

CRIMINAL INJURIES COMPENSATION ACT 1985.

(No. 73 of 1985.)

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CRIMINAL INJURIES COMPENSATION.

No. 73 of 1985.

AN ACT to establish a scheme for the payment in certain circumstances of compensation to persons injured, and to the close relatives of persons killed, by reason of the commission of offences and certain alleged offences, and for connected purposes.

[Assented to 4 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Criminal Injuries Compensation Act 1985*. Short title.

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Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpreta-
tion.

3. (1) In this Act, unless the contrary intention appears—

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

“application” means an application for compensation under Part III;

“Assessor” means the person appointed as such under section 5, and includes an acting Assessor;

“close relative” in relation to a deceased person means—

(a) a person who immediately before the death of the deceased was the husband or wife of the deceased;

(b) any person who was the father, mother, grandfather, grandmother, stepfather or stepmother of the deceased;

(c) any person who was a son, daughter, grandson, granddaughter, stepson or stepdaughter of the deceased;

(d) any person who, although not married to the deceased person—

(i) lived with the deceased as husband or wife of the deceased on a permanent and *bona fide* domestic basis immediately before his or her death, if the deceased left any dependant who is the child of that union; or

- (ii) lived with the deceased as husband or wife of the deceased on a permanent and *bona fide* domestic basis for not less than 3 years, if the deceased did not leave any dependant who is a child of that union;

“conviction” includes—

- (a) a conviction in respect of which a probation order is made, notwithstanding section 20 of the Offenders Probation and Parole Act 1963 or sections 40 and 126A of the Child Welfare Act 1947;
- (b) a finding of guilt referred to in section 34 or 34B of the Child Welfare Act 1947;
- (c) a dismissal under section 669 (1) (a) of The Criminal Code; and
- (d) a dismissal under section 26 (2) of the Child Welfare Act 1947;

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

“loss”, if incurred or claimed to have been incurred—

- (a) by an applicant seeking compensation for himself, means any loss of the following kinds caused by or directly arising from injury—
 - (i) expenses actually and reasonably incurred by the applicant or by a person responsible for the maintenance of the applicant;

(ii) loss arising from damage to items of the personal apparel of the applicant; and

(iii) loss of earnings suffered by the applicant; or

(b) by a close relative of a deceased person, means any loss in respect of which damages could be awarded to such close relative under the Fatal Accidents Act 1959 where the death of the deceased person is caused by the wrongful act, neglect or default of another;

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

“person interested in an application” has the meaning assigned thereto by section 18;

“personal representative”, in relation to a deceased person, means—

(a) any person who has obtained a grant of representation in this State in respect of the estate of that person; and

(b) where no such grant has been obtained, a person who satisfies the Assessor that he is entitled, whether alone or jointly with any other person, to apply therefor;

“Under Secretary for Law” means the person holding the office of Under Secretary, Crown Law Department of the State.

(2) In deducing any relationship for the purposes of this Act—

(a) a person who is legally adopted, whether in this State or elsewhere, shall be treated as the legitimate child of his adopters; and

(b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(3) For the purposes of this Act, the relationship between a father and his illegitimate child, and any other relationship traced through that relationship, shall be recognized only if—

- (a) in the case of an application by, or through relationship with, the illegitimate child, paternity is admitted by or established against the father in his lifetime; and
- (b) in the case of an application by, or through relationship with, the father of an illegitimate child, paternity is admitted by or established against the father in the lifetime of the illegitimate child.

(4) For the purposes of this Act, a child of the deceased person born alive after the death of that person shall be treated as having been born before the death of the deceased person.

4. Subject to sections 26 and 40, this Act shall be construed as being in addition to, and not in derogation of, any other law.

Construction
of Act.

PART II—OFFICE OF ASSESSOR.

5. (1) A person who is a practitioner (as defined by the Legal Practitioners Act 1893) of not less than 8 years' standing and practice shall be appointed by the Governor as Assessor for the purpose of determining applications for compensation under, and exercising and performing the other functions conferred on the Assessor by, this Act.

Assessor.

(2) Schedule 1 shall have effect with respect to the appointment of the Assessor, an acting Assessor, and other matters relating to the office of Assessor.

Clerical and
secretarial
staff.

6. There may be appointed, under and subject to the Public Service Act 1978, such officers as are necessary to provide clerical and secretarial assistance to the Assessor.

PART III—APPLICATIONS FOR AND AWARD
OF COMPENSATION.

Application
and award
where
offence
committed.

7. (1) Where a person has suffered injury or loss in consequence of the commission of an offence he may apply to the Assessor for an award of compensation for that injury or loss.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an offence; and
- (b) any close relative of the deceased person has suffered any loss thereby,

the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

(3) Before he makes an award of compensation pursuant to an application made under this section the Assessor shall satisfy himself on the balance of probabilities and shall not make an award unless he is so satisfied—

- (a) that the claimed loss or injury has occurred;
- and

(b) where the application is made—

- (i) under subsection (1), that the claimed loss or injury occurred in consequence of the commission of an offence;

- (ii) under subsection (2), that the death occurred in consequence of the commission of an offence and the loss is one in respect of which damages could be awarded under the Fatal Accidents Act 1959.

8. (1) Where a person has suffered injury or loss in consequence of an act, omission or event alleged to constitute a crime, misdemeanour or simple offence and a person charged with the commission of the alleged crime, misdemeanour or simple offence has been acquitted on account of unsoundness of mind, the person who has suffered injury or loss may apply to the Assessor for an award of compensation.

Application where accused acquitted on account of unsoundness of mind.

(2) Where—

- (a) the death of a person has occurred in consequence of an act, omission or event alleged to constitute a crime, misdemeanour or simple offence;
- (b) any close relative of the deceased person has suffered any loss thereby; and
- (c) a person charged with the commission of the alleged crime, misdemeanour or simple offence has been acquitted on account of unsoundness of mind,

the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

9. (1) Where a person has suffered injury or loss in consequence of the commission of an alleged offence and a person charged with the commission of the alleged offence has been found to be incapable of understanding the proceedings at his trial or not of sound mind during his trial, the person who has suffered injury or loss may apply to the Assessor for an award of compensation.

Application where accused incapable of understanding proceedings or not of sound mind.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an alleged offence;
- (b) any close relative of the deceased person has suffered any loss thereby; and
- (c) a person charged with the commission of the alleged offence has been found to be incapable of understanding the proceedings at his trial or not of sound mind during his trial,

the personal representative of the deceased person may apply to the Assessor for an award of the compensation for that loss.

Application
where
accused dies
before
verdict.

10. (1) Where a person has suffered injury or loss in consequence of the commission of an alleged offence and a person charged with the commission of the alleged offence has died before a verdict has been given by a court with respect to the charge, the person who has suffered the injury or loss may apply to the Assessor for an award of compensation for that injury or loss.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an alleged offence;
- (b) any close relative of the deceased person has suffered any loss thereby; and
- (c) a person charged with the commission of the alleged offence has died before a verdict has been given by a court with respect to the charge,

the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

11. (1) Where a person has suffered injury or loss in consequence of the commission of an alleged offence, a person has been charged with the commission of the alleged offence and the complaint or indictment in respect of that alleged offence has been withdrawn or a *nolle prosequi* has been entered in relation to the complaint or indictment, or the person charged has, otherwise, not been brought to trial, the person who has suffered injury or loss may apply to the Assessor for an award of compensation for that injury or loss.

Application where complaint or indictment withdrawn or *nolle prosequi* entered.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an alleged offence;
- (b) any close relative of the deceased person has suffered any loss thereby; and
- (c) a person has been charged with the commission of the alleged offence and the complaint or indictment in respect of that alleged offence has been withdrawn or a *nolle prosequi* has been entered in relation to the complaint or indictment, or the person charged has, otherwise, not been brought to trial,

the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

12. (1) Where a person has suffered injury or loss in consequence of the commission of an alleged offence and no person has been charged with the commission of the alleged offence, the person who has suffered injury or loss may apply to the Assessor for an award of compensation.

Application where no person charged.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an alleged offence;

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(b) any close relative of the deceased person has suffered any loss thereby; and

(c) no person has been charged with the commission of the alleged offence,

the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

Award where application made under section 8, 9, 10, 11 or 12.

13. Before he makes an award of compensation pursuant to an application made under section 8, 9, 10, 11 or 12 the Assessor shall satisfy himself on the balance of probabilities and shall not make an award unless he is so satisfied—

(a) that the claimed injury or loss has occurred;

and

(b) where the application is made—

(i) under section 8 (1), that the claimed loss or injury occurred in consequence of the act, omission or event alleged to constitute the crime, misdemeanour or simple offence;

(ii) under section 9 (1), 10 (1), 11 (1) or 12 (1), that the claimed loss or injury occurred in consequence of the commission of an alleged offence;

(iii) under section 8 (2), that the death occurred in consequence of the act, omission or event alleged to constitute the crime, misdemeanour or simple offence and the loss is one in respect of which damages could be awarded under the Fatal Accidents Act 1959;

- (iv) under section 9 (2), 10 (2), 11 (2) or 12 (2), that the death occurred in consequence of the commission of an alleged offence and the loss is one in respect of which damages could be awarded under the Fatal Accidents Act 1959.

14. (1) Where a person has suffered injury or loss in consequence of the commission of an alleged offence and that person claims that the alleged offence was committed by a person other than a person acquitted of the alleged offence the person who has suffered injury or loss may apply to the Assessor for an award of compensation for that injury or loss.

Application
and award
where alleged
offender
acquitted.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an alleged offence;
- (b) any close relative of the deceased person has suffered any loss thereby; and
- (c) the personal representative of the deceased person claims that the offence was committed by a person other than a person acquitted of the alleged offence,

the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

(3) Before he makes an award of compensation pursuant to an application made under this section the Assessor shall satisfy himself on the balance of probabilities and shall not make an award unless he is so satisfied—

- (a) that the claimed injury or loss has occurred;

- (b) where the application is made—
 - (i) under subsection (1), that the claimed loss or injury occurred in consequence of the commission of an alleged offence;
 - (ii) under subsection (2), that the death occurred in consequence of the commission of an alleged offence and the loss is one in respect of which damages could be awarded under the Fatal Accidents Act 1959; and
- (c) that the alleged offence was committed by a person other than a person acquitted of the alleged offence.

(4) In this section a reference to a person acquitted of an alleged offence—

- (a) includes a reference to a person charged with an alleged offence where the complaint or indictment against him was dismissed (unless that complaint or indictment was dismissed under section 669 (1) (a) of The Criminal Code or section 26 (2) of the Child Welfare Act 1947); and
- (b) does not include a reference to a person acquitted on account of unsoundness of mind.

Application
on certificate
of Attorney
General.

15. (1) Where a person has suffered injury or loss in consequence of the commission of an alleged offence and it appears to the Attorney General that a person charged with the commission of the alleged offence has not been convicted of the offence on account of the proceedings being commenced out of time or for other technical reasons not going to the merits of the case, the Attorney General may certify that a claim may be made under this subsection, and if he does so the person who has suffered injury or loss may apply to the Assessor for an award of compensation for that injury or loss.

(2) Where—

- (a) the death of a person has occurred in consequence of the commission of an alleged offence;
- (b) any close relative of the deceased person has suffered any loss thereby; and
- (c) it appears to the Attorney General that a person charged with the commission of the alleged offence has not been convicted on account of the proceedings being commenced out of time or for other technical reasons not going to the merits of the case,

the Attorney General may certify that a claim may be made under this subsection, and if he does so the personal representative of the deceased person may apply to the Assessor for an award of compensation for that loss.

(3) Before he makes an award of compensation pursuant to an application made under this section the Assessor shall sight the certificate given by the Attorney General under subsection (1) or (2) and satisfy himself on the balance of probabilities and shall not make an award unless he is so satisfied—

- (a) that the claimed injury or loss has occurred; and
- (b) where the application is made—
 - (i) under subsection (1), that the claimed loss or injury occurred in consequence of the commission of an alleged offence;
 - (ii) under subsection (2), that the death occurred in consequence of the commission of an alleged offence and the loss is one in respect of which damages could be awarded under the Fatal Accidents Act 1959.

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Form of
application.

16. (1) An application shall be made in writing to the Assessor in the prescribed form setting out—

- (a) the grounds on which the applicant relies in support of the application;
- (b) the circumstances in which the injury or loss occurred;
- (c) the nature of the injury or loss; and
- (d) whether any civil or criminal proceedings have been taken as a result of the injury or loss and if so the nature and result of those proceedings.

(2) Where a person entitled to make an application is—

- (a) an infant, the application may be made on his behalf by a parent or person acting in place of a parent;
- (b) an incapable person within the meaning of the Mental Health Act 1962, the application may be made by the manager appointed under that Act;
- (c) an incapable patient or infirm person within the meaning of the Public Trustee Act 1941, the application may be made by the Public Trustee.

Time for
making
application.

17. (1) An application shall be made to the Assessor not later than 3 years after the commission of the offence or alleged offence, or all of the offences or alleged offences, to which the application relates.

(2) Notwithstanding subsection (1), the Assessor may if he thinks it is just to do so, grant leave to a person to make an application after the period referred to in subsection (1) has expired, but subject to such conditions as he thinks it is just to impose.

Persons
interested in
an applica-
tion.

18. The persons interested in an application are—

- (a) the applicant;

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- (b) any person who may, in the opinion of the Assessor, become liable under section 39 to refund any amount to the Crown;
- (c) the Under Secretary for Law; and
- (d) any other person who satisfies the Assessor that he has a substantial interest in the proceedings.

19. (1) Where application is made in respect of any injury or loss, the Assessor may, in accordance with this Act—

Award of compensation.

- (a) award compensation to the applicant, but not exceeding the prescribed maximum amount; and
- (b) where applicable—
 - (i) apportion the compensation among the close relatives of the deceased person;
 - (ii) direct that the compensation, or part thereof, be held by a specified person on trust on such terms and conditions as the Assessor may declare for the applicant or any close relative of the deceased person,

and shall cause to be drawn up an order setting out such award and the other requisite matters.

(2) A copy of every order under this section shall be sent by the Assessor to the Under Secretary for Law.

20. (1) For the purposes of paragraph (a) of section 19 (1), the prescribed maximum amount is \$15 000, or such other sum as may be prescribed for the purposes of that paragraph by regulations.

Prescribed maximum amount.

(2) Where the Assessor is satisfied that any injury, loss or death, in respect of which an award is to be made, occurred in consequence of the commission of—

- (a) an offence or an alleged offence by 2 or more persons acting jointly; or
- (b) 2 or more offences or alleged offences, whether committed by the same person or by 2 or more persons, which offences or alleged offences were committed at approximately the same time or by persons acting in concert or are otherwise related to each other,

he shall not award more than the prescribed maximum amount referred to in subsection (1) in the aggregate in respect of the offence or alleged offence or all of the offences or alleged offences.

(3) Where—

- (a) a person applies under section 7 (1), 8 (1), 9 (1), 10 (1), 11 (1), 12 (1), 14 (1) or 15 (1) for compensation for injury or loss suffered in consequence of the commission of an offence or alleged offence; and
- (b) the personal representative of a deceased person also applies under section 7 (2), 8 (2), 9 (2), 10 (2), 11 (2), 12 (2), 14 (2) or 15 (2) for compensation for that person for loss suffered by him by reason of a death which occurred in consequence of the commission of that offence or alleged offence,

the Assessor shall not, in determining those applications, award more than the prescribed maximum amount referred to in subsection (1) in the aggregate to or for the benefit of that person.

Assessor to
furnish
reasons for
decision.

21. (1) Upon receiving a written request from that person to do so, the Assessor shall furnish to the Under Secretary for Law, the applicant or any other person interested in an application the reasons for his decision to award compensation.

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(2) If the Assessor refuses to award compensation he shall—

- (a) furnish to the applicant; and
- (b) upon receiving a written request from the Under Secretary for Law or any other person interested in an application, furnish to that person,

the reasons for so refusing.

22. Where, in the opinion of the Assessor, a person who has applied for compensation in respect of an injury or loss—

Applicant may be required to enforce other remedies.

- (a) has reasonable grounds for taking proceedings independently of this Act to obtain compensation or damages for that injury or loss; or
- (b) may be entitled to payment under any contract of insurance for such injury or loss,

the Assessor may require the applicant to take proceedings to obtain the compensation, damages or payment and may defer the application pending the determination of such proceedings.

23. The Assessor shall not make an award of compensation to an applicant if he considers that, by reason of any relationship or connection between the person who committed the offence or alleged offence and the applicant or a close relative of the deceased person, as the case may be, any compensation awarded is likely to result in a benefit or advantage to the person who committed the offence or alleged offence.

No award where compensation likely to benefit offender.

No award where applicant failed to assist in enforcement.

24. Where—

- (a) an application for compensation is made in respect of the commission of an offence or an alleged offence; and
- (b) the Assessor is of the opinion that the applicant or a close relative did not do any act or thing which he ought reasonably to have done to assist in the identification, apprehension or prosecution of any person alleged to have committed that offence or alleged offence,

the Assessor shall not make an award to that applicant or for the benefit of that close relative.

Behaviour etc. of applicant to be considered.

25. In determining the amount of an award of compensation the Assessor shall have regard to any behaviour, condition, attitude or disposition of the applicant or deceased person which contributed, directly or indirectly, to the injury or loss suffered by him or to his death, as the case may be, and may reduce the amount which he would otherwise award by such percentage as he thinks just.

Deductions for other compensation.

26. (1) In determining the amount of an award of compensation for any injury or loss, the Assessor, subject to subsection (2)—

- (a) may deduct any amount that he is satisfied will be paid to, or for the benefit of, the applicant or any close relative independently of this Act by way of compensation or damages or under any contract of insurance for that injury or loss; and
- (b) shall deduct any amount referred to in paragraph (a) that he is satisfied has been paid.

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(2) In the case of an application made by the personal representative of a deceased person, no amounts of the kind described in section 5 (2) (b) and (c) of the Fatal Accidents Act 1959 shall, under subsection (1), be deducted from the compensation.

27. Subject to this Act, the Assessor in determining whether or not to make an award of compensation, or the amount of an award, may have regard to such factors and circumstances as he thinks relevant. General discretion of Assessor.

PART IV—PROCEDURE AND EVIDENCE.

28. The Assessor shall expeditiously and informally determine applications under this Act having regard to the requirements of justice and without regard to legal forms and solemnities and, subject to this Act, shall be free to act without regard to, or to observe, legal rules relating to evidence or procedure. Assessor to act informally.

29. Where the Assessor considers it appropriate, he may serve notice of an application on any person interested in the application. Notice to interested persons.

30. The Assessor may, on his own initiative, seek and receive such evidence or information and make such other enquiries and investigations as he thinks fit. Assessor may make enquiries.

31. The Assessor may defer consideration, or further consideration, of an application if he thinks it is necessary to obtain more information for the purposes of his decision. Decision may be deferred until further information obtained.

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Under
Secretary for
Law may
apply for
stay of
application.

32. The Under Secretary for Law may at any time apply to the Assessor for the stay of any application before the Assessor on the ground—

- (a) that a prosecution for an alleged offence to which the application relates has been commenced; or
- (b) that such a prosecution is about to be commenced,

and in any such case the Assessor may order that the application be stayed for such period as he thinks fit.

Determina-
tion
without
hearing.

33. The Assessor may, without conducting a hearing—

- (a) grant an application and determine the amount of compensation and the person or persons to whom compensation is payable;

or

- (b) refuse to make an award,

and notify the applicant of the decision and the amount of compensation, if any, awarded.

Hearings.

34. (1) Where the Assessor decides to conduct a hearing of an application he shall—

- (a) fix a time and place for the hearing; and
- (b) cause notice of the time and place to be given to the applicant and to any person interested in the application he intends to hear.

(2) A person given a notice under subsection (1) (b) may attend the hearing and be heard by the Assessor.

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(3) Any person entitled to be heard by the Assessor may appear in person or be represented by a legal practitioner or any other person approved by the Assessor.

35. (1) The Assessor may cause a notice in writing signed by him to be served upon any person requiring him—

Witnesses
and compul-
sion to
furnish
information.

- (a) to furnish to the Assessor within the time specified in the notice any information described, whether generally or specifically in the notice;
- (b) to attend at a time and place specified in the notice, and then and there to give evidence;
- (c) to produce any books, documents, or writings in his custody or control described, whether generally or specifically, in the notice,

concerning any matter relevant to an application for compensation under this Act.

(2) A person given notice under section 34 (1) (b) may call evidence and cross-examine witnesses.

(3) The Assessor may administer an oath to any person appearing as a witness before him, and may examine any witness.

(4) Subject to section 46 any person who refuses or without reasonable excuse fails to comply with the requirements of a notice under subsection (1) or answer any question put to him by the Assessor commits an offence.

Penalty: \$1 000.

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(5) A person appearing as a witness before the Assessor shall be paid such fees as are prescribed if the Assessor so orders.

Hearings generally to be in private.

36. (1) Any hearing before the Assessor shall be in private unless the Assessor considers that, in the circumstances of the case, the hearing should be in public.

(2) Where the hearing is in private the Assessor shall, subject to section 34, determine who may be present.

PART V—PAYMENT OF COMPENSATION.

Compensation charged on Consolidated Revenue Fund.

37. All compensation awarded under this Act is hereby charged on the Consolidated Revenue Fund which to the necessary extent is hereby appropriated accordingly.

Expenses may be paid directly to person who incurred them.

38. Where an award of compensation to an applicant includes expenses incurred by a person responsible for his maintenance, the order may direct that payment of those expenses be made directly to that person.

Recovery from offender.

39. (1) Where a person is convicted of an offence and an award for the payment of compensation is made under this Act in respect of injury or loss resulting from the act or omission constituting that offence, the Assessor may at any time on the application of the Under Secretary for Law make an order directing the offender to refund to the Crown—

- (a) the whole or any specified part of the compensation paid or payable; and
- (b) the whole or any specified part of the amount, if any, deducted under section 26 and remitted to the Commonwealth under a law of the Commonwealth.

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(2) An order made under subsection (1) may be for the payment by the offender of a lump sum or of periodical payments during a specified period or both.

(3) Before making or varying an order under this section the Assessor shall—

(a) serve the offender with notice of the application of the Under Secretary for Law;

and

(b) serve the offender and the Under Secretary for Law with notice of a time and a place where they may be heard with respect to—

(i) the making of the award and the amount and terms of the award;

(ii) the financial position of the offender;

(iii) the offender's employment and the possibilities of future employment;

(iv) the offender's liabilities to family and otherwise; and

(v) such other circumstances as the Assessor considers relevant.

(4) The Assessor shall not make or vary an order under this section until he has given the offender and the Under Secretary for Law an opportunity to be heard with respect to the matters referred to in subsection (3) (b).

(5) The offender or Under Secretary for Law, on or before the date specified in the notice referred to in paragraph (b) of subsection (3), may provide the Assessor with a written report with respect to the matters referred to in that paragraph.

(6) The Assessor shall take into account any verbal or written reports he has received under subsections (4) and (5) before making or varying an order under this section.

(7) In a hearing under this section the parties may appear in person or be represented by a legal practitioner or any other person approved by the Assessor.

(8) The Assessor may at any time, on the application of the Under Secretary for Law or of the offender, vary any order made under this section (including an order that has been previously varied) as he thinks fit.

(9) Where a certified copy of an order of the Assessor made under this section is filed with the clerk of a Local Court in accordance with the rules of court (which may make provisions for the payment of a lodging fee), the clerk shall register the order and payment of the amount of compensation specified in the order may be enforced as if it were required by a judgment of that court.

(10) All money recovered by the Crown under this section shall be paid into the Consolidated Revenue Fund.

Crown to be
reimbursed
out of other
compensa-
tion or
damages
recovered.

40. (1) Where compensation is paid under this Act to or for the benefit of an applicant or any close relative in respect of an injury or loss and he also receives, by way of compensation, damages or moneys paid under any contract of insurance for that injury or loss independently of this Act, any sum that has not been deducted pursuant to section 26, an amount equal to—

(a) the compensation paid to him or for his benefit under this Act; or

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- (b) the other compensation, damages or sum paid under the contract of insurance,

whichever is the less, shall constitute a debt due to the Crown by the applicant or the close relative or by any person who holds the compensation, damages or sum paid under the contract of insurance on his behalf.

(2) A debt due under subsection (1) may be recovered in a court of competent jurisdiction, and when recovered shall be paid into the Consolidated Revenue Fund.

PART VI.—APPEALS AND REFERENCES
TO DISTRICT COURT.

41. (1) Where a person interested in an application or the Under Secretary for Law is dissatisfied with—

Appeals to
District
Court.

- (a) an order of the Assessor under section 19;
- (b) a refusal by the Assessor to make an order;
- (c) a refusal by the Assessor to vary an order under section 39; or
- (d) an order of the Assessor under section 39 directing an offender to make a refund, or the direction as to the amount of the refund,

he may, in accordance with this section, appeal to a District Court Judge against that order.

(2) The appeal shall be commenced within 21 days after the date of the order or refusal but a District Court Judge may, if he thinks it is just to do so, grant leave to commence an appeal after the expiry of that period.

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(3) On an appeal under this section, the District Court Judge shall determine the application to which the appeal relates afresh without being fettered by the determination of the Assessor, and may—

- (a) confirm, quash or vary an order or refusal of the Assessor, either in whole or in part;
 - (b) award costs against an unsuccessful party and in favour of a successful party in accordance with the scale of costs prescribed for the purposes of this paragraph;
- or
- (c) make such other order as he thinks fit.

References
to District
Court by
Assessor.

42. The Assessor may refer to a District Court Judge any application which, on account of the complexity or difficulty of the issues involved, he considers should be dealt with by such a Judge.

How Judge
to proceed.

43. (1) A District Court Judge who hears an appeal under section 41 or who deals with an application referred under section 42—

- (a) may decide the appeal or determine the application solely on the evidence and information in the possession of the Assessor or may receive further information or evidence;
- (b) shall for the purposes of sections 7 (3), 13, 14 (3), 15 (3) and 18 to 27, Part IV, (other than sections 29, 33 and 34) and Part V be deemed to be the Assessor.

(2) The decision of the District Court Judge under this Part shall be final.

PART VII—MISCELLANEOUS.

44. (1) Subject to subsection (2), the Assessor and a Judge acting under section 42, shall not have power to award costs. Costs.

(2) Where a payment of compensation is awarded in respect of injury or loss resulting from an act or omission constituting an offence, the Assessor may order the person convicted of that offence to pay to the Crown the fees of any witnesses paid or payable under section 35 (5).

(3) Where a certified copy of an order of the Assessor made under this section is filed with the clerk of a Local Court in accordance with the rules of court, the clerk shall register the order and payment of the fees specified in the order may be enforced as if it were required by an order of that court.

(4) All moneys paid to or recovered by the Crown under this section shall be paid into the Consolidated Revenue Fund.

45. (1) A person who, in or for the purpose of or in connection with an application, including an application under section 39, makes any statement which he knows to be, or recklessly makes any statement which is, false in a material particular commits an offence. False statements.

Penalty: \$1 000.

(2) Where a court convicts a person of an offence against subsection (1) in respect of an application for compensation, it may, in addition to imposing a penalty under subsection (1), order that he repay to the Crown the whole or part of any amount paid to him for that compensation and the amount or part so ordered to be repaid may be recovered by the Crown in the same manner as a penalty imposed under subsection (1).

Liability and protection of witnesses, and of persons representing parties.

46. (1) A person appearing before the Assessor as a witness or a person served with a notice under section 34 (1) (b) has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the Supreme Court.

(2) A barrister, solicitor or other representative who appears on behalf of a person before the Assessor has the same protection and immunity as a barrister has in proceedings in the Supreme Court.

Publication of reports of, and names of persons involved in, applications.

47. (1) The Assessor may, if he is satisfied that the public interest so requires, order that there shall not be published by any means any report or summary of the result of an application, or the reasons given under section 21 for an award or refusal of compensation.

(2) The Assessor may, if he is satisfied that it is necessary for the protection of a person who has not been convicted of an alleged offence, order that there shall not be published by any means any particulars likely to lead to his identification.

(3) The Assessor may, if he is satisfied that it is necessary for the protection of an applicant or of a close relative of a deceased person, order that there shall not be published by any means the name of the applicant or of any close relative or of any particulars likely to lead to his identification.

(4) In making an order under this section the Assessor shall have regard to the desirability of ensuring that the public are informed of the nature of applications made under this Act and the principles applied in deciding such applications.

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(5) A person who, except with lawful excuse, fails to comply with an order made under this section commits an offence.

Penalty: \$1 000.

48. (1) Before the end of March in each year, the Assessor shall furnish to the Minister a report on the operation of this Act during the year ending on the previous 31 December and may do so at any other time. Report to Parliament.

(2) The Minister shall cause any report furnished to him under this section to be laid before each House of Parliament within 15 sitting days of that House after he receives it.

49. (1) The Governor may make regulations prescribing such things as are required or permitted to be prescribed or as it is necessary or expedient to prescribe for the purposes thereof. Regulations.

(2) Without limiting the generality of subsection (1) regulations may—

- (a) make provision for the substituted service of notices given under section 34, 35 or 39 or on an appeal, in cases where it is impossible or impracticable to effect service by other means;
- (b) for the purposes of section 20 prescribe the maximum amount of compensation which may be awarded under this Act to an applicant in respect of any injury or loss;

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- (c) make provision for or with respect to the bringing and disposition of appeals under Part VI;
- (d) for the purposes of paragraph (b) of section 41 (3), prescribe a scale of costs according to which costs may be awarded under that paragraph;
- (e) prescribe the fees to be paid to persons appearing as witnesses before the Assessor or for supplying reports concerning an applicant whether by reference to fees payable under any other Act at the time the regulation is made or from time to time or otherwise.

(3) Regulations made under this section may provide that a contravention or failure to comply with a regulation constitutes an offence and may provide for penalties not exceeding a fine of \$500 for offences against the regulations.

Repeal and
transitional
provisions.

50. (1) The Criminal Injuries Compensation Act 1982 (in this section referred to as "the repealed Act") is repealed.

(2) The person who, immediately before the commencement of this Act, was the Assessor under the repealed Act shall continue to be the Assessor under this Act as if that person had been appointed on the same terms and conditions under this Act for a term expiring on the day on which the appointment under the repealed Act would expire.

(3) This Act applies to—

- (a) any injury or loss suffered; or
- (b) loss suffered by reason of the death of a person which has occurred,

in consequence of an offence or alleged offence committed on or after the day on which this Act comes into operation.

(4) Notwithstanding subsection (1), the repealed Act, and any regulations made for the purpose thereof, continue to apply to—

- (a) any injury or loss suffered; or
- (b) loss suffered by reason of the death of a person which has occurred,

in consequence of an offence or alleged offence committed on or after 1 January 1983 and before the day on which this Act comes into operation, and to all matters relating thereto or arising therefrom.

(5) Notwithstanding section 44 (1) of the repealed Act, the Criminal Injuries (Compensation) Act 1970 and any rules of court made for the purpose thereof, continue to apply to—

- (a) any injury or loss suffered; or
- (b) loss suffered by reason of the death of a person which has occurred,

in consequence of an offence or alleged offence committed before 1 January 1983, and to all matters relating thereto or arising therefrom.

SCHEDULE 1. (Section 5).

PROVISIONS RELATING TO THE OFFICE OF ASSESSOR.

1. The Assessor—

- (a) shall be appointed for a term not exceeding 5 years and shall be eligible for re-appointment;

Term of office, removal and resignation.

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(b) may be removed from office by the Governor for mental or physical disability, incompetence, neglect of duty or misconduct proved to the satisfaction of the Governor; and

(c) may resign his office by notice in writing addressed to the Governor.

Assessor
may be part
time.

2. The Assessor is not required to devote the whole of his time to the duties of his office.

Acting
Assessor.

3. (1) If the Assessor becomes incapable of acting by reason of illness, absence or other cause the Governor may appoint a person who would be eligible for appointment as Assessor under section 5 (1) to act temporarily as Assessor, and while so acting that person shall have the powers, functions and duties of the Assessor.

(2) No act or omission of an acting Assessor shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

Remunera-
tion.

4. The Assessor and an acting Assessor shall be paid such remuneration and allowances as are determined in his case by the Governor on the recommendation of the Public Service Board.

Oath of
office.

5. Before he enters upon the duties of his office the Assessor shall take an oath before a Judge of the Supreme Court that he will faithfully and impartially perform the duties of his office.

Protection of
Assessor.

6. Subject to this Act, the Assessor has, in the performance of his duties, the same protection and immunity as a Judge has in respect of proceedings in the Supreme Court.
