- (a) be in writing;
- (b) be in accordance with the form in the Schedule; and
- (c) be lodged with the Registrar.

(2) Subject to sub-section (3), an application shall be lodged within the period of 12 months commencing on the date on which the relevant prescribed injury or prescribed property damage was sustained.

(3) The court may, on application made at any time (whether before or after the expiration of the period referred to in sub-section (2)), extend the time for the lodging of an application if the court considers it just to do so.

(4) On receiving an application, the Registrar shall—

- (a) forward a copy of the application to the Secretary; and
- (b) if the Court of Petty Sessions has jurisdiction under section 11 to determine that application—transmit that application to the Clerk.

Jurisdiction of court or power of Registrar to determine application

11. (1) The Supreme Court has jurisdiction to determine an application in respect of a prescribed injury or prescribed property damage where, in respect of the relevant offence—

- (a) criminal proceedings have been instituted in that court (whether or not those proceedings have been completed); or
- (b) a person has been committed for trial or sentence in that court (whether or not proceedings consequential upon that committal have been completed).

(2) The Court of Petty Sessions has jurisdiction to determine an application in respect of a prescribed injury or prescribed property damage where, in respect of the relevant offence—

- (a) committal proceedings in that court have been completed and a person was not committed for trial or sentence in the Supreme Court as a consequence of those proceedings; or
- (b) summary proceedings were instituted in that court (whether or not those proceedings have been completed).

(3) The Registrar has power to determine an application in respect of a prescribed injury or prescribed property damage where criminal proceedings have not been instituted in respect of the relevant offence.

Procedure for determination of application by Court of Petty Sessions

12. (1) Subject to this section, the provisions of the *Court of Petty Sessions (Civil Jurisdiction) Ordinance 1982* apply in relation to proceedings in the Court of Petty Sessions on an application as if those proceedings were proceedings instituted in the court by filing an application referred to in section 20 of the first-mentioned Ordinance.

(2) On receiving an application transmitted to him under sub-section 10 (4), the Clerk shall—

- (a) fix a date, time and place for the determination of the application;
- (b) serve on the applicant notice in writing of the date, time and place so fixed; and
- (c) forward a copy of that notice to the Secretary.

(3) The Court of Petty Sessions may proceed to determine an application in the absence of the applicant if the court is satisfied that he had reasonable notice of the proceedings.

Conditions of award

13. (1) An award of compensation may be made subject to such conditions as the court determines.

(2) Without limiting the generality of sub-section (1), an award may be made subject to conditions relating to—

- (a) the disposal or apportionment of any amount to be paid in pursuance of the award; and
- (b) the holding of any amount to be so paid on trust for a person entitled to the benefit of that amount.

Court's power when other remedies available to applicant

14. The court may refuse to determine an application if it is satisfied that the applicant has not taken such steps to enforce rights or to pursue remedies in respect of the relevant prescribed injury or prescribed property damage as the court considers it reasonable for him to have taken.

Matters to be taken into account in determining amount of compensation payable

15. (1) In determining—

- (a) whether or not to make an order awarding compensation; or
- (b) the amount of compensation to be awarded,

the court shall have regard to any behaviour, condition, attitude or disposition of the applicant or the person who sustained the relevant prescribed injury or prescribed property damage which directly or indirectly contributed to that injury or damage, as the case may be.

(2) In determining the amount of compensation to be awarded, the court shall have regard to—

- (a) any pension or allowance under the *Social Security Act 1947* that the applicant is receiving or is entitled to receive as a consequence of the relevant prescribed injury;
- (b) any damages recovered by or for the benefit of the applicant in respect of the relevant prescribed injury or prescribed property damage or that would, in the opinion of the court, be likely to be so recovered if proceedings for the recovery of those damages were instituted in a court of competent jurisdiction;
- (c) any compensation paid or payable to or for the benefit of the applicant in respect of the relevant prescribed injury or prescribed property damage under another law of the Territory or under a law of the Commonwealth, a State or another Territory or that would, in the opinion of the court, be likely to be so payable if appropriate action were taken;
- (d) any order made by a court in favour of the applicant in respect of the relevant prescribed injury pursuant to Part XVA of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory;
- (e) any amount that the applicant has received or is entitled to receive under a contract of insurance, whether by way of a re-imbursement in whole or in part of any hospital or medical expenses incurred or otherwise, as a result of having sustained the relevant prescribed injury or prescribed property damage;
- (f) any amount that, in the opinion of the court, the applicant would have received if he had taken such steps to enforce rights or to pursue remedies in respect of the relevant prescribed injury or prescribed property damage as the court considers it reasonable for him to have taken;
- (g) any amount that the applicant has received or is entitled to receive under an interim award of compensation made by the court;
- (h) whether the applicant or the person who sustained the relevant prescribed injury, as the case may be, was, when that injury was sustained, living with the person whose criminal conduct resulted in that injury as the spouse of that person or as a member of the household of that person; and
- (i) such other circumstances as the court considers relevant.

Interim awards

16. (1) Subject to sub-section (2), where the court—

- (a) is satisfied that an award of compensation should be made to an applicant; and
- (b) does not have sufficient information before it to enable it to determine finally the amount of compensation to be awarded,

the court may, if it thinks just, by order, make an interim award of compensation to the applicant pending the making of an order under section 5 in relation to that applicant.

(2) An interim award made under this section to an applicant ceases to have effect when an order is made under section 5 in relation to that applicant.

Restriction on publication

17. (1) The court may make an order prohibiting the publication of any report or account of proceedings under this Ordinance or any part of such proceedings if it is satisfied that it is necessary in the public interest to do so.

(2) The court may make an order prohibiting the publication of—

(a) the name of—

(i) an applicant;

(ii) a person who sustained a prescribed injury; or

(iii) the person whose criminal conduct resulted in a prescribed injury; or

(b) any particulars likely to lead to the identification of any of the persons referred to in paragraph (a),

if—

(c) a person has not been convicted of any relevant offence; or

(d) the court is satisfied that the making of such an order is necessary in the interests of the administration of justice.

(3) In considering whether or not to make an order under this section, the court shall have regard to the desirability of the public being made aware of the principles applied by the court with regard to applications.

(4) A person who publishes a report or account of proceedings under this Ordinance or any part of such proceedings, or a name or particulars, in contravention of an order made by the court under this section is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for 6 months.

Variation of an award

18. (1) The court may, on application made by the Attorney-General or by the person in whose favour an award was made, by order, vary an award of compensation by increasing or reducing the amount of compensation awarded, or otherwise.

(2) In considering an application under this section, the court shall have regard to—

(a) any further evidence in relation to the circumstances in which the relevant prescribed injury or prescribed property damage was sustained or the relevant criminal conduct occurred that has become available since the date on which the award was made;

- (b) any amounts received by or payable to the person in whose favour the award was made in respect of the relevant prescribed injury or prescribed property damage since the date on which the award was made;
- (c) any change in the economic circumstances of that person that has occurred since the date on which the award was made; and
- (d) any other matter that the court considers relevant.

Determination of application by Registrar

19. Where the Registrar has power under sub-section 11 (3) to determine an application, this Ordinance applies in relation to that application and in relation to any award of compensation made in pursuance of that application as if each reference in this Ordinance to the court were a reference to the Registrar.

Power of Registrar where criminal conduct not reported to police

20. Where the Registrar has power under sub-section 11 (3) to determine an application, the Registrar may, in his discretion, refuse to make an award of compensation to the applicant if he is satisfied that the criminal conduct as a result of which the prescribed injury was sustained was not reported to a police officer.

Inquiry by Registrar

21. (1) The Registrar shall not proceed to determine an application unless he has held an inquiry in relation to the application.

(2) Where the Registrar proposes to hold an inquiry, he shall—

- (a) fix a date, time and place for the holding of the inquiry;
- (b) serve on the applicant notice in writing of the date, time and place so fixed; and
- (c) forward a copy of that notice to the Secretary.

(3) At an inquiry, the Registrar may—

- (a) examine witnesses on oath and, for that purpose, administer oaths; and
- (b) proceed in the absence of the applicant if he is satisfied that the applicant had reasonable notice of the inquiry,

and the Registrar may adjourn an inquiry from time to time.

Power to summon witness

22. The Registrar may, by writing signed by him, summon a person to attend before him on a date and at a time and place specified in the summons to give evidence at an inquiry and to produce at the inquiry such documents (if any) as are referred to in the summons.

Failure of witness to attend

23. A person served with a summons under section 22 to attend before the Registrar at an inquiry shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused or released from further attendance by the Registrar.

Penalty: \$1,000.

Refusal of witness to be sworn, &c.

24. (1) A person attending before the Registrar at an inquiry shall not, without reasonable excuse—

- (a) refuse or fail to be sworn;
- (b) refuse or fail to answer a question that he is required by the Registrar to answer; or
- (c) refuse or fail to produce a document that he is required by a summons under section 22 served on him to produce.

Penalty: \$1,000.

(2) It is a defence to a prosecution for an offence against sub-section (1) consisting of refusing or failing to answer a question or refusing or failing to produce a document that the question or document, as the case may be, was not relevant to the subject-matter of the inquiry.

Protection of witness at inquiry

25. A person attending before the Registrar to give evidence or to produce a document at an inquiry has the same protection, and is, in addition to the penalties provided by this Ordinance, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Retention of documents

26. The Registrar may retain a document produced at an inquiry for such time as is necessary and reasonable.

Payment of compensation awarded

27. Subject to this Ordinance, where compensation is awarded to a person an amount equal to the amount of compensation so awarded is payable by the Commonwealth to that person.

Appeal to Supreme Court from Registrar's determination

28. (1) Where the Registrar—

- (a) makes an award of compensation; or
- (b) refuses to make such an award,

the applicant or the Commonwealth may appeal to the Supreme Court within 30 days after the date on which the Registrar made or refused to make the award, as the case may be.

(2) Jurisdiction to hear and determine appeals under this section is vested in the Supreme Court.

(3) An appeal under this section shall be by way of a re-hearing.

(4) On an appeal under this section, the Supreme Court may—

- (a) affirm, set aside or vary the determination of the Registrar; and
- (b) make such other order as it considers just.

Recovery of compensation

29. (1) Where—

- (a) an amount of compensation awarded under this Ordinance has been paid to a person; and
- (b) in respect of the relevant prescribed injury or prescribed property damage—
 - (i) the person recovers damages, whether in the Territory or elsewhere; or
 - (ii) compensation is paid to the person under another law of the Territory or under a law of the Commonwealth, a State or another Territory,

the person is liable to pay to the Commonwealth—

- (c) if the amount of damages or compensation referred to in paragraph (b) is less than the amount of compensation awarded under this Ordinance—an amount equal to the amount of damages or compensation referred to in paragraph (b); or
- (d) if the amount of damages or compensation referred to in paragraph (b) is equal to or exceeds the amount of compensation awarded under this Ordinance—an amount equal to the amount of compensation awarded under this Ordinance.

(2) A person who is liable under sub-section (1) to pay an amount to the Commonwealth shall, within 28 days after the date on which the liability to pay that amount arose, notify the Secretary in writing accordingly.

Penalty: \$10,000 or imprisonment for 6 months.

Certificate of order and arrangements for payment

30. (1) Where an award of compensation is made by the Supreme Court or the Registrar, the Registrar shall—

- (a) furnish the applicant with a certified copy of the order by which the award is made; and
- (b) transmit a certified copy of that order to the Secretary.

(2) Where an award of compensation is made by the Court of Petty Sessions, the Clerk shall—

- (a) furnish the applicant with a certified copy of the order by which the award is made;
- (b) transmit a certified copy of that order to the Secretary; and

(c) transmit a copy of that order to the Registrar.

(3) On receiving a certified copy of an order transmitted under sub-section (1) or (2), the Secretary shall make arrangements for payment of compensation in accordance with the award.

Compensation not subject to attachment, &c.

31. Compensation paid or payable—

- (a) is not subject to attachment under a law, other than an Act, in force in the Territory;
- (b) is not capable of being assigned, charged or taken in execution; and
- (c) shall not be made the subject of a set-off in any proceedings.

Other rights not affected

32. The making of an award of compensation does not affect the rights or liabilities of any person under any other law in force in the Territory in relation to the relevant prescribed injury or prescribed property damage or the relevant criminal conduct.

Service of documents

33. A notice or summons under this Ordinance may be served on a person—

- (a) by delivering the notice or summons to him personally;
- (b) by leaving the notice or summons at his last-known place of residence or business with a person apparently resident or employed at that place and apparently over the age of 16 years; or
- (c) by sending the notice or summons by post addressed to him at his last-known place of residence or business.

Commonwealth as party to proceedings

34. The Commonwealth has a right of appearance in any proceedings before a court or the Registrar on an application for compensation under this Ordinance.

Annual report

35. (1) The Registrar shall, within 60 days after the end of each financial year, submit to the Attorney-General a report in writing setting out—

- (a) the number of applications for compensation made during that year;
- (b) particulars of awards of compensation made in pursuance of those applications;
- (c) a brief description of the facts and circumstances to which those applications related; and
- (d) such other particulars relating to the operation of this Ordinance during that year as the Registrar thinks fit.

(2) The Attorney-General shall cause a report referred to in sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Attorney-General.

Regulations

36. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters required or permitted by this Ordinance to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

SCHEDULE

Section 10

AUSTRALIAN CAPITAL TERRITORY

Criminal Injuries Compensation Ordinance 1983

To: The Registrar of the
Supreme Court of the
Australian Capital Territory

I, _____ of _____
apply for an award of compensation under the *Criminal Injuries Compensation Ordinance 1983*.

1. This application is made by me—

- * (a) in respect of an injury (or property damage) sustained by me;
- * (b) as a person who is responsible for the maintenance of (name) (being a person who has sustained an injury) and who has suffered pecuniary loss or incurred expense as a consequence of the injury;
- * (c) as a person who was, immediately before the death of (name of deceased) (being a person who died as a result of having sustained an injury), responsible for his maintenance and who has suffered pecuniary loss or incurred expense as a consequence of the injury (or death);
- * (d) as a person who was a dependant of (name of deceased) (being a person who died as a result of having sustained an injury);
- * (e) as a person who has incurred expense as a consequence of the death of (name of deceased) (being a person who died as a result of having sustained an injury), there being no persons who were dependants of the deceased.

2. Date on which relevant injury (or property damage) was sustained:

3. Particulars of the relevant injury (or property damage):

4. Circumstances in which the relevant injury (or property damage) was sustained (including particulars in so far as they are known to me) of the action of any person as a result of which the relevant injury (or property damage) was sustained:

5. Names and addresses of persons (if any) who are able to give evidence on my behalf in support of this application, and the nature of that evidence:

6. The action of a person as a result of which the relevant injury was sustained has (or has not) been reported to a police officer:

7. Steps taken to enforce rights or to pursue remedies in respect of the relevant injury (or property damage):

*8. Reasons why no steps have been taken to enforce rights or to pursue remedies in respect of the relevant injury (or property damage):

9. Particulars of any damages recovered by me, or compensation or other amount paid or payable to me, in respect of the relevant injury (or property damage):

10. Particulars of any criminal proceedings, including proceedings by way of appeal instituted against a person whose action resulted in the relevant injury (or property damage) being sustained (in so far as those particulars are known to me):

Dated

19

.....
(Applicant)

* Strike out if inapplicable

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 30 June 1983.