

CRIMINAL INJURIES (COMPENSATION).

No. 76 of 1976.

AN ACT to amend the Criminal Injuries (Compensation) Act, 1970.

[Assented to 18th October, 1976.]

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:—

1. (1) This Act may be cited as the *Criminal Injuries (Compensation) Act Amendment Act, 1976.*

Short title
and citation.

(2) In this Act the Criminal Injuries (Compensation) Act, 1970 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Criminal Injuries (Compensation) Act, 1970-1976.

Section 3
amended.

2. Section 3 of the principal Act is amended—

(a) by adding immediately before the definition “injury” the following definition—

“child” has the same meaning as is given to that term by the Fatal Accidents Act, 1959; ;

(b) by adding after the definition “injury” the following definitions—

“loss”, if incurred or claimed to have been incurred by a person seeking compensation for himself, means any loss of the following kinds caused by or directly arising from injury, namely loss of earnings, loss arising from damage to items of personal apparel and loss arising from the necessity to provide or repair spectacles or contact lenses, hearing aids, artificial teeth or any artificial limb or like surgical appliance for relieving disablement suffered by the person;

“loss”, if incurred or claimed to have been incurred by the wife, husband, parent or child of a deceased person, means any loss in respect of which damages might be recovered in an action taken under the Fatal Accidents Act, 1959 if the death of the deceased person had been caused by a wrongful act, neglect or default of another; ;
and

- (c) by adding after the definition “offence” the following definition—

“parent” has the same meaning as is given to that term by the Fatal Accidents Act, 1959; .

3. Section 4 of the principal Act is amended—

Section 4
amended.

- (a) by repealing subsection (1) and substituting the following subsections—

(1) Where a person is convicted of an offence, the court by which or the judge before whom, the person was tried may, at any time after his conviction on the application of a person who has suffered injury or loss in consequence of the commission of the offence, order that a sum not exceeding seven thousand five hundred dollars be paid by the person convicted out of his property to such other person by way of compensation for the injury and loss suffered by that person by reason of the commission of the offence.

(1a) Where a person is convicted of an offence the court by which, or the judge before whom, the person was tried may, at any time after his conviction on the application of the personal representative of a person whose death occurred in consequence of the commission of the offence, order that—

- (a) a sum not exceeding seven thousand five hundred dollars be paid by the person convicted out of his property to such personal representative by way of compensation for the total loss suffered by the wife or husband, parents and children of the person whose death occurred in consequence of the commission of the offence; and

- (b) the sum be proportioned among the wife or husband, parents and children as the court or judge thinks fit. ;

- (b) by adding after the passage "subsection (1)" in line two of subsection (2) the passage "or (1a)";

- (c) by deleting the passage "injury suffered by him," in line five of subsection (2) and substituting the passage "injury or loss suffered by him, or to his death, as the case may be,";

- (d) by adding after subsection (2) the following subsections—

(2a) Where a person has suffered injury or loss or has died in consequence of the commission of an offence by two or more persons acting jointly, or of more than one offence, whether the offences were committed by the same person or two or more persons, but the offences were committed at approximately the same time or by persons acting in concert, or the offences are otherwise related to each other, the court or judge shall not order that more than seven thousand five hundred dollars be paid in the aggregate in respect of the joint offence or all the offences, as the case requires, but shall order that the total sum ordered to be paid shall be paid by the respective convicted persons in such proportion as it or he thinks fit.

(2b) For the purposes of this section a person who is acquitted of an offence on the ground that it is found that he was not of sound mind at the time when the act or omission took place shall be

regarded as having been convicted of the offence, but the court by which, or the judge before whom, that person was tried shall not order the person so acquitted to pay any amount to the person injured or the personal representative of the deceased person, as the case requires, but shall in lieu grant a certificate stating the sum which would have been ordered to be paid under this section if the person so acquitted had been convicted of the offence. ; and

- (e) by adding after the passage “subsection (1)” in lines one and two of subsection (4) the passage “or (1a)”.

4. Section 5 of the principal Act is amended— Section 5 amended.

- (a) by deleting the words “injury suffered” in line three and substituting the passage “injury or loss suffered by a person or for the total loss suffered by the wife or husband, parents and children of a deceased person, as the case may be,”; and
- (b) by adding after the word “person” in line seven the words “or personal representative”.

5. Section 6 of the principal Act is amended— Section 6 amended.

- (a) by adding after subsection (1) the following subsection—

(1a) In subsection (1) of this section “person claiming to be aggrieved by reason of the commission of the offence” includes the personal representative of a person whose death occurred in consequence of the commission of the offence. ;

- (b) by repealing and re-enacting subsection (3) as follows—

(3) The court shall not grant a certificate under this section unless it is satisfied that the person claiming to be aggrieved has in fact suffered injury or loss by reason of an offence committed by some other person or that, where the application is made by the personal representative of a deceased person, that person's death occurred in consequence of the commission of an offence committed by some other person. ; and

- (c) by repealing subsection (4).

Section 6A
added.

6. The principal Act is amended by adding after section 6 the following new section—

Application
by or on
behalf of
person where
offender
not brought
to trial.

6A. (1) Where, on application made to The District Court of Western Australia, a person satisfies the Court that he has suffered injury or loss in consequence of the commission of an offence and that no person has been tried with the commission of the offence, the Court may grant a certificate stating the sum to which he would have been entitled pursuant to an order under section 4 if the person or persons who committed the offence had been convicted of the offence and an order had been made under that section.

(2) Where, on application made to The District Court of Western Australia by the personal representative of a person, the personal representative satisfies the Court that the death of the person for whom he is personal representative occurred in consequence of the commission of an offence and that no person has been tried with the commission of the offence, the Court may grant a certificate stating the sum which would have been ordered to be paid to the personal representative and the manner in which that sum would

have been proportioned if the person or persons who committed the offence had been convicted of the offence and an order had been made under section 4.

(3) A certificate shall not be granted under this section if the sum referred to would amount to less than one hundred dollars.

(4) A certificate shall not be granted under subsection (1) of this section if the Court is of opinion that the person claiming to have suffered loss or injury in consequence of the commission of an alleged offence failed to do any act or thing which he ought reasonably to have done to assist in the detection, apprehension or prosecution of the alleged offender.

(5) Except where the Court is satisfied that the person who committed the alleged offence has died, the Court shall not hear or determine an application under this section until the expiration of twelve months after the commission of the alleged offence.

7. The principal Act is amended by adding a new section as follows—

Section 6B
added.

6B. A person or personal representative to whom a certificate has been granted under subsection (2b) of section 4, section 6 or section 6A may make application in writing to the Under Secretary for payment to him of the sum so specified in the certificate out of the Consolidated Revenue Fund.

Application
to Under
Secretary.

8. Section 7 of the principal Act is amended—

Section 7
amended.

(a) by deleting the passage “subsection (4) of section 6” in line three of subsection (1) and substituting the passage “section 6B”;

- (b) by deleting the passage "subsection (1) of section 6" in line four of paragraph (a) of subsection (1) and substituting the words "this Act";
- (c) by deleting the words "to which the application relates" in the last line of subsection (1) and substituting the passage "or loss to which the application relates, including, in the case of an application made by a personal representative, the amounts of any sums of the kind described in paragraphs (a), (b) and (c) of subsection (2) of section 5 of the Fatal Accidents Act, 1959";
- (d) by deleting the word "Where" in line one of subsection (3) and substituting the passage "Subject to subsection (3a) of this section, where";
- (e) by adding after the word "statement" in the last line of subsection (3) the passage "or, in the case of an order or certificate made or granted by a court of summary jurisdiction such other amount as the Treasurer considers justified"; and
- (f) by adding after subsection (3) the following subsection—

(3a) Where, in relation to an application made by a personal representative, the Treasurer, after considering the statement of the Under Secretary, considers that no payment or a reduced payment should be made to one or more of the persons for whose benefit a sum was ordered to be paid to the personal representative of a deceased person, may, if he thinks fit, increase the sums to be paid to any other of the persons for whom sums were so ordered to be paid, but so that the total amount paid to the personal representative does not exceed seven thousand five hundred dollars. .

1976.] *Criminal Injuries (Compensation)*. [No. 76.

9. Subsection (1) of section 9 of the principal Act is amended by deleting the passage "under section 6" in line three and substituting the words "under this Act".

Section 9
amended.

10. The principal Act is amended by adding at the end thereof the following new section—

Section 10
added.

10. The amendments to this Act effected by the Criminal Injuries (Compensation) Act Amendment Act, 1976 shall have effect only in relation to injuries or deaths occurring on or after the day on which the Criminal Injuries (Compensation) Act Amendment Act, 1976 receives the royal assent, and in relation to injuries occurring prior to that day the provisions of this Act as in force immediately prior to that day shall continue to apply. .

Transitional
provision.
