

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

CRIMINAL INJURIES COMPENSATION (AMENDMENT)

ORDINANCE 1988

No 29, 1988

Subsection 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

The proposed Ordinance will amend the Criminal Injuries Compensation Ordinance 1983 (Principal Ordinance) by -

- granting additional jurisdiction to the Magistrate's Court to consider applications for compensation where committal proceedings have not been completed;
- clarifying the jurisdiction of the Registrar;
- determining who has jurisdiction to consider application for compensation based on injuries inflicted by more than one person; and
- making consequential amendments to ensure consistency of expression throughout section 11 of the Principal Ordinance.

Under the Principal Ordinance the Supreme Court, Magistrates Court or Registrar of the Supreme Court do not have jurisdiction to hear an application for compensation where a person has been arrested for, or charged with a criminal offence, and has absconded, or died, or is not otherwise amenable to justice during a committal hearing. The amendments will ensure that where a court has jurisdiction to hear or determine a proceeding for a criminal offence it will also have jurisdiction to hear an application for compensation that arises out of the criminal proceeding that is or was before it. The Registrar of the Supreme Court will have jurisdiction to hear and determine compensation applications where no court has jurisdiction in relation to any of the criminal offences alleged to be part or the sole cause of the injury or damage for which compensation is claimed.

Details of the proposed Ordinance are as follows:

Clauses 1-2 - These are formal commencement provisions.

Clause 3 - Paragraph (a) repeals paragraphs 11(1)(a) and (b) of the Principal Ordinance. The amendment does not change the jurisdiction of the Supreme Court. It reflects the different language used in the proposed Ordinance to make the language throughout section 11 consistent. The Supreme Court has jurisdiction where an indictment has been presented in the normal course of events, or an ex-officio indictment has been presented, or where a person has been committed to the Supreme Court for trial or sentence from the Magistrates Court and no indictment has as yet been presented.

Paragraph (b) repeals subsection 11(2) of the Principal Ordinance and provides the Magistrates Court with additional jurisdiction to hear applications during a committal. It provides the Magistrates Court with jurisdiction whenever an information has been laid in the Magistrates Court and the Supreme Court does not have jurisdiction. The Magistrates Court retains jurisdiction to hear an application for compensation where the defendant has been acquitted of or discharged for an offence relevant to the application. It also retains jurisdiction where a committal proceeding is converted into a summary proceeding by the operation of a 'step-down' provision such as section 477 of the Crimes Act 1900 of the State of New South Wales in its application to the Australian Capital Territory.

Paragraph (c) repeals subsection 11(3) of the Principal Ordinance and provides the Registrar with jurisdiction to hear an application when the Supreme and Magistrate's Courts do not have jurisdiction. It grants the Registrar jurisdiction when criminal proceedings have not been commenced in any court, or where an alleged offender has been arrested but criminal proceedings have not been commenced in a court, or where no person has been arrested.

Paragraph (d) inserts a new subsection 11(4) into the Principal Ordinance. It is designed to deal with applications for compensation based on injuries or property damage arising out of the conduct of two or more persons, where the criminal proceedings against such persons took or will take place in different courts. In these circumstances the Principal Ordinance would require multiple applications for compensation to be made. So that each court could deal with the injuries or damage caused by the assailant dealt with by it. The Registrar, in his Annual Report 1986-87 on the operation of the Principal Ordinance, made the following comments on this requirement: "because of the very nature of simultaneous assaults upon a person by two or more than two others, it will be a difficult, if not impossible, task to determine which are the relevant injuries and the appropriate amount for compensation".

The new subsection 11(4) of the Principal Ordinance will rectify this and other similar problems by granting the most senior court preferential jurisdiction. Seniority in decreasing order is given to the Supreme Court, the Magistrates Court and the Registrar of the Supreme Court.

Thus, for example, where a person is simultaneously assaulted by five persons and criminal proceedings against 2 of the assailants take place in the Supreme Court; against 1 of them takes place in the Magistrates Court; and no charges are brought against the other 2, the Supreme Court would have sole jurisdiction to hear the victim's application for compensation.

The amendment caters for all permutations of the number of assailants and types of criminal proceedings taken (including where no proceedings are taken).

Clause 4 - This is a transitional provision. It allows an application for compensation to be brought within 12 months of the commencement of the proposed Ordinance where a previous application has been (or would have been) dismissed for want of jurisdiction which is to be rectified by the amendment proposed by paragraph 3(b).

The amendment also applies to applications that have been lodged with the Registrar of the Supreme Court prior to, but not determined by the date of commencement of the proposed Ordinance.

ATTORNEY-GENERAL