



Western Australia

## **Criminal Injuries Compensation Act 2003**

Compare between:

[27 May 2008, 01-e0-02] and [11 Jul 2008, 01-f0-02]



Western Australia

## **Criminal Injuries Compensation Act 2003**

**An Act to provide for the payment of compensation to victims of offences in some circumstances, and for related matters.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Criminal Injuries Compensation Act 2003*<sup>1</sup>.

### 2. Commencement

This Act comes into operation on a day fixed by proclamation<sup>1</sup>.

### 3. Terms used in this Act

In this Act, unless the contrary intention appears —

“**alleged offence**” means a crime, misdemeanour or simple offence of which no person has been convicted;

“**applicant**” means a person who makes a compensation application;

“**assessor**” means the Chief Assessor, or an assessor, appointed under Schedule 1 clause 2;

“**CEO**” means the chief executive officer of the department of the Public Service that principally assists the Minister in the administration of this Act;

“**Chief Assessor**” means the Chief Assessor of Criminal Injuries Compensation appointed under Schedule 1 clause 2(1);

“**close relative**” has the meaning given by section 4;

“**compensation application**” means an application for criminal injuries compensation made under Part 2;

“**compensation award**” means an award of compensation made under Part 4;

“**compensation reimbursement order**” means an order made under section 52 of this Act, or section 39(1) of the *Criminal Injuries Compensation Act 1985*<sup>2</sup>;

“**convicted**” has a meaning affected by section 5;

**“health professional”** means —

- (a) a dentist within the meaning of the *Dental Act 1939*;
- (b) a medical practitioner within the meaning of the *Medical Act 1894*; or
- (c) a psychologist as defined in the *Psychologists Act 2005* section 3;

**“injury”** means bodily harm, mental and nervous shock, or pregnancy;

**“interested person”**, in relation to a compensation application or to a compensation award made on such an application, means —

- (a) the applicant;
- (b) a person who an assessor thinks may become liable under Part 6 to pay an amount to the State; or
- (c) the CEO;

**“lawyer”** means a person who is admitted and entitled to practise as a barrister and solicitor of the Supreme Court;

**“loss”** has the meaning given by section 6;

**“offence”** means an alleged offence or a proved offence;

**“personal representative”**, of a deceased person, means —

- (a) the executor or the administrator of the deceased’s estate;
- (b) in the absence of such an executor or administrator, a person who satisfies an assessor that the person is entitled to apply to be the executor or administrator of the deceased’s estate;

**“proved offence”** means a crime, misdemeanour or simple offence of which a person has been convicted;

**“record”** means any record of information, whether made on paper, electronically or otherwise and whether in writing or otherwise;

**“satisfied”** means satisfied on the balance of probabilities;

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**“victim”** means a person who suffers injury, or who dies, as a consequence of the commission of an offence.

*[Section 3 amended by No. 29 of 2004 s. 4; No. 28 of 2005 s. 108.]*

**4. “Close relative”, meaning of**

- (1) For the purposes of this Act, a **“close relative”** of a victim who dies or is injured as a consequence of the commission of an offence, is a person who, immediately before the offence was committed, was —
  - (a) a parent, grandparent or step-parent of the victim;
  - (b) the spouse or a de facto partner of the victim; or
  - (c) a child, grandchild or stepchild of the victim.
- (2) The presumptions of parentage in the *Family Court Act 1997* Part 5 Division 11 Subdivision 3 operate, and section 193 of that Act operates in respect of those presumptions, for the purposes of this Act.

**5. “Convicted”, meaning of**

- (1) For the purposes of this Act a person is convicted of an offence notwithstanding that having been found guilty or convicted of the offence —
  - (a) a spent conviction order made under the *Sentencing Act 1995* section 39 applies to the conviction;
  - (b) a conviction is not recorded under the *Young Offenders Act 1994* section 55;
  - (c) the complaint or indictment was dismissed under the repealed section 669(1)(a) of *The Criminal Code*;
  - (d) the repealed section 20 of the *Offenders Community Corrections Act 1963*<sup>3</sup> applies to the conviction;
  - (e) the repealed section 40 or 126A of the *Child Welfare Act 1947*<sup>4</sup> applies to the conviction;

- (f) the charge was dismissed or the person was discharged under the repealed section 34 or 34B of the *Child Welfare Act 1947*<sup>4</sup>; or
  - (g) the complaint for the offence was dismissed under the repealed section 24 of the *Children's Court of Western Australia Act 1988*.
- (2) For the purposes of this Act a person is convicted of an offence if the person, whether or not he or she is charged with the offence, is dealt with by a juvenile justice team under the *Young Offenders Act 1994* Part 5 Division 2 for the offence.

**6. “Loss”, meaning of**

- (1) In this section —
- “personal item”** means —
- (a) an item of clothing or footwear;
  - (b) spectacles, or contact lenses, used to correct eyesight;
  - (c) a hearing aid;
  - (d) artificial teeth;
  - (e) an artificial limb;
  - (f) a surgical appliance or implant used to correct or relieve a physical disability or medical condition; or
  - (g) any other item prescribed by the regulations.
- (2) In the case of a victim who is injured, **“loss”** means —
- (a) expenses actually and reasonably incurred by or on behalf of the victim —
    - (i) that arise directly from; or
    - (ii) that arise in obtaining any report from a health professional or a counsellor in relation to, the injury suffered by the victim;
  - (b) expenses that are likely to be reasonably incurred by or on behalf of the victim for treatment that the victim is

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likely to need as a direct consequence of the injury suffered by the victim;

- (c) loss of earnings suffered by the victim as a direct consequence of the injury suffered by the victim; or
  - (d) any loss arising from any damage caused as a direct consequence of the commission of the offence to any personal item that was being worn by the victim when he or she suffered the injury.
- (3) In the case of a victim who dies, “**loss**” means any loss suffered by a close relative of the victim for which damages could be awarded to the relative under the *Fatal Accidents Act 1959* if the death of the victim were caused by the wrongful act, neglect or default of another.

**7. Construction of Act**

Subject to sections 42(3) and (4) and 68, this Act must be construed as being in addition to, and not in derogation of, any other law.



## **Part 2 — Applying for compensation**

### **Division 1 — General**

#### **8. Offences for which compensation may be sought**

This Act does not apply to or in relation to an offence that was committed before 22 January 1971.

#### **9. Time limit for making a compensation application**

(1) A compensation application must be made within 3 years after the date on which —

- (a) the offence to which it relates was committed; or
- (b) if it relates to more than one offence, the last of them was committed.

(2) Despite subsection (1), an assessor may allow a compensation application to be made after the 3 years if he or she thinks it is just to do so and may do so on any conditions that he or she thinks it is just to impose.

#### **10. Death of person entitled to compensation ends entitlement**

(1) Any entitlement of a victim to compensation under this Act ceases on the death of the victim.

(2) Any entitlement of a close relative of a deceased victim to compensation under this Act ceases on the death of the close relative.

(3) Subsections (1) and (2) apply even if —

- (a) a compensation application is made by or on behalf of a victim or a close relative of a deceased victim before the death of the victim or close relative; or
- (b) a compensation award in favour of a victim or a close relative of a deceased victim is made after and in ignorance of the death of the victim or close relative.

**11. How to make a compensation application**

- (1) A compensation application must be —
  - (a) made in writing on a form approved by the Chief Assessor; and
  - (b) given to the Chief Assessor.
- (2) If a person entitled to make a compensation application is —
  - (a) under 18 years of age — the application may be made on his or her behalf by a parent, or a person acting in place of a parent, of the person;
  - (b) a represented person within the meaning of the *Guardianship and Administration Act 1990* — the application may be made on his or her behalf by the person's guardian or administrator appointed under that Act.

**Division 2 — When and what compensation can be claimed**

**12. Proved offence**

- (1) A person who suffers injury as a consequence of the commission of a proved offence may apply for compensation for the injury and any loss also suffered.
- (2) If a person, being a close relative of a person who dies as a consequence of the commission of a proved offence, suffers loss as a result of the death, the personal representative of the deceased may apply for compensation for that loss.
- (3) An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied —
  - (a) if the application is made under subsection (1) — that the claimed injury and any claimed loss has occurred and did so as a consequence of the commission of a proved offence;

- (b) if the application is made under subsection (2) — that the death occurred as a consequence of the commission of a proved offence and that the claimed loss has occurred.

**13. Alleged offence: acquittal**

- (1) This section applies if a person is charged with an alleged offence and is found not guilty of it other than on account of unsoundness of mind.
- (2) If a person —
  - (a) suffers injury as a consequence of the commission of the alleged offence; and
  - (b) claims that the alleged offence was committed but by a person other than the acquitted person,

the person may apply for compensation for that injury and any loss also suffered.

- (3) If —
  - (a) a person dies as a consequence of the commission of the alleged offence;
  - (b) a close relative of the deceased suffers loss as a result of the death; and
  - (c) the personal representative of the deceased claims that the alleged offence was committed but by a person other than the acquitted person,

the personal representative of the deceased may apply for compensation for that loss.

- (4) An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied that the alleged offence was committed but by a person other than the acquitted person and —
  - (a) if the application is made under subsection (2) — that the claimed injury and any claimed loss has occurred

and did so as a consequence of the commission of the alleged offence;

- (b) if the application is made under subsection (3) — that the death occurred as a consequence of the commission of the alleged offence and that the claimed loss has occurred.

- (5) If an assessor is satisfied that the person who committed the act or made the omission that constitutes the alleged offence was, at the time of the act or omission, not criminally responsible for it, the alleged offence is to be taken not to have been committed for the purposes of subsection (4) unless the person was not criminally responsible for it by reason of *The Criminal Code* section 27.

**14. Alleged offence: acquittal due to unsoundness of mind**

- (1) This section applies if a person is found not guilty of a crime, misdemeanour or simple offence (the “**charged offence**”) on account of unsoundness of mind.
- (2) A person who suffers injury as a consequence of the act or omission that is alleged to constitute the charged offence may apply for compensation for that injury and any loss also suffered.
- (3) If —
  - (a) a person dies as a consequence of the act or omission that is alleged to constitute the charged offence; and
  - (b) a close relative of the deceased suffers loss as a result of the death,

the personal representative of the deceased may apply for compensation for that loss.

- (4) An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied —
- (a) if the application is made under subsection (2) — that the claimed injury and any claimed loss has occurred and did so as a consequence of the act or omission that is alleged to constitute the charged offence;
  - (b) if the application is made under subsection (3) — that the death occurred as a consequence of the act or omission that is alleged to constitute the charged offence and that the claimed loss has occurred.

**15. Alleged offence: accused not mentally fit to stand trial**

- (1) This section applies if —
- (a) a person is charged with an alleged offence that is alleged to have been committed on or after 1 January 1986; and
  - (b) the person is found to be mentally unfit to stand trial for the alleged offence.
- (2) A person who suffers injury as a consequence of the commission of the alleged offence may apply for compensation for that injury and any loss also suffered.
- (3) If a person, being a close relative of a person who dies as a consequence of the commission of the alleged offence, suffers loss as a result of the death, the personal representative of the deceased may apply for compensation for that loss.
- (4) An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied —
- (a) if the application is made under subsection (2) — that the claimed injury and any claimed loss has occurred and did so as a consequence of the commission of the alleged offence;

- (b) if the application is made under subsection (3) — that the death occurred as a consequence of the commission of the alleged offence and that the claimed loss has occurred.
- (5) If an assessor is satisfied that the person who committed the act or made the omission that constitutes the alleged offence was, at the time of the act or omission, not criminally responsible for it, the alleged offence is to be taken not to have been committed for the purposes of subsection (4) unless the person was not criminally responsible for it by reason of *The Criminal Code* section 27.

**16. Alleged offence: charge not determined**

- (1) This section applies if a person is charged with an alleged offence and —
  - (a) the charge is withdrawn or a *nolle prosequi* is entered in respect of it or the prosecution of it is discontinued;
  - (b) the charge is dismissed without a finding as to whether the person charged is guilty or not guilty of it;
  - (c) the person is acquitted because the prosecutor does not adduce any evidence on the charge;
  - (d) the person dies before he or she is found guilty or not guilty of the charge; or
  - (e) for any other reason, the person is not brought to trial on the charge,and —
  - (f) the person charged is not otherwise charged with the alleged offence or tried for it; and
  - (g) section 15 does not apply.
- (2) A person who suffers injury as a consequence of the commission of the alleged offence may apply for compensation for that injury and any loss also suffered.

- (3) If a person, being a close relative of a person who dies as a consequence of the commission of the alleged offence, suffers loss as a result of the death, the personal representative of the deceased may apply for compensation for that loss.
- (4) An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied —
  - (a) if the application is made under subsection (2) — that the claimed injury and any claimed loss has occurred and did so as a consequence of the commission of the alleged offence;
  - (b) if the application is made under subsection (3) — that the death occurred as a consequence of the commission of the alleged offence and that the claimed loss has occurred.
- (5) If an assessor is satisfied that the person who committed the act or made the omission that constitutes the alleged offence was, at the time of the act or omission, not criminally responsible for it, the alleged offence is to be taken not to have been committed for the purposes of subsection (4) unless the person was not criminally responsible for it by reason of *The Criminal Code* section 27.

*[Section 16 amended by No. 2 of 2008 s. 59.]*

**17. Alleged offence: no person charged**

- (1) This section applies if an alleged offence is committed but no person is charged with the alleged offence.
- (2) A person who suffers injury as a consequence of the commission of the alleged offence may apply for compensation for that injury and any loss also suffered.
- (3) If a person, being a close relative of a person who dies as a consequence of the commission of the alleged offence, suffers

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loss as a result of the death, the personal representative of the deceased may apply for compensation for that loss.

- (4) An assessor must not make a compensation award in respect of a compensation application made under this section unless satisfied —
- (a) if the application is made under subsection (2) — that the claimed injury and any claimed loss has occurred and did so as a consequence of the commission of the alleged offence;
  - (b) if the application is made under subsection (3) — that the death occurred as a consequence of the commission of the alleged offence and that the claimed loss has occurred.
- (5) If an assessor is satisfied that the person who committed the act or made the omission that constitutes the alleged offence was, at the time of the act or omission, not criminally responsible for it, the alleged offence is to be taken not to have been committed for the purposes of subsection (4) unless the person was not criminally responsible for it by reason of *The Criminal Code* section 27.



### **Part 3 — Dealing with compensation applications**

#### **18. Procedure, general matters**

- (1) An assessor must determine compensation applications expeditiously and informally having regard to the requirements of justice and this Act.
- (2) In deciding a compensation application an assessor is not bound by rules or practice as to evidence or procedure but may inform himself or herself in any manner he or she thinks fit.

#### **19. Assessor's general powers**

- (1) For the purposes of deciding a compensation application, an assessor may do any or all of the following, either on the application of an interested person or on the assessor's own initiative —
  - (a) amend the application;
  - (b) give written notice of the application and of any amendment to it to an interested person;
  - (c) seek and receive any information or evidence that the assessor thinks necessary;
  - (d) make any inquiries and investigate any matters that the assessor thinks necessary;
  - (e) request the applicant to provide the assessor with information in relation to the application;
  - (f) defer deciding the application in order to obtain more information or until information requested under paragraph (c), (d) or (e) is provided.
- (2) For the purposes of deciding a compensation application, an assessor may give a person a written notice that requires the person to do any or all of the following —
  - (a) to give the assessor, within the time specified in the notice, the relevant information described generally or specifically in the notice;

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- (b) to appear before the assessor at a time and place specified in the notice to give relevant evidence to the assessor;
  - (c) to produce to the assessor, within the time specified in the notice, any relevant record that is described generally or specifically in the notice and that is in the person's possession or control.
- (3) The powers in subsection (1) and (2) may be exercised whether or not a hearing of the compensation application is to be conducted.
- (4) An assessor to whom a record is produced may inspect and make a copy of the record and for those purposes may keep the record for a reasonable time.
- (5) A person who is given a notice under subsection (2) and who, without a reasonable excuse, does not comply with it commits an offence.
- Penalty: \$5 000.

**20. Victim may be directed to attend doctor etc.**

- (1) For the purposes of deciding a compensation application by or on behalf of a person who claims to have suffered an injury as a consequence of the commission of an offence (the “**victim**”), an assessor, either on the application of an interested person or on the assessor's own initiative, may —
- (a) direct the victim to attend and be examined by a health professional nominated by the assessor; and
  - (b) defer deciding the application until the victim has complied with the direction.
- (2) If an assessor directs such a victim to attend and be examined by a health professional —
- (a) the assessor may give the health professional a copy of any report by another health professional about the victim;

- (b) the assessor must request the health professional to provide the assessor with a report of the examination;
  - (c) the Chief Assessor must pay the reasonable cost of the examination and the report; and
  - (d) any compensation award must be reduced by the amount so paid.
- (3) If a victim does not obey such a direction, the assessor may take account of the fact by reducing any compensation award made in favour of the victim.

**21. Applicant may be required to enforce other remedies**

- (1) If an assessor dealing with a compensation application by or on behalf of a victim who suffered injury as a consequence of the commission of an offence is of the opinion that the victim —
- (a) has reasonable grounds for taking proceedings independently of this Act to obtain compensation or damages for all or some of the claimed injury and any claimed loss; or
  - (b) may be entitled under a contract of insurance to payment for all or some of that injury or loss,

the assessor may require the victim to take proceedings to obtain the compensation, damages or payment and may defer the application pending the determination of those proceedings.

- (2) If an assessor dealing with a compensation application by the personal representative of a victim who died as a consequence of the commission of an offence is of the opinion that the personal representative —
- (a) has reasonable grounds for taking proceedings independently of this Act to obtain compensation or damages for all or some of any claimed loss; or

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- (b) may be entitled under a contract of insurance to payment for all or some of that loss,

the assessor may require the representative to take proceedings to obtain the compensation, damages or payment and may defer the application pending the determination of those proceedings.

**22. CEO may apply for stay of compensation application**

- (1) The CEO may at any time request that a compensation application be stayed because a prosecution for an alleged offence to which the compensation application relates has been or is about to be commenced.
- (2) On such a request an assessor may stay the compensation application for such period as the assessor decides.

**23. Interim payments**

- (1) If an assessor dealing with a compensation application is satisfied —
  - (a) that a person has incurred or is likely to incur expenses that are or are likely to be a loss in respect of which compensation will be or is likely to be awarded under this Act on the application; and
  - (b) that the making of an interim payment of compensation pending the final determination of the application is warranted,

the assessor may make an interim payment of such reasonable amount, and on such terms, as the assessor decides.

- (2) For any one compensation application more than one interim payment may be made but the total of the payments, not including any payment for the funeral of a victim who has died, must not exceed 3% of the maximum amount of compensation that could be awarded if the application were for compensation in relation to a single offence.

- (3) The total of any interim payments must be deducted from any compensation award that is subsequently made in favour of the victim or close relative.
- (4) If one or more interim payments are made to a person and a compensation award in favour of that person is subsequently refused, the total of the interim payments becomes a debt due to the State by the person.

**24. Hearing to be held if assessor thinks fit**

- (1) An assessor may conduct a hearing of a compensation application if he or she thinks fit.
- (2) An assessor, without conducting a hearing of a compensation application may make, or refuse to make, a compensation award in respect of the application.

**25. Hearings**

- (1) If an assessor decides to conduct a hearing of a compensation application, the assessor must cause written notice of the time and place of the hearing to be given to the applicant and to any other interested person that the assessor intends to hear.
- (2) A person who is notified of a hearing is entitled —
  - (a) to appear at the hearing and be heard by the assessor;
  - (b) to appear in person or to be represented by a lawyer, or by a person approved by the assessor; and
  - (c) to present evidence and to call, examine and re-examine witnesses and to cross-examine any witness not called by that person.
- (3) Section 63 applies for the purposes of conducting a hearing.
- (4) A hearing by an assessor must be conducted in private unless the assessor decides that it should be conducted in public.
- (5) If a hearing is conducted in private, the assessor may exclude any person who the assessor does not intend to hear.

**26. Awards etc. to be in writing**

A compensation award, or a decision to refuse to make a compensation award, must —

- (a) be made in writing; and
- (b) be given to the applicant concerned.

**27. Reasons for decisions**

- (1) If an assessor makes a compensation award, the assessor must give written reasons for making the award to any interested person who, in writing, asks the assessor for the reasons.
- (2) If an assessor refuses to make a compensation award, the assessor must give written reasons for the refusal to —
  - (a) the applicant; and
  - (b) any other interested person who, in writing, asks the assessor for the reasons.

**28. Copy of awards to be sent to CEO**

The Chief Assessor must send a copy of a compensation award to the CEO as soon as practicable after it is made.

## **Part 4 — Matters governing compensation awards**

### **29. Assessor's general discretion**

- (1) In deciding whether or not to make a compensation award, or the amount of a compensation award, an assessor may have regard to any factors or circumstances that the assessor thinks are relevant.
- (2) Subsection (1) is subject to sections 12(3), 13(4), 14(4), 15(4), 16(4) and 17(4) and this Part.

### **30. Compensation awards, general**

- (1) On a compensation application in respect of injury suffered by a victim as a consequence of the commission of an offence, an assessor may award such compensation that the assessor is satisfied is just for the injury and for any loss also suffered.
- (2) A compensation award made under subsection (1) may include directions that all or a specified part of the compensation be held on trust for the victim by the person, and on any terms, specified in the award.
- (3) On a compensation application made by the personal representative of a victim who dies as a consequence of the commission of an offence, an assessor may award such compensation that the assessor is satisfied is just for the loss suffered by the one or more close relatives of the deceased.
- (4) A compensation award made under subsection (3) may —
  - (a) apportion the compensation between 2 or more close relatives;
  - (b) include directions that all or a specified part of the compensation be held on trust for a close relative by the person, and on any terms, specified in the award.
- (5) An assessor may at any time for good reason amend or cancel a direction made under subsection (2) or (4).

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**31. Maximum for single offence**

- (1) Subject to sections 32, 33 and 34, the maximum amount that may be awarded in aggregate under sections 30(1) and (3) in favour of one person for a single offence committed on a date in a period set out in the Table to this subsection is set out in the Table opposite that period.

**Table**

<b>Item</b>	<b>Period</b> (all dates inclusive)	<b>Maximum amount</b>
1.	22 January 1971 to 17 October 1976	For an indictable offence: \$2 000 For a simple offence: \$300
2.	18 October 1976 to 31 December 1982	\$7 500
3.	1 January 1983 to 31 December 1985	\$15 000
4.	1 January 1986 to 30 June 1991	\$20 000
5.	1 July 1991 to the day before the day on which this Act comes into operation	\$50 000
6.	On or after the day on which this Act comes into operation	\$75 000

- (2) Subject to sections 32, 33 and 34, the maximum amount that may be awarded in aggregate on a compensation application made by the personal representative of a victim who dies as a consequence of the commission of an offence committed in a period set out in the Table to subsection (1) is set out in that Table opposite the period.
- (3) The regulations may from time to time amend the Table to subsection (1) by —



- (a) inserting a further item that specifies the maximum amount for offences committed on or after a date specified or referred to in the item, being a date on or after the date on which the regulations come into operation; and
- (b) making any necessary consequential amendments to any previous item in the Table that do not change the effect of the item.

**32. Maximum for single offence by multiple offenders**

Section 31(1) and (2) apply even if the single offence is committed by 2 or more persons acting in concert.

**33. Maximum for multiple related offences**

- (1) For the purposes of this section, 2 or more offences are related to one another if an assessor is satisfied —
  - (a) that they were committed at approximately the same time, whether by one person or by 2 or more persons acting in concert; or
  - (b) that they are related for any other reason.
- (2) If as a consequence of the commission of 2 or more related offences, a person —
  - (a) suffers injury;
  - (b) suffers loss as the close relative of a victim who dies as a consequence of one of the offences; or
  - (c) suffers both injury as described in paragraph (a) and loss as described in paragraph (b),

the amounts awarded under section 30(1) and (3) in favour of the person for the injury described in paragraph (a) and any loss also suffered and for the loss described in paragraph (b) must not in aggregate exceed the maximum amount that may be awarded for the last one of the offences to be committed.

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- (3) Despite subsection (2), if a person is a close relative of 2 or more victims who die as a consequence of 2 or more related offences and as a result of 2 or more of those deaths —
- (a) suffers injury;
  - (b) suffers loss as the close relative; or
  - (c) suffers both injury as described in paragraph (a) and loss as described in paragraph (b),

the amounts awarded under section 30(1) and (3) in favour of the person for the injury described in paragraph (a) and any loss also suffered and for the loss described in paragraph (b) must not in aggregate exceed twice the maximum amount that may be awarded for the last one of the offences to be committed.

**34. Maximum for multiple unrelated offences by one offender**

- (1) This section applies to and in respect of a compensation application made on or after 23 September 2003.
- (2) If as a consequence of 2 or more offences committed by one person that are not related offences within the meaning of section 33(1), another person —
- (a) suffers injury;
  - (b) suffers loss as a close relative of a victim who dies as a consequence of one or more of the offences; or
  - (c) suffers both injury as described in paragraph (a) and loss as described in paragraph (b),

the amounts awarded under section 30(1) and (3) in favour of the person for the injury described in paragraph (a) and any loss also suffered and for the loss described in paragraph (b) must not in aggregate exceed twice the maximum amount that may be awarded for the last one of the offences to be committed.

**35. Mental and nervous shock, compensation for limited to certain persons**

- (1) This section applies to and in respect of a compensation application made on or after 23 September 2003.
- (2) An assessor must not make a compensation award for mental and nervous shock suffered by a victim as a consequence of the commission of an offence, or for any loss in respect of such shock, unless the assessor is satisfied —
  - (a) that the victim also suffered bodily harm or became pregnant as a consequence of the commission of the offence;
  - (b) that the victim was the person against whom, or against whose property, the offence was committed;
  - (c) that a person other than the victim died or suffered injury as a consequence of the offence and the victim was personally present when or immediately after the offence was committed;
  - (d) that immediately before the offence was committed the victim was the parent or step-parent of a person who died as a consequence of the commission of the offence; or
  - (e) that immediately before the offence was committed the victim —
    - (i) was a close relative of a person who suffered injury or died as a consequence of the commission of the offence; and
    - (ii) was living with that person.
- (3) Despite subsection (2), if an assessor is satisfied —
  - (a) that a person died or was injured as a consequence of the commission of an offence; and
  - (b) that the death occurred or the injury was suffered when the person was committing a separate offence,

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the assessor must not make a compensation award in favour of a close relative of the person for mental and nervous shock suffered by the close relative as a result of the death or injury.

*[Section 35 amended by No. 29 of 2004 s. 5.]*

**36. No award if compensation likely to benefit offender**

An assessor must not make a compensation award in favour of a victim, or a close relative of a deceased victim, if the assessor is of the opinion —

- (a) that there is a relationship or connection between the person who committed the offence and the victim or close relative; and
- (b) that by reason of the relationship or connection any money paid under the award is likely to benefit or advantage the person who committed the offence.

**37. No award if injury is from motor vehicle in certain cases**

- (1) In this section —

**“motor vehicle”** has the meaning given by the *Motor Vehicle (Third Party Insurance) Act 1943*.

- (2) This section applies in relation to an offence committed on or after 1 July 1993.

- (3) An assessor must not make a compensation award in favour of —

- (aa) an injured victim in respect of the injury or any loss suffered by the victim; or
- (ab) the personal representative of a deceased victim, in respect of any loss suffered by a close relative of a deceased victim,

as a consequence of the commission of an offence if satisfied that the injury or death was caused directly by, or by the driving or other use of, a motor vehicle unless —

- (a) the motor vehicle was used for the purpose of committing the offence; and
- (b) the offence is a crime.

*[Section 37 amended by No. 29 of 2004 s. 6.]*

**38. No award if applicant did not assist investigators**

An assessor must not make a compensation award in favour of a victim, or a close relative of a deceased victim, if the assessor is of the opinion that the victim or close relative did not do any act or thing which he or she ought reasonably to have done to assist in the identification, apprehension or prosecution of the person who committed the offence.

**39. No award if victim was engaged in criminal conduct**

- (1) If an assessor is satisfied —
  - (a) that a person was injured as a consequence of the commission of an offence; and
  - (b) that the injury was suffered when the person was committing a separate offence,

the assessor must not make a compensation award in favour of the person.

- (2) If an assessor is satisfied —
  - (a) that a person died as a consequence of the commission of an offence; and
  - (b) that the death occurred when the person was committing a separate offence,

the assessor must not make a compensation award in favour of a close relative of the person for any loss suffered by the close relative as a result of the death.

**40. No award if compensation already awarded or refused**

- (1) In this section —

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**“award”** means an order for compensation made under the *Criminal Injuries (Compensation) Act 1970*<sup>5</sup>, or an award of compensation made under the *Criminal Injuries Compensation Act 1982*<sup>6</sup>, the *Criminal Injuries Compensation Act 1985*<sup>2</sup>, or this Act;

**“compensation application”** means an application for compensation made under the *Criminal Injuries (Compensation) Act 1970*<sup>5</sup>, the *Criminal Injuries Compensation Act 1982*<sup>6</sup>, the *Criminal Injuries Compensation Act 1985*<sup>2</sup> or this Act.

- (2) An assessor must not make a compensation award in favour of a victim who is injured as a consequence of the commission of an offence if —
- (a) an award has been made previously in favour of the victim; or
  - (b) a compensation application by or on behalf of the victim has been refused previously,

in relation to an injury suffered by the victim as a consequence of the offence.

- (3) An assessor must not make a compensation award in favour of a close relative of a victim who dies as a consequence of the commission of an offence if —
- (a) an award has been made previously in favour of the close relative; or
  - (b) a compensation application on behalf of the close relative has been refused previously,

in relation to loss suffered by the close relative as a result of the death.

**41. Behaviour etc. of victim to be considered**

In deciding whether or not to make a compensation award, or the amount of a compensation award, in favour of a victim, or a close relative of a deceased victim, an assessor —

- (a) must have regard to any behaviour, condition, attitude, or disposition of the victim that contributed, directly or indirectly, to the victim's injury or death; and
- (b) may, if he or she thinks it is just to do so —
  - (i) refuse to make a compensation award because of that contribution; or
  - (ii) reduce the amount that the assessor would otherwise have awarded.

**42. Insurance payments etc. to be deducted from award**

- (1) In this section —  
**“registered organisation”** has the meaning given by the *National Health Act 1953* of the Commonwealth.
- (2) An assessor must deduct from a compensation award in relation to any loss suffered by a victim, or a close relative of a deceased victim, any amount that the victim or close relative would, but for this Act, also be entitled to receive under a contract of insurance with a registered organisation in respect of any of that loss.
- (3) An assessor must deduct from a compensation award in relation to any injury or loss suffered by a victim, or a close relative of a deceased victim, any amount that the victim or close relative has received by way of compensation or damages, or under a contract of insurance, for the injury or loss.
- (4) If an assessor is satisfied that a victim, or a close relative of a deceased victim, who has suffered injury or loss will receive an amount by way of compensation or damages, or under a contract of insurance, for the injury or loss, the assessor may deduct the amount from a compensation award in relation to that injury or loss.
- (5) Despite subsections (3) and (4), in the case of an application by a personal representative of a deceased victim, the amounts

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described in the *Fatal Accidents Act 1959* section 5(2)(b) and (c) must not be deducted.

**43. Award to be off set against any amount owed to the State**

An assessor may reduce the amount payable to a victim or close relative under a compensation award by an amount not exceeding any amount that the victim or close relative owes the State —

- (a) under section 23(4);
- (b) under a compensation reimbursement order; or
- (c) under section 68.

*[Section 43 amended by No. 29 of 2004 s. 7.]*

**44. Person who incurs expenses may be paid directly**

If a compensation award includes an amount in respect of expenses incurred on behalf of a victim, or a close relative of a deceased victim, by a person who is responsible for the maintenance of the victim or close relative, the award may direct that the amount be paid directly to that person.

**45. Order about reimbursement order may be made**

- (1) When or after making a compensation award in respect of an application made under section 12, an assessor who thinks it is just to do so may make —
  - (a) an order barring proceedings under Part 6 in respect of the award; or
  - (b) an order that only a part of the award (specified in the order) may be the subject of proceedings under Part 6.
- (2) At any time, on an application by the CEO, an assessor may cancel an order made under subsection (1).



## **Part 5 — Paying compensation awarded**

### **46. Consolidated Account charged with payment**

The Consolidated Account is charged with the payment of any compensation awarded under this Act and is appropriated accordingly.

*[Section 46 amended by No. 77 of 2006 s. 4.]*

### **47. Appeal period, payment may be withheld**

Payment under a compensation award is not to be made until —

- (a) the period referred to in section 55(3) has elapsed; and
- (b) any appeal commenced under Part 7 is determined,

except with the written authority of an assessor.

### **48. Future treatment expenses, payment of**

If a compensation award made in favour of a victim who has suffered injury includes an amount in respect of expenses of the kind referred to in section 6(2)(b), the amount is not to be paid unless —

- (a) the Chief Assessor is given evidence for the purposes of paragraph (b) by or on behalf of the victim; and
- (b) an assessor is satisfied that the expenses have been reasonably incurred by or on behalf of the victim for treatment that the victim required as a direct consequence of the injury suffered by the victim in consequence of the commission of the offence to which the award relates.

## **Part 6 — Recovering compensation from offenders**

### **48A. Term used in this Part**

In this Part —

“**compensation award**” includes an award for payment of compensation made under the *Criminal Injuries Compensation Act 1985*<sup>2</sup>.

*[Section 48A inserted by No. 29 of 2004 s. 8.]*

### **49. CEO may request offender to reimburse compensation**

If —

- (a) a compensation award is made in respect of any injury or loss suffered as a consequence of an offence; and
- (b) a person is convicted of the offence,

then, subject to any order made under section 45(1), the CEO may give the offender a written notice that requests the offender to pay to the State as a lump sum —

- (c) the whole, or such part as is specified in the notice, of the amount paid or payable under the award; and
- (d) the whole, or such part as is specified in the notice, of the amount, if any, deducted under section 42(3) or (4) and remitted to the Commonwealth under a law of the Commonwealth.

### **50. Compensation reimbursement orders, application for**

- (1) At any time after a compensation award is made in relation to an offence the CEO may apply to the Chief Assessor for a compensation reimbursement order against a person who has been convicted of the offence, subject to any order made under section 45(1).
- (2) An application may be made under subsection (1) whether or not the CEO has given the offender a notice under section 49.

**51. Dealing with applications**

- (1) In this section —  
    **“application”** means an application made under section 50(1) or 52(3).
- (2) On receiving an application the Chief Assessor must ensure that —
  - (a) notice of the application is served on the offender; and
  - (b) the CEO and the offender are served with notice of —
    - (i) the time and place of the hearing of the application;
    - (ii) the matters listed in section 52(2) that will be considered at the hearing; and
    - (iii) their entitlements under subsection (3).
- (3) A person who is notified of the hearing is entitled —
  - (a) to give the assessor, before the hearing, a written submission about any matter relevant to the making of a compensation reimbursement order;
  - (b) to appear at the hearing and be heard by the assessor dealing with the application;
  - (c) to appear in person or to be represented by a lawyer, or by a person approved by the assessor; and
  - (d) to present evidence and to call, examine and re-examine witnesses and to cross-examine any witness not called by that person.
- (4) Section 63 applies for the purposes of conducting the hearing.
- (5) The hearing must be conducted in private unless the assessor decides that it should be conducted in public.
- (6) If a hearing is conducted in private, the assessor may exclude any person who the assessor does not intend to hear.

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- (7) At the hearing an assessor may inquire into —
- (a) the matters listed in section 52(2); and
  - (b) any other matters that the assessor thinks are relevant to the application.

**52. Compensation reimbursement order, making**

- (1) At the hearing of an application made under section 50(1), an assessor may make a compensation reimbursement order that orders the offender to pay to the State an amount specified in the order being —
- (a) the whole or part of the amount paid or payable under the relevant compensation award; and
  - (b) the whole or part of the amount, if any, deducted under section 42(3) or (4) and remitted to the Commonwealth under a law of the Commonwealth,

in a lump sum or by means of instalments of such amounts and at such times as the order specifies.

- (2) In deciding whether to make a compensation reimbursement order and the amount to be paid under the order an assessor must have regard to the following —
- (a) the extent to which the offender is responsible for the victim's injury or death;
  - (b) whether the behaviour of the victim at the time of the offence in any way precipitated or provoked the offence;
  - (c) whether any behaviour, condition, attitude, or disposition of the victim contributed, directly or indirectly, to the victim's injury or death;
  - (d) the offender's means to satisfy any such order having regard to —
    - (i) the offender's income, assets and liabilities; and
    - (ii) the offender's current and prospective employment;

- (e) the extent to which the offender is likely to be able to satisfy any such order within a reasonable time.
- (3) The CEO or the offender may at any time apply for a compensation reimbursement order to be amended or cancelled.
- (4) On an application made under subsection (3), an assessor may amend or cancel the compensation reimbursement order.

**53. Compensation reimbursement order, enforcement of**

- (1) A compensation reimbursement order may be enforced by lodging a copy of it, certified by an assessor as a true copy, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (2) When a compensation reimbursement order is lodged with a court of competent jurisdiction, the order is to be taken to be a judgment of the court against the offender in favour of the State and may be enforced accordingly.

**54. Reimbursed amounts to be credited to Consolidated Account**

Any money paid or recovered under this Part must be credited to the Consolidated Account.

*[Section 54 amended by No. 77 of 2006 s. 4.]*

## **Part 7 — Appeals and referrals**

### **55. Appeal lies to the District Court**

- (1) An interested person may appeal to the District Court against an assessor's decision —
  - (a) to make or to refuse to make a compensation award;
  - (b) as to the amount of a compensation award.
- (2) The CEO or an offender may appeal to the District Court against an assessor's decision —
  - (a) to make or to refuse to make, or to cancel or amend or to refuse to cancel or amend, a compensation reimbursement order under section 52;
  - (b) as to the amount of a compensation reimbursement order made or amended under section 52.
- (3) The appeal must be commenced within 21 days after the date of the decision.
- (4) If it is just to do so, the District Court may allow an appeal to be commenced after the 21 days, and may do so even if the period has expired.
- (5) The appeal must be conducted in accordance with rules of court made by the District Court.

### **56. Dealing with appeals**

- (1) The District Court must decide an appeal under section 55 on the evidence and information that was in the possession of the assessor concerned but may admit or receive additional evidence or information.
- (2) On an appeal under section 55 the District Court may do any or all of the following —
  - (a) exercise any power of an assessor under this Act, other than a power under section 19(1)(b), 24(1) or 25;

- (b) confirm, vary or reverse the assessor's decision, either in whole or in part;
- (c) make any order that an assessor could make under this Act;
- (d) order an unsuccessful party to the appeal to pay a successful party's costs as set by the Court in accordance with the scale of costs prescribed by the regulations;
- (e) refer a question of law that arises in the appeal to the Court of Appeal for determination;
- (f) make any necessary consequential order.

*[Section 56 amended by No. 45 of 2004 s. 37.]*

**57. District Court decision is final**

The District Court's decision on an appeal made under this Part is not appealable.

**58. Assessor may refer question of law to Court of Appeal**

An assessor may refer a question of law that arises in relation to a compensation application or the interpretation of this Act to the Court of Appeal for determination.

*[Section 58 amended by No. 45 of 2004 s. 37.]*

## **Part 8 — Administrative matters**

**59. Chief Assessor and assessors, appointment of etc.**

Schedule 1 has effect.

**60. Chief Assessor may allocate work to assessors**

The Chief Assessor may allocate and reallocate compensation applications to or among himself or herself and the other assessors to be dealt with in accordance with this Act.

**61. Administrative staff**

Any person needed to assist the assessors must be appointed under the *Public Sector Management Act 1994* Part 3.

**62. Annual report and other reports**

- (1) Before 1 October in each year, the Chief Assessor must give the Minister a report about the operation of this Act during the financial year that ended on 30 June in that year.
- (2) At any other time the Chief Assessor may give the Minister a report about the operation of this Act.
- (3) The Minister must cause any report given to him or her under this section to be laid before each House of Parliament within 15 sitting days of that House after receiving it.



## Part 9 — Miscellaneous

### 63. Witnesses at hearings of applications

- (1) In this section —
  - “**application**” means a compensation application, or an application made under section 50(1) or 52(3);
  - “**witness**” means a person who is given a notice under subsection (2).
- (2) For the purposes of conducting a hearing of an application, an assessor, on the application of a person who has been given notice of the hearing or on the assessor’s own initiative, may give a person a written notice that requires him or her to appear at the hearing and do one or both of the following —
  - (a) to give oral evidence;
  - (b) to produce any record that is described generally or specifically in the notice and that is in his or her possession or control.
- (3) An assessor may administer an oath or affirmation to a witness.
- (4) An assessor may ask a witness any question.
- (5) A witness commits an offence if he or she, without a reasonable excuse, does not —
  - (a) appear in accordance with a notice given to the person under subsection (1);
  - (b) take an oath or affirmation as required by an assessor; or
  - (c) give oral evidence or produce a record as required by an assessor.

Penalty: \$5 000.
- (6) A witness who complies with a notice given to the witness under subsection (2) is entitled to a reasonable amount, decided by an assessor, in respect of any expenses incurred or earnings lost by the witness in so complying.

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- (7) If an amount is paid under subsection (6) in relation to a witness at a hearing of an application that relates to an offence of which a person is convicted, an assessor may order the offender to pay the State the whole or part of the amount.
- (8) Section 53 applies to an order made under subsection (7) as if the order were a compensation reimbursement order.

**64.      Publicity, assessor may restrict**

- (1) In this section —  
    **“proceedings”** means —
  - (a) a compensation application or an application made under Part 6;
  - (b) proceedings on a hearing of such an application; or
  - (c) a decision, award or order made by an assessor on such an application, or the reasons for it;  
    **“specified”** means specified in an order made under this section.
- (2) If satisfied that it is in the interests of justice to do so, an assessor may make an order in respect of specified proceedings that prohibits the publication of the proceedings, or of a report or summary of them, or of a specified part or particular of them.
- (3) Without limiting subsection (2), an assessor may make an order that prohibits the publication of any particular of specified proceedings that is likely to lead members of the public to identify a specified person who is —
  - (a) a victim;
  - (b) a close relative of a deceased victim; or
  - (c) a person who committed an offence to which any proceedings relate, whether or not he or she has been convicted of it.

(4) In making an order under this section an assessor must have regard to the desirability of the public being informed of the nature of applications made under this Act and the principles applied in deciding them.

(5) A person who contravenes an order made under this section commits an offence.

Penalty:

(a) for a natural person: \$5 000;

(b) for a body corporate: \$25 000.

**65. Immunity for assessors, lawyers and witnesses**

(1) An assessor has, in the performance of his or her functions as an assessor, the same protection and immunity as a judge of the Supreme Court has in performance of his or her duties as a judge.

(2) A person representing a person at a hearing conducted by an assessor under this Act has the same protection and immunity as a lawyer has in representing a party in proceedings in the Supreme Court.

(3) A person appearing as a witness before an assessor has the same protection and immunity as a witness has in proceedings in the Supreme Court.

**66. Protection of assessors from personal liability**

(1) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

(2) A civil action does not lie against a person for anything that the person does, while he or she is an assessor, in good faith in the performance or purported performance of a function of an assessor.

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- (3) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (2).

**67. Costs**

An assessor does not have power to award costs.

**68. Repayment to State of insurance payments etc.**

- (1) If—

- (a) a compensation award is made in respect of any injury or loss suffered by a victim or a close relative of a deceased victim;
- (b) the victim or close relative also receives or recovers in respect of that injury or loss an amount under a contract of insurance or by way of damages or compensation, otherwise than under this Act; and
- (c) that amount is not deducted under section 42(3) or (4),

an amount equal to the lesser of—

- (d) the amount awarded to the victim or close relative under the compensation award; or
- (e) the amount referred to in paragraph (b),

is a debt due to the State by the victim or close relative or by any person who holds the amount referred to in paragraph (b) on behalf of the victim or close relative.

- (2) In this section—

**“compensation award”** includes an award for payment of compensation made under the *Criminal Injuries Compensation Act 1985*<sup>2</sup>.

*[Section 68 amended by No. 29 of 2004 s. 9.]*

**69. Debts due to the State, recovery of**

- (1) A debt due to the State under section 23(4) or 68 may be recovered in a court of competent jurisdiction.
- (2) Any such debt that is paid or recovered must be credited to the Consolidated Account.

*[Section 69 amended by No. 77 of 2006 s. 4.]*

**70. False information, offence of giving**

- (1) In this section —  
“**prescribed information**” means any information given —
  - (a) in a compensation application;
  - (b) in response to a request made, or a notice given, under section 19; or
  - (c) in an application made under section 50(1) or 52(3).
- (2) A person who gives any prescribed information knowing that it is false in a material particular commits an offence.  
Penalty: \$5 000.
- (3) A court that convicts a person of an offence under subsection (1) in respect of information given in or in relation to a compensation application may, in addition to the sentence it imposes, order the person to repay to the State the whole or a part of any amount paid to the person under a compensation award made on the compensation application.

**71. Limitation period for prosecutions**

A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

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**72. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may provide for the substituted service on a person of notices issued under section 19, 25, 51(2) or 63, or on an appeal, in cases where it is impossible or impracticable to give the notice to the person.

**73. Repeal, transitional provisions and consequential amendments**

Schedule 2 has effect.

## **Schedule 1 — Provisions about assessors**

[s. 59]

### **1. Qualifications for appointment**

A person is qualified to be appointed under clause 2 as the Chief Assessor or as an assessor if he or she —

- (a) is a lawyer; or
- (b) is a barrister or solicitor of the Supreme Court of another State or a Territory,

of at least 8 years' standing and practice.

### **2. Appointment**

- (1) The Governor may appoint a person who is qualified under clause 1 as the Chief Assessor of Criminal Injuries Compensation.
- (2) The Governor may appoint a person who is qualified under clause 1 as an Assessor of Criminal Injuries Compensation.
- (3) The Governor may appoint as many persons under subclause (2) as are needed to deal with compensation applications in accordance with this Act.

### **3. Conditions of appointment**

- (1) The term of an assessor's appointment must not exceed 5 years.
- (2) A person may be re-appointed as an assessor.
- (3) An assessor may be appointed to work full time or other than full time.
- (4) An assessor is entitled to such remuneration (as defined in the *Salaries and Allowances Act 1975*) and allowances as are determined from time to time by the Governor on the recommendation of the Minister for Public Sector Management.

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**4. Oath of office**

Before beginning to perform the duties of his or her office, an assessor must take an oath, before a judge of the Supreme Court, that he or she will faithfully and impartially perform the duties.

**5. Termination and resignation**

- (1) The Governor may terminate an assessor's appointment if satisfied the assessor —
  - (a) is incapable of properly performing the duties of an assessor;
  - (b) has shown himself or herself to be incompetent to properly perform, or has neglected, those duties; or
  - (c) has been guilty of misconduct.
- (2) An assessor may resign from office at any time by notifying the Governor in writing.



## **Schedule 2 — Repeal, transitional and consequential provisions**

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### **Division 1 — Repeal**

**1.      *Criminal Injuries Compensation Act 1985* repealed**

The *Criminal Injuries Compensation Act 1985* is repealed.

### **Division 2 — Transitional provisions**

**2.      **Terms used in this Division****

(1) In this Division —

“**commencement**” means the commencement of this Act;

“**repealed Act**” means the *Criminal Injuries Compensation Act 1985*.

(2) This Division does not affect the operation of the *Interpretation Act 1984* Part V but if there is a conflict or inconsistency between this Division and that Part, this Division prevails.

**3.      **Pending applications****

(1) If immediately before commencement an application made under the *Criminal Injuries (Compensation) Act 1970*<sup>5</sup> is pending before a court, then on commencement the application is to be dealt with under that Act despite the repeal of section 50(5) of the repealed Act.

(2) If immediately before commencement an application made under the *Criminal Injuries Compensation Act 1982*<sup>6</sup> is pending before the person who holds the office of Assessor or acting Assessor under that Act, then on commencement the application is to be dealt with by an assessor under this Act and this Act applies to and in relation to the application.

(3) If immediately before commencement an application made under the repealed Act is pending before the person who holds the office of Chief Assessor or acting Chief Assessor or an Assessor under that Act, then on commencement the application is to be dealt with by an

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**Schedule 2** Repeal, transitional and consequential provisions

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assessor under this Act and this Act applies to and in relation to the application.

- (4) If immediately before commencement an appeal, or an application that has been referred to the District Court, under the *Criminal Injuries Compensation Act 1982* Part VI<sup>6</sup> is pending in the District Court, then on commencement the appeal or application is to be dealt with by the District Court under that Part and the applicable rules of court despite the repeal of section 50(4) of the repealed Act.
- (5) If immediately before commencement an appeal, or an application that has been referred to the District Court, under the repealed Act Part VI is pending in the District Court, then on commencement the appeal or application is to be dealt with by the District Court under that Part and the applicable rules of court despite the repeal of that Act.

**4. Appeals started after commencement**

If after commencement an appeal is commenced in the District Court in relation to a decision made before commencement under the *Criminal Injuries Compensation Act 1982*<sup>6</sup> or the repealed Act, the District Court must not make any order on the appeal that could not have been made under the law applicable at the time the decision appealed against was made.

**5. Assessors**

- (1) If immediately before commencement a person holds the office of Chief Assessor referred to in the repealed Act section 5, then on commencement the person is to be taken to have been appointed under Schedule 1 clause 2(1) as the Chief Assessor for the term and on the terms and conditions of the appointment under the repealed Act.
- (2) If immediately before commencement a person holds the office of an acting Chief Assessor referred to in the repealed Act section 5A, then on commencement the person is to be taken to have been appointed under the *Interpretation Act 1984* section 52 to act as the Chief Assessor under this Act for the term and on the terms and conditions of the appointment under the repealed Act.

- (3) If immediately before commencement a person holds the office of an Assessor referred to in the repealed Act section 5B, then on commencement the person is to be taken to have been appointed under Schedule 1 clause 2(2) as an Assessor for the term and on the terms and conditions of the appointment under the repealed Act.

**6. Annual reports**

- (1) If this Act commences before 1 January 2004, then despite section 62(1) the Chief Assessor must give the Minister a report about the operation of this Act during the period of 1 January 2003 to 30 June 2004 (both dates inclusive) before 1 October 2004.
- (2) If this Act commences on or after 1 January 2004, then —
- (a) despite its repeal, section 48 of the repealed Act applies to the year ending on 31 December 2003; and
  - (b) despite section 62(1) of this Act the Chief Assessor must give the Minister a report about the operation of this Act during the period of 1 January 2004 to 30 June 2004 (both dates inclusive) before 1 October 2004.

*[Division 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Notes

<sup>1</sup> This is a compilation of the *Criminal Injuries Compensation Act 2003* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Injuries Compensation Act 2003</i>	77 of 2003	15 Dec 2003	s. 1 and 2: 15 Dec 2003; Act other than s. 1 and 2: 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Criminal Injuries Compensation Amendment Act 2004</i> <sup>7</sup>	29 of 2004	14 Oct 2004	14 Oct 2004 (see s. 2)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Psychologists Act 2005</i> s. 108	28 of 2005	12 Dec 2005	4 May 2007 (see s. 2 and <i>Gazette</i> 4 May 2007 p. 1963)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 1: The <i>Criminal Injuries Compensation Act 2003</i> as at 7 Sep 2007</b> (includes amendments listed above)			
<i>Criminal Law and Evidence Amendment Act 2008</i> s. 59	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Justice) Act 2008</i> Pt. 7 <sup>9</sup>	5 of 2008	31 Mar 2008	<del>To be proclaimed</del> <a href="#">31 Jul 2008</a> (see s. 2(d)) and <i>Gazette</i> <a href="#">11 Jul 2008 p. 3253</a>
<i>Legal Profession Act 2008</i> s. 655 <sup>8</sup>	21 of 2008	27 May 2008	To be proclaimed (see s. 2(b))

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Medical Practitioners Act 2008</i> s. 162 <sup>10</sup>	22 of 2008	27 May 2008	To be proclaimed (see s. 2)

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<sup>2</sup> The *Criminal Injuries Compensation Act 1985* was repealed by s. 73 of this Act.

<sup>3</sup> The *Offenders Community Corrections Act 1963* was repealed by the *Sentencing (Consequential Provisions) Act 1995* s. 77.

<sup>4</sup> The *Child Welfare Act 1947* was repealed by the *Children and Community Services Act 2004* s. 250(1)(a).

<sup>5</sup> The *Criminal Injuries (Compensation) Act 1970* was repealed by the *Criminal Injuries Compensation Act 1982* s. 43(1).

<sup>6</sup> The *Criminal Injuries Compensation Act 1982* was repealed by the *Criminal Injuries Compensation Act 1985* s. 50(1).

<sup>7</sup> The *Criminal Injuries Compensation Amendment Act 2004* s. 10 reads as follows:

“

**10. Validation**

- (1) An order to pay moneys under section 39 of the *Criminal Injuries Compensation Act 1985*, made on or after 1 January 2004, is deemed to have been made under the *Criminal Injuries Compensation Act 2003*, as amended by this Act.
- (2) An amount received or recovered as described in section 68 of the *Criminal Injuries Compensation Act 2003*, on or after 1 January 2004, is deemed to create a debt due under the *Criminal Injuries Compensation Act 2003*, as amended by this Act.
- (3) A notice given under the *Criminal Injuries Compensation Act 1985*, on or after 1 January 2004, is deemed to have been given under the *Criminal Injuries Compensation Act 2003*, as amended by this Act.

”

<sup>8</sup> On the date as at which this compilation was prepared, the *Legal Profession Act 2008* s. 655 had not come into operation. It reads as follows:

“

**655. Criminal Injuries Compensation Act 2003 amended**

- (1) The amendments in this section are to the *Criminal Injuries Compensation Act 2003*.
- (2) Section 3 is amended as follows:

- (a) by deleting the definition of “lawyer”;
- (b) by inserting in the appropriate alphabetical position —

“

“**legal practitioner**” means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

”.

- (3) Sections 25(2)(b), 51(3)(c) and 65(2) are amended by deleting “lawyer” in each place where it occurs and inserting instead —  
“ legal practitioner ”.
- (4) Schedule 1 clause 1 is repealed and the following clause is inserted instead —

“

**1. Qualifications for appointment**

- (1) A person is qualified to be appointed under clause 2 as the Chief Assessor or as an Assessor if the person is an Australian lawyer and has had at least 8 years’ legal experience.
- (2) In subclause (1) —  
“**Australian lawyer**” has the meaning given in the *Legal Profession Act 2008* section 3;  
“**legal experience**” means —
  - (a) standing and practice as a legal practitioner; or
  - (b) judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or
  - (c) a combination of both kinds of legal experience mentioned in paragraphs (a) and (b).

”.

”.

<sup>9</sup> On the date as at which this compilation was prepared, the *Acts Amendment (Justice) Act 2008* Pt. 7 had not come into operation. It reads as follows:

“

**Part 7 — *Criminal Injuries Compensation Act 2003*  
amended**

**29. The Act amended in this Part**

The amendments in this Part are to the *Criminal Injuries Compensation Act 2003*.

**30. Section 3 amended**

Section 3 is amended by deleting the definition of “health professional” and inserting instead —

“

“**health professional**” means —

- (a) a person who is registered as a dentist under the *Dental Act 1939* or a law of another place that is substantially similar to that Act;
- (b) a person who is registered as a medical practitioner under the *Medical Act 1894* or a law of another place that is substantially similar to that Act;
- (c) a person who is registered as a psychologist under the *Psychologists Act 2005* or a law of another place that is substantially similar to that Act;

”.

**31. Section 48 amended**

Section 48 is amended as follows:

- (a) by inserting before “If a” the subsection designation “(1)”;
- (b) by deleting the full stop after paragraph (b) and inserting instead —  
“ ; and ”;
- (c) by inserting the following paragraph —

“

- (c) the Chief Assessor is given a request for payment of the amount in accordance with subsection (2).

”;

- (d) by inserting the following subsection —

“

- (2) A request referred to in subsection (1)(c) must be given to the Chief Assessor —
- (a) if the victim was under 18 years of age on the date of the award, before —
    - (i) the victim reaches 28 years of age; or
    - (ii) the expiry of 10 years after the date on which the *Acts Amendment (Justice) Act 2008* section 31 commences,whichever occurs last; or
  - (b) otherwise —
    - (i) if the award was made before that section commences, within 10 years after the day on which it commences; or
    - (ii) otherwise, within 10 years after the date of the award.

”.

**32. Section 56 amended**

Section 56(1) is repealed and the following subsection is inserted instead —

“

- (1) On an appeal under section 55 against an assessor’s decision, the District Court must decide the application to which the decision relates afresh, without being fettered by the assessor’s decision, solely on the evidence and information that was in the possession of the assessor or may receive further evidence and information.

”.

**33. Section 62A inserted**

Before section 63 the following section is inserted in Part 9 —

“

**62A. Assessor may conduct hearing**

- (1) This section does not affect section 24.
- (2) If he or she thinks fit, an assessor may conduct a hearing in respect of any question that an assessor may decide under this Act.

”.



**34. Section 63 amended**

- (1) Section 63(1) is amended by deleting the definition of “application”.
- (2) Section 63(2) is amended by deleting “of an application” and inserting instead —  
“ under this Act ”.
- (3) Section 63(5)(a) is amended by deleting “subsection (1);” and inserting instead —  
“ subsection (2); ”.
- (4) Section 63(7) is amended by deleting “of an application”.

”.

<sup>10</sup> On the date as at which this compilation was prepared, the *Medical Practitioners Act 2008* s. 162, which gives effect to Sch. 3 cl. 14, had not come into operation. It reads as follows:

“

**162. Consequential amendments**

Schedule 3 sets out consequential amendments.

”.

Schedule 3 cl. 14 reads as follows:

“

**Schedule 3 — Consequential amendments**

**14. *Criminal Injuries Compensation Act 2003* amended**

- (1) The amendments in this clause are to the *Criminal Injuries Compensation Act 2003*.
- (2) Section 3 is amended in paragraph (b) of the definition of “health professional” by deleting “*Medical Act 1894*; or” and inserting instead —  
“ *Medical Practitioners Act 2008*; or ”.

”.