



CRIMINAL INJURIES COMPENSATION

No. 32 of 1976

ANALYSIS

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AN ACT to provide for the payment in certain cases of compensation to persons suffering as a result of the criminal conduct of others.

[21 June 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Criminal Injuries Compensation Act 1976*. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

Interpretation.

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

“award” means an award of compensation under this Act;

“criminal conduct” means—

(a) an act or omission referred to in section 4 (1) (a);
or

(b) any act or omission of a person referred to in section 4 (1) (b) as a result of which an award may be made;

“dependant”, in relation to a victim dying as the result of criminal conduct, means any person who at the time of the death was wholly or mainly dependent upon the victim or would have been so dependent but for the total or partial incapacity suffered by the victim since the injury from which the death resulted, and includes any child of the victim born after his death;

“injury” has the meaning assigned to that expression by subsection (2);

“Master” means the Master of the Supreme Court.

“offender” means a person whose act or omission constitutes criminal conduct;

“victim” means a person who suffers death or injury, or loss arising from the destruction of, or damage to, property, resulting from the criminal conduct of an offender.

(2) For the purposes of this Act, references to an injury shall be construed as including references to any impairment of bodily or mental health, and also to becoming pregnant.

(3) In this Act references to an award made to any person shall be construed as references to any award for the payment of a sum (whether to himself or any other person) for his benefit or to meet the cost of his maintenance or of any services rendered to him.

Delegation of functions of Master.

3—(1) The Master may, either generally or in any particular case, delegate to the Registrar or the Deputy Registrar, with or without restrictions, the exercise of any of the functions of the Master under this Act, and may, either generally or in a particular case, vary or revoke any such delegation.

(2) Section 5K of the *Supreme Court Act* 1959 does not apply to any functions exercisable by the Registrar under this Act.

(3) In relation to any functions delegated to the Registrar or the Deputy Registrar under this section any reference in this Act to the Master shall, subject to the terms of the delegation, and so far as

the context does not otherwise require, be construed as including a reference to the Registrar or Deputy Registrar, as the case may require.

(4) In this section, “Registrar” and “Deputy Registrar” mean respectively the Registrar of the Supreme Court and the Deputy Registrar of the Supreme Court.

4—(1) Compensation may be awarded under this Act where a person is killed or suffers injury— Basis of awards of compensation.

(a) as a result of the act or omission of another that constitutes an offence or would have constituted an offence, but for the fact that that other had not attained a specified age, or was insane, or had other grounds of excuse or justification at law for his act or omission; or

(b) in assisting a police officer in the exercise of his power to arrest a person or to take action to prevent the commission of a crime by a person.

(2) Compensation may be awarded under this Act for any destruction of, or damage to, property suffered by a person in assisting a police officer as mentioned in subsection (1) (b).

(3) In respect of the death or injury of a victim the compensation awarded under this Act may be so awarded in respect of any one or more of the following matters:—

(a) Expenses actually and reasonably incurred as a result of the injury or death;

(b) Pecuniary loss to the victim as a result of his total or partial incapacity for work arising from the injury;

(c) Pecuniary loss to the victim’s dependants as a result of the death;

(d) The pain and suffering of the victim arising from the injury.

(4) No compensation shall be awarded under this Act by way of exemplary or vindictive damages or by way of aggravated damages, nor, except as provided in subsection (2), for loss of, or damage to, property.

(5) Compensation awarded under this Act in respect of the injury or death of a victim may be so awarded—

(a) to or for the benefit of the victim;

(b) to any person responsible for the maintenance of the victim who has suffered pecuniary loss as a result of the injury or death;

(c) in a case where the compensation is payable in respect of the death of the victim, to or for the benefit of any one or

more of his dependants or, if there are no such dependants, to any person who has incurred expenses as a result of the victim's death.

(6) Compensation awarded under subsection (2) may be awarded to any person suffering loss by reason of the destruction of, or the damage to, the property.

(7) No compensation shall be awarded under this Act—

(a) in respect of any death or injury in respect of which compensation is, or would but for this Act be, payable under any law of the State or of the Commonwealth or of any other State or Territory of the Commonwealth that relates to the payment of compensation by an employer in respect of the death of, or bodily injury to, persons in his employment resulting from accidents occurring in connection with that employment; or

(b) in respect of a death or injury caused by or arising out of the use of a motor vehicle (as defined in the *Traffic Act 1925*).

Jurisdiction of
Master
to make awards.

5—(1) Awards of compensation are within the discretion of the Master and in exercising his discretion in any particular case he may have regard to any circumstances that he considers relevant.

(2) The Master shall not make an award in respect of a death or injury, or the damage to, or destruction of, property unless he is satisfied, on a balance of probabilities, that the death or injury, or the destruction or damage, was the result of criminal conduct.

(3) In determining whether or not to make an award and, if so, the amount of the award, the Master shall have regard to any behaviour, condition, attitude, or disposition of the victim that appears to him to have directly or indirectly contributed to the injury or death, or the destruction of, or damage to, property, in relation to which the award is sought.

(4) The Master may refuse to make an award to any person in respect of any criminal conduct if he is satisfied that that person has, or had, an adequate remedy in civil proceedings in respect of that conduct, and in determining the amount of any such award he shall take into account any amount recovered by or for the benefit of that person, by way of damages or compensation arising from the criminal conduct, or would, in the opinion of the Master, be likely to be so recovered, if proper action was taken by that person or on his behalf.

(5) Where the Master in making, or refusing to make, an award to any person in respect of any criminal conduct exercises

the powers conferred by subsection (4), he may give leave for the making of a further application by or on behalf of that person for an award or a further award in respect of the same criminal conduct, and the Master may make such an award if, having regard to circumstances that have arisen or the information that has been obtained since his previous decision, he considers it just to do so.

(6) Where the Master is satisfied that an award should be made to any person but has not sufficient information to enable him to determine finally the amount of the award, he may, if he considers it proper to do so, make an interim award to that person, and the making of an interim award to any person shall not be taken as preventing the making of a further interim award to the same person.

(7) An award may be made on and subject to such conditions as the Master determines as to—

- (a) the payment, disposal, allotment, or apportionment of any sum paid under the award;
- (b) the holding of any sum paid under the award on trust for a person entitled to the benefit thereof.

(8) Where an applicant for an award has incurred expense in making his application the Master may, if he considers it proper in the circumstances so to do, add to the amount awarded an amount to meet, in whole or in part, the expense so incurred.

6—(1) The total amount awarded to any one person in respect of any particular criminal conduct shall not exceed a prescribed maximum or, if no such maximum is prescribed in respect of that conduct, \$10 000. Limits on amount of awards.

(2) References in subsection (1) to particular criminal conduct, shall be construed as references to criminal conduct, whether of one person or more than one person, arising out of a single occurrence.

(3) For the purposes of this section any amount added to an award under section 5 (8) shall be disregarded.

(4) This section does not apply to an award of compensation in respect of any death or injury, or any destruction of, or damage to, property as a result of the giving of assistance to a police officer as mentioned in section 4 (2).

7—(1) An application for an award shall be made to the Master, and regulations under this Act may prescribe the manner in which the application is to be made, and the particulars to be furnished therewith, and may require the application to be accompanied by such statutory declaration as may be prescribed. Procedure for determining applications for awards.

(2) In the consideration of an application for an award, the Master is entitled to inform himself as he sees fit.

(3) Proof of conviction of any person for an offence shall, in relation to any application for an award, be taken to be conclusive of the fact that the offence has been committed, unless an appeal against the conviction is pending or a new trial has been directed.

(4) A person applying for an award under this Act, whether for himself or on behalf of some other person, is entitled to appear before and be heard by the Master either personally or by some person approved by the Master.

(5) In his consideration of an application for an award to any person the Master may give directions requiring that person to appear before him in person and he may refuse to make the award if, without reasonable excuse, there is a failure or refusal to comply with the directions.

(6) If he thinks it convenient to do so the Master may, at any time, adjourn his consideration of an application for an award, and, in particular, may adjourn his consideration of such an application while legal proceedings are contemplated or being taken in relation to the criminal conduct to which the application relates.

(7) Without prejudice to the provisions of subsection (6), the Attorney-General may, at any time, apply to the Master for the adjournment of the consideration by the Master of an application for an award on the ground that a prosecution for an offence arising out of the conduct to which the application relates has been, or is about to be, brought; and on such an application, the Master may adjourn the hearing for such period or in such manner as he thinks proper.

Restriction on
publicity of
proceedings.

8—(1) Proceedings before the Master under this Act shall be conducted in private.

(2) No person shall—

(a) in any newspaper or periodical, or in any book publicly exposed or offered for sale; or

(b) in any television or radio broadcast,

publish or cause or allow to be published a report of any proceedings before the Master on an application under this Act.

Penalty: \$200.

(3) Nothing in this section prohibits the publication of any matter by or under the authority of the Attorney-General, or by a person who, by virtue of his office, is authorized or required to make the publication.

9—(1) Subject to this section, the making in respect of any criminal conduct, of an award to a person does not affect the enforcement of any right or remedy that that person may have as a consequence of the criminal conduct.

Effect on other rights and remedies.

(2) Where, in respect of any criminal conduct, an award is made to any person and, as a consequence of that conduct, any sum is recovered by or for the benefit of that person by way of damages or compensation, that sum shall be deemed to be held in trust for the Treasurer until the amount of the award has been repaid to him.

(3) If, in the circumstances of any particular case, the Attorney-General considers it just so to do the Treasurer shall relinquish, in whole or in part, the rights accrued or accruing to him under subsection (2).

10 A decision of the Master under this Act is final and no appeal lies therefrom.

Finality of decision of Master.

11 Any sum required to be paid under an award shall be paid by the Treasurer out of moneys provided by Parliament, and, subject to the terms of the award, if any sum is so required to be paid to a person who has died, it shall be paid to his legal personal representative.

Payment of awards.

12 No award shall be made in respect of criminal conduct occurring before the commencement of this Act.

Exclusion of past criminal conduct.

13 The Governor may make regulations for the purposes of this Act.

Regulations.

