

1993

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

**CRIMINAL INJURIES COMPENSATION
(AMENDMENT) BILL 1993**

EXPLANATORY MEMORANDUM

**(Circulated by the Authority of
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Attorney-General)**

CRIMINAL INJURIES COMPENSATION (AMENDMENT) BILL 1993

OUTLINE

The Criminal Injuries Compensation Act 1983 provides for the determination by the courts of claims for compensation for injuries sustained by victims, and the dependants of victims, of criminal offences.

The Bill amends the Criminal Injuries Compensation Act 1983 to provide that compensation shall not be awarded unless the court is satisfied that it would be just and equitable to award compensation. The intention is to emphasise that the court has a discretion whether to award compensation for an injury resulting from an offence. In making its decision the court will be required to have regard to whether the offence has been the subject of a prosecution. The intention is to focus the attention of the court on the question whether the offence is serious enough to justify the expenditure of taxpayers' funds on compensation.

The Bill also provides that, in the absence of a prosecution, compensation is not payable for categories of injury specified in the regulations.

FINANCIAL CONSIDERATIONS

There are no costs associated with the Bill.

CLAUSE NOTES**Clause 1: Short title**

This clause provides that the Bill when enacted may be cited as the Criminal Injuries Compensation (Amendment) Act 1993.

Clause 2: Commencement

Clause 2 states that the Bill will commence on the day on which it is notified in the Gazette.

Clause 3: Principal Act

Clause 3 provides that in the Bill the words 'Principal Act' mean the Criminal Injuries Compensation Act 1983.

Clause 4: Interpretation

Clause 4(a) omits the definition of 'criminal conduct' from section 2 of the Principal Act. That definition is no longer required because the Bill amends provisions of the Principal Act to refer to 'the commission of an offence' rather than 'criminal conduct'. The change in wording is consequential upon the amendment made by clause 4(b) of the Bill which will require the court, in exercising a discretion to award compensation, to be satisfied that the injury is the result of the commission of an offence.

Clause 4(b) amends the definition of 'prescribed injury' in section 2 of the Principal Act to refer to 'the commission of an offence' rather than 'criminal conduct'. The amendment together with section 8 of the Principal Act will require the court, in exercising a discretion to award compensation, to be satisfied that the applicant is correct in claiming that his or her injury is the result of the commission of an offence.

Clause 5: Legal capacity not material

Clause 5 amends section 4 of the Principal Act to refer to 'offence' rather than 'criminal conduct'. This change in wording is consequential upon the amendment made by clause 4(a) of the Bill.

Clause 6: Maximum amount of compensation

Clause 6 amends section 7 of the Principal Act to refer to 'offence' rather than 'criminal conduct'. This change in wording is consequential upon the amendment made by clause 4(a) of the Bill.

Clause 7: Insertion of new section : Just and equitable awards

Clause 7 inserts a new section 7A in the Principal Act to provide that compensation shall not be awarded under that Act unless the court is satisfied that it would be just and equitable to award compensation. The intention in inserting new section 7A is to emphasise that the court has a discretion whether to award compensation. Compensation does not have to be awarded in every case where an injury results from the commission of an offence. In making its decision the court is required to have regard to the considerations set out in new section 8A which is inserted by clause 8 of the Bill.

Clause 8 Insertion of new section : Relevant considerations

Clause 8 inserts a new section 8A in the Principal Act. New section 8A will provide that the courts are to have regard to certain matters in making decisions under the Act about whether an injury is the result of the commission of an offence (section 8) and about whether it is just and equitable to award compensation for the injury (section 7A).

The first consideration for the court in making these decisions is whether a prosecution has been instituted. If no prosecution has been instituted, the court is to consider whether the offender has been identified, whether the offence was committed with an intention to injure any person and whether the offence was reported to police as soon as possible after it was committed. The court is also to have regard to any other matters it considers relevant. These considerations are intended to focus the attention of the court, in exercising its discretion to award compensation, on the questions whether the applicant was injured as a result of an offence and whether the offence is serious enough to justify the expenditure of taxpayers' funds on compensation. The presence or absence of any of these factors will not necessarily be conclusive in determining whether a person may be awarded compensation. They are factors for the court to take into account in exercising its discretion.

In requiring the court to consider whether a person has been prosecuted for an offence, new section 8A is not referring to private prosecutions but rather to an official prosecution instituted by or on behalf of the Attorney-General, the Director of Public Prosecutions or a police officer authorised by the Chief Police Officer to institute prosecutions.

Clause 9 Matters in respect of which compensation is not payable

Clause 9 amends section 9 of the Principal Act to provide that compensation shall not be awarded for injuries specified in Regulations made under the Principal Act, unless the injury is one resulting from an offence for which an offender has been prosecuted. Clause 9 is not referring to private prosecutions but rather to an official prosecution instituted by or on behalf of the Attorney-General, the Director of Public Prosecutions or a police officer authorised by the Chief Police Officer to institute prosecutions.

Clause 9 also removes an unnecessary reference in section 9 of the Act to death arising from the use of a motor vehicle. That reference is unnecessary because compensation is not to be payable in respect of any injury arising from the use of a motor vehicle whether or not the injury results in death.

Clauses 10 to 16

Clauses 10 to 16 amend sections of the Principal Act to refer to 'offence' rather than 'criminal conduct'. These changes in wording are consequential upon the amendment made by clause 4(a) of the Bill.

Clause 17 Application

Clause 17 provides that the changes made by the Bill apply to applications for compensation made but not determined at the date of commencement.