

Western Australia

Criminal Injuries Compensation Act 1985

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Criminal Injuries Compensation Act 1985

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Schedule 1

NOTES

Western Australia

Criminal Injuries Compensation Act 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.

Part I — Preliminary

1. Short title

This Act may be cited as the *Criminal Injuries Compensation Act 1985*^{1,1a}.

2. Commencement

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

3. Interpretation

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

“**acting Chief Assessor**” means a person appointed to act temporarily as the Chief Assessor under section 5A (1);

“**administrative functions**” means the functions referred to in sections 5 (2), 19 (2) and 48 (1);

“**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 a person appointed as such under section 5B;

“**Chief Assessor**” means, subject to subsections (5) and (6), the person appointed as such under section 5 (1);

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

“**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 parent, grandparent or step-parent of the deceased;

- (c) any person who was a son, daughter, grandson, granddaughter, stepson or stepdaughter of the deceased;
- (d) a person who, immediately before the death, was living in a de facto relationship with the deceased person and had been living on that basis with that person for at least the previous 2 years;

“function” has the same meaning as it has in the *Interpretation Act 1984*;

“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;

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“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 Chief Assessor that he is entitled, whether alone or jointly with any other person, to apply therefor;

“qualified person” means a person who is a practitioner within the meaning of the *Legal Practitioners Act 1893* of not less than 8 years' standing and practice.

- (1a) For the purposes of this Act a person is convicted of an offence notwithstanding that —
 - (a) a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction;
 - (b) having been found guilty of the offence, a conviction is not recorded under section 55 of the *Young Offenders Act 1994*;
 - (c) having been found guilty of the offence, the indictment or complaint was dismissed under repealed section 669 (1) (a) of *The Criminal Code*;
 - (d) having been found guilty of the offence, the charge was dismissed or the person was discharged under repealed section 34 or 34B of the *Child Welfare Act 1947*;
 - (e) repealed section 20 of the *Offenders Community Corrections Act 1963* or repealed section 40 or 126A of the *Child Welfare Act 1947* applies to the conviction;
 - (f) having been found guilty of the offence, the complaint for the offence was dismissed under repealed section 24 of the *Children's Court of Western Australia Act 1988*.
- (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 parents.
- (3) For the purposes of this Act, the relationship between a parent and his or her 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, parentage is admitted by or established against the parent in the parent's lifetime; and
 - (b) in the case of an application by, or through relationship with, the parent of an illegitimate child, parentage is admitted by or established against the parent in the lifetime of the illegitimate child.
- (3a) Subsection (3) does not apply to or in respect of a relationship established by the *Artificial Conception Act 1985*.
- (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.
- (5) A reference to the Chief Assessor in this Act includes, except in section 5 (1) and clause (1) (a) of Schedule 1, a reference to an acting Chief Assessor.
- (6) A reference to the Chief Assessor in —
- (a) paragraph (b) of the definition of “personal representative” in subsection (1);
 - (b) Parts III (except section 19 (2)), IV, V and VI;
 - (c) sections 44, 46, 47 and 49; and
 - (d) Schedule 1,
- includes a reference to an Assessor.

s. 4

[Section 3 amended by No. 49 of 1988 s.66; No. 15 of 1991 s.21; No. 31 of 1993 s.35; No. 78 of 1995 s.29; No. 71 of 1996 s.4; No. 28 of 2003 s. 36.]

4. Construction of Act

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

Part II — Offices of Chief Assessor, acting Chief Assessor and Assessors

[Heading amended by No. 71 of 1996 s.5.]

5. Chief Assessor

- (1) The Governor shall appoint a qualified person as Chief Assessor for the purpose of determining applications for compensation under, and exercising and performing the other functions assigned to the Chief Assessor by, this Act.
- (2) Subject to this Act, the Chief Assessor may allocate and reallocate applications for compensation under this Act to or among Assessors.

[Section 5 inserted by No. 71 of 1996 s.6.]

5A. Acting Chief Assessor

- (1) If the Chief Assessor becomes incapable of acting by reason of illness, absence or other cause, the Governor may appoint a qualified person to act temporarily as the Chief Assessor, and while so acting the qualified person has the functions of the Chief Assessor.
- (2) No act or omission of an acting Chief Assessor shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

[Section 5A inserted by No. 71 of 1996 s.6.]

5B. Assessors

The Governor may appoint one or more qualified persons as Assessors for the purpose of exercising or performing the functions (other than the administrative functions) assigned to the Chief Assessor by this Act.

[Section 5B inserted by No. 71 of 1996 s.6.]

s. 5C

5C. Matters relating to Chief Assessor, acting Chief Assessors and Assessors

- (1) An Assessor may exercise or perform his functions in relation to a matter at the same time as the Chief Assessor or another Assessor is exercising or performing the same functions in relation to another matter.
- (2) Schedule 1 has effect with respect to the appointment of, and to other matters relating to the office of, the Chief Assessor, an acting Chief Assessor or an Assessor.

[Section 5C inserted by No. 71 of 1996 s.6.]

6. Clerical and secretarial staff

There may be appointed, under and subject to Part 3 of the *Public Sector Management Act 1994*, such officers as are necessary to provide clerical and secretarial assistance to the Chief Assessor and any Assessors.

[Section 6 amended by No. 32 of 1994 s.3(2); No. 71 of 1996 s.7.]

Part III — Applications for and award of compensation

7. Application and award where offence committed

- (1) Where a person has suffered injury or loss in consequence of the commission of an offence he may apply to the Chief 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 Chief 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 Chief 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*.

[Section 7 amended by No. 71 of 1996 s.11.]

s. 8

8. Application where accused acquitted on account of unsoundness of mind

- (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 Chief Assessor for an award of compensation.
- (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 Chief Assessor for an award of compensation for that loss.

[Section 8 amended by No. 71 of 1996 s.11.]

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

- (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 mentally unfit to stand trial, the person who has suffered injury or loss may apply to the Chief Assessor for an award of compensation.
- (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 mentally unfit to stand trial,

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

[Section 9 amended by No. 71 of 1996 s.11; No. 69 of 1996 s.21.]

10. Application where accused dies before verdict

- (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 Chief 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 Chief Assessor for an award of compensation for that loss.

[Section 10 amended by No. 71 of 1996 s.11.]

s. 11

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

- (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 Chief 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 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 Chief Assessor for an award of compensation for that loss.

[Section 11 amended by No. 71 of 1996 s.11.]

12. Application where no person charged

- (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 Chief Assessor for an award of compensation.
- (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) no person has been charged with the commission of the alleged offence,

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

[Section 12 amended by No. 71 of 1996 s.11.]

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

Before he makes an award of compensation pursuant to an application made under section 8, 9, 10, 11 or 12 the Chief 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*;

s. 14

- (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*.

[Section 13 amended by No. 71 of 1996 s.11.]

14. Application and award where alleged offender acquitted

- (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 Chief 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) 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 Chief 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 Chief 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 a provision referred to in section 3 (1a) (c), (d) or (f)); and
 - (b) does not include a reference to a person acquitted on account of unsoundness of mind.

[Section 14 amended by No. 49 of 1988 s.67; No. 15 of 1991 s.21; No. 78 of 1995 s.30; No. 71 of 1996 s.11.]

15. Application on certificate of Attorney General

- (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) that person is not eligible to apply for an award of compensation for that injury or loss and the circumstances of the case are such that it would be unjust if that person were not so eligible; or
 - (b) 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 the Attorney General does so the

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person who has suffered injury or loss may apply to the Chief 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 —
 - (i) the personal representative of the deceased person is not eligible to apply for an award of compensation for that loss and the circumstances of the case are such that it would be unjust if the personal representative were not so eligible; or
 - (ii) 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 the Attorney General does so the person who has suffered injury or loss may apply to the Chief 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 Chief 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*.

[Section 15 amended by No. 21 of 1991 s.3; No. 71 of 1996 s.11.]

16. Form of Application

- (1) An application shall be made in writing to the Chief 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.

[Section 16 amended by No. 71 of 1996 s.11.]

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17. Time for making application

- (1) An application shall be made to the Chief 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 Chief 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.

[Section 17 amended by No. 71 of 1996 s.11.]

18. Persons interested in an application

The persons interested in an application are —

- (a) the applicant;
- (b) any person who may, in the Opinion of the Chief Assessor, become liable under section 39 to refund any amount to the Crown;
- (c) the chief executive officer; and
- (d) any other person who satisfies the Chief Assessor that he has a substantial interest in the proceedings.

[Section 18 amended by No. 31 of 1993 s.36; No. 71 of 1996 s.11.]

19. Award of compensation

- (1) Where application is made in respect of any injury or loss, the Chief Assessor may, in accordance with this Act —
 - (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 Chief 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 Chief Assessor to the chief executive officer.

[Section 19 amended by No. 31 of 1993 s.36; No. 71 of 1996 s.11.]

20. Prescribed maximum amount

- (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.
- (2) Where the Chief 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 —

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- (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 Chief 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.

[Section 20 amended by No. 71 of 1996 s.11.]

21. Chief Assessor to furnish reasons for decision

- (1) Upon receiving a written request from that person to do so, the Chief Assessor shall furnish to the chief executive officer, the applicant or any other person interested in an application the reasons for his decision to award compensation.
- (2) If the Chief Assessor refuses to award compensation he shall —
 - (a) furnish to the applicant; and
 - (b) upon receiving a written request from the chief executive officer or any other person interested in an application, furnish to that person,

the reasons for so refusing.

[Section 21 amended by No. 31 of 1993 s.36; No. 71 of 1996 s.11.]

22. Applicant may be required to enforce other remedies

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

- (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 Chief 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.

[Section 22 amended by No. 71 of 1996 s.11.]

23. No award where compensation likely to benefit offender

The Chief 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.

[Section 23 amended by No. 71 of 1996 s.11.]

24. No award where applicant failed to assist in enforcement

Where —

- (a) an application for compensation is made in respect of the commission of an offence or an alleged offence; and

s. 24A

- (b) the Chief 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 Chief Assessor shall not make an award to that applicant or for the benefit of that close relative.

[Section 24 amended by No. 71 of 1996 s.11.]

24A. Procedure when, but for this Act, there would be entitlement to payment from health insurance fund

- (1) When, in the opinion of the Chief Assessor, an applicant for compensation in respect of injury or loss —
- (a) is entitled to be awarded compensation under this Act; and
- (b) would have been entitled, but for the existence of this Act, to payment of an amount under a contract of insurance with a registered organization in respect of any loss the subject of the application,

the Chief Assessor shall exclude the amount referred to in paragraph (b) from the amount of the award.

- (2) In subsection (1) —
- “registered organization”** has the same meaning as it has in the *National Health Act 1953* of the Commonwealth.

[Section 24A inserted by No. 71 of 1996 s.8.]

24B. No award where injury or loss arises from certain motor vehicle accident

- (1) Subject to subsection (2), the Chief Assessor shall not make an award to an applicant for compensation in respect of an injury or loss if the Chief Assessor considers that the injury or loss is directly caused by, or by the driving of, a motor vehicle within

the meaning of the *Motor Vehicle (Third Party Insurance) Act 1943*.

- (2) Subsection (1) does not apply to an injury or loss if —
- (a) the injury or loss was directly caused by the driving or other use of the motor vehicle for the purpose of committing the offence to which the application relates; and
 - (b) that offence is a crime as defined by section 3 of *The Criminal Code*.
- (3) Subject to subsection (4), this section is deemed to have come into operation on 1 July 1993.
- (4) Subsection (3) does not apply in relation to awards made before the commencement of section 8 of the *Criminal Injuries Compensation Amendment Act 1996*.

[Section 24B inserted by No. 71 of 1996 s.8.]

25. Behaviour etc. of applicant to be considered

In determining the amount of an award of compensation the Chief 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.

[Section 25 amended by No. 71 of 1996 s.11.]

26. Deductions for other compensation

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

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- (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.
- (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.

[Section 26 amended by No. 71 of 1996 s.11.]

27. General discretion of Chief Assessor

Subject to this Act, the Chief 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.

[Section 27 amended by No. 71 of 1996 s.11.]

Part IV — Procedure and evidence

28. Chief Assessor to act informally

The Chief 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.

[Section 28 amended by No. 71 of 1996 s.11.]

29. Notice to interested persons

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

[Section 29 amended by No. 71 of 1996 s.9.]

30. Chief Assessor may make enquiries

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

[Section 30 amended by No. 71 of 1996 s.11.]

31. Decision may be deferred until further information obtained

The Chief 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.

[Section 31 amended by No. 71 of 1996 s.11.]

32. Chief Executive Officer may apply for stay of application

The chief executive officer may at any time apply to the Chief Assessor for the stay of any application before the Chief Assessor on the ground —

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- (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 Chief Assessor may order that the application be stayed for such period as he thinks fit.

[Section 32 amended by No. 31 of 1993 s.36; No. 71 of 1996 s.11.]

33. Determination without hearing

The Chief 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.

[Section 33 amended by No. 71 of 1996 s.11.]

34. Hearings

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

[Section 34 amended by No. 71 of 1996 s.11.]

35. Witnesses and compulsion to furnish information

- (1) The Chief Assessor may cause a notice in writing signed by him to be served upon any person requiring him —
 - (a) to furnish to the Chief 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 Chief 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 Chief Assessor commits an offence.
Penalty: \$1 000.
- (5) A person appearing as a witness before the Chief Assessor shall be paid such fees as are prescribed if the Chief Assessor so orders.

[Section 35 amended by No. 71 of 1996 s.11.]

36. Hearings generally to be in private

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

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

[Section 36 amended by No. 71 of 1996 s.11.]

Part V — Payment of compensation

37. Compensation charged on Consolidated Fund

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

[Section 37 amended by No. 6 of 1993 s.11.]

38. Expenses may be paid directly to person who incurred them

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.

38A. Recovery from offender by Crown

- (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 chief executive officer may notify the offender that the offender may pay to the Crown —
 - (a) as a lump sum, the whole or any specified part of the compensation paid or payable; and
 - (b) as a lump sum, 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.
- (2) If the offender does not make payment to the Crown as requested under subsection (1) within 30 days of the date of the notice, the chief executive officer may make application to the Chief Assessor under section 39 for an order directing that that payment be made to the Crown.
- (3) All money recovered by the Crown under this section shall be credited to the Consolidated Fund.

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- (4) In subsection (1) “**specified**” means specified by the chief executive officer in the notification.

[Section 38A inserted by No. 21 of 1991 s.4; amended by No. 6 of 1993 s.11; No. 31 of 1993 s.36; No. 49 of 1996 s.64; No. 71 of 1996 s.11.]

39. Recovery from offender

- (1) Where —
- (a) a person is convicted of an offence;
 - (b) an award for payment of compensation is made under this Act in respect of injury or loss resulting from the act or omission constituting that offence; and
 - (c) the chief executive officer has not given a notice to the offender under section 38A or the offender has not made payment in accordance with a notice under section 38A,

the Chief Assessor may at any time on the application of the chief executive officer make an order directing the offender to pay to the Crown —

- (d) the whole or any specified part of the compensation paid or payable; and
 - (e) 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.
- (1a) In subsection (1) “**specified**” means specified by the Chief Assessor in the order.
- (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 period specified in the notice or both.
- (3) Before making or varying an order under this section the Chief Assessor shall —
- (a) serve the offender with notice of the application of the chief executive officer; and

- (b) serve the offender and the chief executive officer 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 Chief Assessor considers relevant.
- (4) The Chief Assessor shall not make or vary an order under this section until he has given the offender and the chief executive officer an opportunity to be heard with respect to the matters referred to in subsection (3) (b).
- (5) The offender or chief executive officer, on or before the date specified in the notice referred to in paragraph (b) of subsection (3), may provide the Chief Assessor with a written report with respect to the matters referred to in that paragraph.
- (6) The Chief 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 Chief Assessor.
- (8) The Chief Assessor may at any time, on the application of the chief executive officer 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 Chief Assessor made under this section is filed with the clerk of a Local Court in

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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 credited to the Consolidated Fund.

[Section 39 amended by No. 21 of 1991 s.5; No. 6 of 1993 s.11; No. 31 of 1993 s.36; No. 49 of 1996 s.64; No. 71 of 1996 s.11.]

40. Crown to be reimbursed out of other compensation or damages recovered

- (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
 - (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 credited to the Consolidated Fund.

[Section 40 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

Part VI — Appeals and references to District Court

41. Appeals to District Court

- (1) Where a person interested in an application or the chief executive officer is dissatisfied with —
- (a) an order of the Chief Assessor under section 19;
 - (b) a refusal by the Chief Assessor to make an order;
 - (c) a refusal by the Chief Assessor to vary an order under section 39; or
 - (d) an order of the Chief 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.
- (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 Chief Assessor, and may —
- (a) confirm, quash or vary an order or refusal of the Chief 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.

[Section 41 amended by No. 31 of 1993 s.36; No. 71 of 1996 s.11.]

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42. References to District Court by Chief Assessor

The Chief 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.

[Section 42 amended by No. 71 of 1996 s.11.]

43. How Judge to proceed

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

[Section 43 amended by No. 71 of 1996 s.11.]

Part VII — Miscellaneous

44. Costs

- (1) Subject to subsection (2), the Chief Assessor and a Judge acting under section 42, shall not have power to award 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 Chief 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 Chief 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 credited to the Consolidated Fund.

[Section 44 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64; No. 71 of 1996 s.11.]

45. False statements

- (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.
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

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part so ordered to be repaid may be recovered by the Crown in the same manner as a penalty imposed under subsection (1).

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

- (1) A person appearing before the Chief 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 Chief Assessor has the same protection and immunity as a barrister has in proceedings in the Supreme Court.

[Section 46 amended by No. 71 of 1996 s.11.]

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

- (1) The Chief 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 Chief 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 Chief 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 Chief 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.

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

Penalty: \$1 000.

[Section 47 amended by No. 71 of 1996 s.11.]

48. Report to Parliament

(1) Before the end of March in each year, the Chief 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.

(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.

[Section 48 amended by No. 71 of 1996 s.11.]

49. Regulations

(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.

(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 Chief 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.

[Section 49 amended by No. 71 of 1996 s.11.]

50. Repeal and transitional provisions

- (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 43 (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.

[Section 50 amended by No. 73 of 1994 s.4.]

Schedule 1

[Section 5C]

PROVISIONS RELATING TO THE OFFICE OF CHIEF ASSESSOR

1. Term of office, removal and resignation

The Chief Assessor —

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

2. Chief Assessor may be part time

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

[3. Repealed]

4. Remuneration

The Chief Assessor shall be paid such remuneration and allowances as are determined in his case by the Governor on the recommendation of the Minister for Public Sector Management.

5. Oath of office

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

6. Protection of Chief Assessor

Subject to this Act, the Chief 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.

[Schedule 1 amended by No. 71 of 1996 ss.10 and 11.]

Notes

- ^{1.} This is a compilation of the *Criminal Injuries Compensation Act 1985* and includes the amendments effected by the other Acts referred to in the following Table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Injuries Compensation Act 1985</i>	73 of 1985	4 Dec 1985	1 Jan 1986 (see <i>Gazette</i> 23 Dec 1985 p. 5059)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 10</i>	49 of 1988	20 Dec 1989	1 Dec 1989 (see <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991 s. 21</i>	15 of 1991	21 Jun 1991	9 Aug 1991 (see <i>Gazette</i> 9 Aug 1991 p. 4101)
<i>Criminal Injuries Compensation Amendment Act 1991</i>	21 of 1991	20 Sep 1991	18 Oct 1991
<i>Financial Administration Legislation Amendment Act 1993 Pt. 4</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2)
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 7</i>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994 Pt. 2</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994, s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994
<i>Sentencing (Consequential Provisions) Act 1995, Pt. 21</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Financial Legislation Amendment Act 1996, s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Mental Health</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>(Consequential Provisions)</i>			
<i>Act 1996, Pt. 5</i>			
<i>Criminal Injuries Compensation Amendment Act 1996</i>	71 of 1996	13 Nov 1996	13 Nov 1996
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 13</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

^{1a} As at the date of this compilation Part 5 of the *Mental Health (Consequential Provisions) Act 1996* was not in operation, but proclaimed to become operative when Act No. 68 of 1996 (*Mental Health Act 1996*) comes into force. Part 5 reads as follows —

“

Part 5 — Criminal Injuries Compensation Act 1985

21. Section 9 amended

Section 9 of the *Criminal Injuries Compensation Act 1985* is amended by deleting “incapable of understanding the proceedings at his trial or not of sound mind during his trial, ” in the 2 places it occurs and substituting the following” —

“ mentally unfit to stand trial, ”.

² Part 19 of the *Acts Amendment (Ministry of Justice) Act 1993* reads as follows —

“

PART 19 – SAVINGS AND TRANSITIONAL

68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as

a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

69. Transitional

Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate”.

”.

³ Section 6 (2) and (3) of the *Criminal Injuries Compensation Amendment Act 1996* reads as follows —

“

- (2) The person who was, immediately before the commencement of this Act, the Assessor continues, after that commencement and subject to the principal Act, to hold office as if he or she had been appointed, on the same terms and conditions, as Chief Assessor under section 5 (1) of the principal Act as amended by this Act for a term expiring on the day on which his or her appointment as Assessor would have expired.
- (3) A person who was, immediately before the commencement of this Act, an acting Assessor continues, after that commencement and subject to the principal Act, to hold office as if he or she had been appointed, on the same terms and conditions, to act temporarily as the Chief Assessor under section 5A (1) of the principal Act as amended by this Act..

”.