

NORTHERN TERRITORY OF AUSTRALIA

CRIMES COMPENSATION ACT

No. 46 of 1982

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NORTHERN TERRITORY OF AUSTRALIA

No. 46 of 1982

AN ACT

To provide compensation for injury as a
result of a criminal act

[Assented to 29 June 1982]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Crimes Compensation Act 1982*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. REPEAL

The *Criminal Injuries (Compensation) Ordinance 1976* is repealed.

4. INTERPRETATION

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

"applicant" means a person who makes an application under section 5(1) or (2);

"compensation certificate" means a compensation certificate issued by the Court under section 8(1);

"Court" means a Local Court of Full Jurisdiction under the *Local Courts Act*;

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"*de facto* widow" and "*de facto* widower", in relation to a deceased victim, means a person who, immediately before the death of the victim, was living with the victim on a permanent and bona fide domestic basis as though that person were the spouse of the deceased victim;

"dependant", in relation to a deceased victim, means a relative of the victim who -

- (a) at the time of the death of the victim was wholly or substantially dependent upon him financially; or
- (b) would have been so dependent but for the injury suffered by the deceased victim;

"injury" means bodily harm, mental injury, pregnancy, mental shock or nervous shock;

"offence" means an offence, whether indictable or not, committed by one or more persons which results in injury to another person;

"offender" means a person who commits an offence which results in an injury to another person;

"relative", in relation to a deceased victim, means a person who -

- (a) is the widow or widower of the victim;
- (b) is the *de facto* widow or *de facto* widower of the victim;
- (c) was a stepchild of the victim, including a child of the *de facto* widow or *de facto* widower of the victim; or
- (d) was related by blood or adoption to the victim;

"victim" means a person who is injured or dies as the result of the commission of an offence by another person.

(2) For the purpose of determining whether a person is a relative of a deceased victim, an Aboriginal who has entered into a relationship with another Aboriginal that is recognized as a traditional marriage by the community or group to which either Aboriginal belongs is married to the other Aboriginal, and all relationships shall be determined accordingly.

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(3) Where a child of a victim is born after the death of the victim, the child is deemed, for the purposes of this Act, to be a dependant of the deceased victim in all respects as if the child was born during the life of the victim.

PART II - COMPENSATION CERTIFICATE

5. APPLICATION FOR COMPENSATION CERTIFICATE

(1) A victim may, within 12 months after the date of the offence, apply to a Court for a compensation certificate in respect of the injury suffered by him as a result of that offence.

(2) Where a victim has died, as a result of the injury suffered by him, prior to the issue to him of a certificate of compensation, a person who, in the opinion of the Court, is a suitable person to represent the interests of the dependants of the deceased victim may, within 12 months after the death of the victim, apply to the Court, on behalf of the dependants of the deceased victim, for a compensation certificate in respect of the financial loss suffered by the dependants.

(3) The Court may, as it thinks fit, extend the period within which an application under sub-section (1) or (2) may be made.

6. SERVICE OF COPY OF APPLICATION

(1) An applicant shall serve, or cause to be served, a copy of the application upon -

(a) the Crown Solicitor; and

(b) where the identity of the offender who caused the injury or death is known - the offender,

not less than 14 days prior to the date upon which the application is to be heard by the Court.

(2) The Court may, as it thinks fit, dispense with service under sub-section (1) of a copy of the application on an offender.

7. PARTIES

The Crown and, where the identity of the offender who caused the injury or death is known, the offender shall be parties to proceedings in respect of an application under section 5.

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8. COMPENSATION CERTIFICATE

(1) Upon hearing an application under section 5, the Court may issue a compensation certificate, but shall not issue more than one certificate in respect of any one application.

(2) A compensation certificate under sub-section (1) shall certify that, in the opinion of the Court, it would be proper for the Minister to pay -

- (a) in respect of an application under section 5(1), to the victim, an amount specified in the certificate by way of compensation for the injury suffered by the victim; or
- (b) in respect of an application under section 5(2), to the dependants, an amount specified in the certificate by way of compensation for the financial loss suffered by them as a result of the death of the victim (to be apportioned between the dependants, as the Court thinks fit),

together with such amount, if any, by way of costs, as the Court thinks fit.

9. PRINCIPLES FOR ASSESSMENT OF COMPENSATION

In assessing the amount of compensation to be specified in a compensation certificate, the Court may, subject to this Act, include an amount in respect of -

- (a) expenses actually incurred as a result of the injury suffered by, or the death of, the victim;
- (b) pecuniary loss to the victim as a result of his total or partial incapacity for work;
- (c) pecuniary loss to the dependants of the victim as a result of his death;
- (d) any other pecuniary loss arising in consequence of injury suffered by, or the death of, the victim and any other expenses reasonably so incurred;
- (e) pain and suffering of the victim;
- (f) mental distress of the victim;
- (g) loss of the amenities of life by the victim;
- (h) loss of expectation of life by the victim; and
- (j) loss of, or damage to, the clothing or personal effects of the victim.

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10. MATTERS TO BE TAKEN INTO ACCOUNT

In considering an application for compensation, and in assessing the amount of compensation to be specified in a compensation certificate, the Court shall have regard to -

- (a) any conduct on the part of the victim that contributed, directly or indirectly, to his injury or death;
- (b) whether the victim is or was a relative of the offender;
- (c) whether the victim and the offender were living, at the time the offence was committed, as members of the same household and have continued to live as members of the same household;
- (d) the amount of a payment in respect of the injury suffered by, or death of, the victim received or likely to be received by the victim or his dependants, as the case may be, otherwise than under this Act; and
- (e) such other circumstances as it thinks fit.

11. CIRCUMSTANCES IN WHICH COMPENSATION NOT PAYABLE

In assessing the amount of compensation to be specified in a compensation certificate, the Court shall not include an amount -

- (a) by way of exemplary, punitive or aggravated damages;
- (b) in respect of loss or damage to personal property other than property referred to in section 9(j); or
- (c) where the offence directly resulted in the victim becoming pregnant and the victim gives birth to a child - in respect of the maintenance of the child.

12. COMPENSATION CERTIFICATE NOT TO BE ISSUED IN CERTAIN CIRCUMSTANCES

The Court shall not issue a compensation certificate -

- (a) in respect of an injury or death in respect of which compensation is, or would but for this Act be, payable under a law of the Territory, a

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State, the Commonwealth or any other Territory of the Commonwealth that relates to the payment of compensation by an employer in respect of the injury to, or death of, persons in his employment resulting from accidents occurring in connection with that employment; or

- (b) in respect of an injury or death caused by, or arising out of, the use of a motor vehicle.

13. LIMITATION ON AMOUNT

(1) The Court shall not specify in a compensation certificate an amount more than \$15,000 or less than \$100.

(2) For the purposes of an amount which may be specified under sub-section (1), the costs of the application shall not be included.

14. JOINT OFFENDERS, &c.

(1) Where a victim suffers an injury, or dies, as a result of an offence committed by more than one offender, the Court may issue only one compensation certificate in respect of the injury or death.

(2) Where a victim suffers an injury, or dies, as a result of a series of offences committed consecutively by one offender, or a series of offences committed simultaneously or consecutively by offenders acting in concert or in circumstances in which those offences constitute a single incident, the Court may issue only one compensation certificate in respect of the injury or death.

PART III - PROCEDURE, HEARING AND APPEALS

15. PROCEDURE

(1) On the hearing by the Court of an application under section 5(1) or (2), the procedure of the Court is, subject to this Act and to the Regulations, within the discretion of the Court.

(2) The hearing of an application under section 5(1) or (2) shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the application permit.

(3) Subject to this Act, the Court is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit.

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16. ADJOURNMENTS

(1) The Crown Solicitor may, at any time before the Court has issued a compensation certificate, apply to the Court for an adjournment of proceedings under this Act on the ground that a prosecution for an offence in respect of which the issue of a compensation certificate is sought has been, or is about to be, commenced.

(2) Where the Crown Solicitor applies under subsection (1), the Court may make an order adjourning the proceedings for such period as it thinks fit.

17. PROOF AND EVIDENCE

(1) A fact to be proved by an applicant in proceedings under this Act shall be sufficiently proved where it is proved on the balance of probabilities.

(2) In proceedings under this Act, the Court may receive in evidence any transcript of evidence in proceedings in any other court, and may draw any conclusions of fact therefrom that it considers proper.

18. COURT MAY BE CLOSED

The Court may, as it thinks fit, close proceedings under this Act to the public or a specified person or group of persons.

19. RESERVATION OF QUESTIONS OF LAW

(1) The Court may reserve for the decision of the Supreme Court a question of law arising out of an application under section 5 and the decision of the Supreme Court shall be certified to and be binding on the Court.

(2) Costs consequent on a reservation under subsection (1) shall be in the discretion of the Supreme Court.

PART IV - PAYMENTS AND RECOVERY

20. PAYMENTS BY MINISTER

Where a compensation certificate has been issued, the Minister may -

- (a) pay the whole or a part of the amount specified in the certificate; or
- (b) decline to make any payment.

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21. RECOVERY FROM OFFENDER

Where -

- (a) an offender is convicted of an offence; and
- (b) the Minister has paid an amount under section 20(a) in respect of the injury or death resulting from the commission of that offence,

the Minister may, on behalf of the Territory, recover from the offender as a debt due and payable to the Territory an amount equal to the amount of compensation paid under section 20 and costs.

22. SUBROGATION

Where the Minister pays an amount under section 20(a), he shall be subrogated to the rights of -

- (a) the victim, or his dependants, as the case may be, as against the offender; and
- (b) the offender as against any insurer or other person from whom the offender is entitled to indemnity or contribution in respect of liability arising from the injury or death to which the payment relates.

23. PRESERVATION OF CIVIL REMEDY

(1) Nothing in this Act affects the right of a person to claim or recover compensation or damages otherwise than under this Act.

(2) A Court by which an action for damages under a law, other than this Act, is heard shall not take into consideration that compensation has been or may be paid under this Act.

(3) Where -

- (a) an amount is paid to a victim, or his dependants, under section 20; and
- (b) subsequently, compensation is, or damages are, recovered by the victim or his dependants otherwise than under this Act in respect of the injury or death in respect of which the amount was paid under section 20,

the victim is, or dependants are, liable to pay to the Territory -

- (c) the amount paid under section 20; or

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- (d) the amount of compensation or damages recovered otherwise than under this Act,

whichever is the lesser.

24. TAXATION OF COSTS

- (1) A legal practitioner shall not be entitled -
 - (a) to recover from an applicant costs in respect of an application under section 5(1) or (2);
 - (b) to claim a lien in respect of costs on an amount paid or payable under section 20; or
 - (c) to deduct costs from an amount so paid or payable,

except to the extent to which the costs have been allowed as between the legal practitioner and the applicant by the Court on the application of the legal practitioner or the applicant.

(2) Sub-section (1) does not apply to costs which are disbursements of the legal practitioner.

25. RECOVERED MONEY TO CONSOLIDATED FUND

Any money recovered by the Minister under this Act shall be paid into the Consolidated Fund.

PART V - MISCELLANEOUS

26. APPROPRIATION

The Consolidated Fund is appropriated to the extent necessary for the payment of compensation under section 20.

27. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART VI - SAVINGS, &c., TRANSITIONAL

28. SAVINGS, &c.

(1) Notwithstanding the repeal effected by section 3, the *Criminal Injuries (Compensation) Act* as in force immediately before the commencement of this Act continues to have effect to and in relation to an injury occurring before the commencement of this Act.

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(2) Where, prior to the commencement of this Act, a payment in respect of costs was purported to be made under the *Criminal Injuries (Compensation) Act* as then in force, that payment is deemed to be a valid payment under that Act.

(3) Where a person -

(a) at any time prior to the commencement of this Act, applied to the Minister under section 5 of the *Criminal Injuries (Compensation) Act* as then in force and the Minister made a payment under section 6 of that Act to the person but the amount of the payment did not include an amount by way of costs; or

(b) receives a payment under section 6 of the *Criminal Injuries (Compensation) Act* by virtue of sub-section (1),

that person may be paid such an amount by way of costs as the Minister thinks fit.
