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# ELIZABETHAE II REGINAE

A.D. 1990

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No. 27 of 1990

An Act to amend the Criminal Law (Sentencing) Act, 1988, and the Criminal Injuries Compensation Act, 1978.

[Assented to 26 April 1990]

The Parliament of South Australia enacts as follows:

## Short title

1. This Act may be cited as the *Statutes Amendment (Victims of Crime) Act, 1990*.

## Commencement

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

## Amendment of Criminal Law (Sentencing) Act, 1988

3. The *Criminal Law (Sentencing) Act, 1988*, is amended—

(a) by inserting after subsection (2) of section 53 the following subsection:

(2a) Where—

(a) a court finds a defendant guilty of an offence, or takes an offence into account in determining sentence;

and

(b) the circumstances of the offence are such as to suggest that a right to compensation has arisen, or may have arisen, under this section,

the court must, if it does not make an order for compensation, give its reasons for not doing so.;

and

(b) by striking out subsections (5) and (6) of section 53 and substituting the following subsection:

(5) The power of a court to award compensation under this section is subject to the following qualifications:

(a) no compensation may be awarded for injury, loss or damage caused by, or arising out of the use of, a motor vehicle except damage to property;

- (b) no compensation may be awarded against an employer in favour of an employee or former employee if—
- (i) the offence arises from breach of a statutory duty related to employment;
- and
- (ii) the injury, loss or damage is compensable under the *Workers Rehabilitation and Compensation Act, 1986*;
- (c) a court of summary jurisdiction may not award more than \$20 000 (or if a greater amount is prescribed—the prescribed amount) by way of compensation.

#### Amendment of Criminal Injuries Compensation Act, 1978

4. The *Criminal Injuries Compensation Act, 1978*, is amended as follows:

(a) Section 7 is amended—

(i) by inserting after subsection (2a) the following subsection:

(2b) Where a victim dies in consequence of the offence, a person who pays, or is responsible for payment of, the victim's funeral expenses may within 12 months of the date of the funeral apply to the court for an order for compensation in respect of funeral expenses.;

(ii) by striking out from subsection (3) "subsection (1), (2) or (2a)" and substituting "this section";

(iii) by striking out "or" from between paragraphs (b) and (c) of subsection (7) and inserting after paragraph (c) the following word and paragraph:

or

(d) in the case of an application for compensation in respect of funeral expenses, that the applicant be paid—

(i) the amount of funeral expenses incurred by the claimant;

or

(ii) \$3 000,

whichever is the lesser.;

(iv) by striking out from subsection (8) "\$20 000" wherever it occurs and substituting, in each case, "\$50 000";

and

(v) by inserting after subsection (12) the following subsection:

(13) If—

(a) the offence arises from breach of a statutory duty by an employer in relation to employment of the victim;

and

(b) the injury is compensable under the *Workers Rehabilitation and Compensation Act, 1986*,

no compensation may be awarded under this Act.;

(b) Section 11 is amended—

(i) by striking out paragraph (c) of subsection (2a) and substituting the following paragraph:

(c) if the other compensation does not, in the Attorney-General's opinion, represent an adequate compensation for pain, suffering and other non-economic loss—should not reduce the amount to be paid under this Act below the lesser of the following two amounts:

(i) the amount that represents the extent of the deficiency;

(ii) \$10 000.;

(ii) by striking out “or” from between paragraphs (a) and (b) of subsection (3);  
and

(iii) by inserting after paragraph (b) of subsection (3) the following paragraphs:

(c) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to the victim of conduct capable of constituting the objective elements of an offence if it appears to the Attorney-General that, because of lack of evidence, absence of capacity to incur criminal responsibility or other matters personal to the perpetrator, or for any other reason that does not reflect adversely on the victim, an offence has not been, or cannot be, established;

or

(d) such other *ex gratia* payments (not exceeding, in any particular case, the limits prescribed by this Act in relation to an order for compensation) as the Attorney-General considers necessary, and consistent with the objects and policy of this Act, to compensate harm resulting from criminal conduct or conduct of the kind described above.;

and

(c) Section 13 is amended by striking out from paragraph (b) of subsection (6) “the court has the same powers” and substituting “the court that convicted the person has the same powers”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor