

TASMANIA

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**CRIMINAL INJURIES COMPENSATION  
AMENDMENT BILL 2005**

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**CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 1 amended (Short title and commencement)
5. Section 2 amended (Interpretation)
6. Section 4 substituted
  4. Basis of awards of compensation
7. Section 5 amended (Jurisdiction of Commissioner to make awards)
8. Section 6 substituted
  6. When compensation not to be awarded
  - 6A. Limits on amount of awards
  - 6B. Deductions from awards
9. Section 7 amended (Procedure for determining applications for awards)
10. Section 7A amended (Recovery from offender)



**CRIMINAL INJURIES COMPENSATION  
AMENDMENT BILL 2005**

*(Brought in by the Minister for Justice and Industrial  
Relations, the Honourable Judith Louise Jackson)*

**A BILL FOR**

**An Act to amend the *Criminal Injuries Compensation Act  
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. Short title**

This Act may be cited as the *Criminal Injuries  
Compensation Amendment Act 2005*.

**2. Commencement**

This Act commences on the day on which this  
Act receives the Royal Assent.

**3. Principal Act**

In this Act, the *Criminal Injuries Compensation  
Act 1976*\* is referred to as the Principal Act.

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\*No. 32 of 1976

**4. Section 1 amended (Short title and commencement)**

Section 1 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) This Act may be cited as the *Victims of Crime Assistance Act 1976*.

**5. Section 2 amended (Interpretation)**

Section 2(1) of the Principal Act is amended as follows:

- (a) by omitting “or omission” from paragraph (a) of the definition of “criminal conduct”;
- (b) by omitting “or omission” from paragraph (b) of the definition of “criminal conduct”;
- (c) by inserting the following definition after the definition of “Master”:

**“offence”** means an offence that involves violence by one person against another and includes a crime under section 127, 127A, 185, 186, 191A or 192 of the Criminal Code;

- (d) by omitting “or omission” from the definition of “offender”;
- (e) by inserting the following definitions after the definition of “offender”:

**“primary victim”** means a person against whom an offence is committed;

**“related victim”** means a person who is –

- (a) the spouse or a child, stepchild, brother, sister, stepbrother or stepsister of a primary victim; or
  - (b) a parent or step-parent of a primary victim who was over 18 years of age at the time of the offence; or
  - (c) in a personal relationship, within the meaning of the *Relationships Act 2003*, with a primary victim;
- (f) by omitting the definition of “victim” and substituting the following definition:

**“secondary victim”** means –

- (a) a person who suffers injury as a result of witnessing an offence; or
- (b) a parent, step-parent or guardian of a primary victim who was under 18 years of age at the time of the offence.

**6. Section 4 substituted**

Section 4 of the Principal Act is repealed and the following section is substituted:

**4. Basis of awards of compensation**

- (1) Subject to section 6, compensation may be awarded under this Act where a person is killed or suffers injury –
  - (a) as a result of the act of another person that constitutes an offence or would have constituted an offence, but for the fact that that other person had not attained a specified age, or was insane, or had other grounds of excuse or justification at law for his or her act; or
  - (b) in assisting a police officer in the exercise of the power to arrest a person or to take action to prevent the commission of a crime by a person.
- (2) In respect of the injury of a primary victim, compensation awarded under this Act may be awarded to the primary victim in respect of any one or more of the following matters:
  - (a) expenses actually and reasonably incurred by the primary victim as a result of the injury;
  - (b) the cost of medical, dental, psychological or counselling services which the Commissioner

is satisfied the primary victim will require in the future;

- (c) loss of wages or salary by the primary victim as a result of his or her total or partial incapacity for work arising from the injury;
  - (d) the pain and suffering of the primary victim arising from the injury;
  - (e) expenses reasonably incurred by the primary victim in claiming compensation.
- (3) In respect of the death or injury of a person, compensation awarded under this Act may be awarded to a secondary victim in respect of any one or more of the following matters:
- (a) expenses actually and reasonably incurred by the secondary victim as a result of his or her own injury;
  - (b) if the secondary victim is a parent, step-parent or guardian of the primary victim, expenses actually and reasonably incurred by the secondary victim as a result of the death or injury of the primary victim;
  - (c) the cost of medical, psychological or counselling services which the Commissioner is satisfied the

secondary victim will require in the future;

- (d) loss of wages or salary by the secondary victim as a result of –
    - (i) his or her total or partial incapacity for work arising from his or her own injury; or
    - (ii) his or her total or partial inability to work while providing care to the primary victim;
  - (e) the pain and suffering of the secondary victim arising from his or her own injury;
  - (f) expenses reasonably incurred by the secondary victim in claiming compensation.
- (4) In respect of the death or injury of a person, compensation awarded under this Act may be awarded to a related victim in respect of any one or more of the following matters:
- (a) expenses actually and reasonably incurred by the related victim as a result of his or her own injury;
  - (b) expenses actually and reasonably incurred by the related victim as a result of the death or injury of the primary victim;



- (c) the cost of medical, psychological or counselling services which the Commissioner is satisfied the related victim will require in the future;
- (d) loss of wages or salary by the related victim as a result of –
  - (i) his or her total or partial incapacity for work arising from his or her own injury; or
  - (ii) his or her total or partial inability to work while providing care to the primary victim;
- (e) the pain and suffering of the related victim arising from his or her own injury;
- (f) if the primary victim dies, financial loss if the related victim was dependent on the primary victim;
- (g) expenses reasonably incurred by the related victim in claiming compensation.

**7. Section 5 amended (Jurisdiction of Commissioner to make awards)**

Section 5 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “, or the damage to, or destruction of, property”;
- (b) by omitting from subsection (2) “, or the destruction or damage,”;
- (c) by omitting from subsection (3) “, or the destruction of, or damage to, property,”;
- (d) by omitting subsection (8);
- (e) by omitting from subsection (9) “of making the determination” and substituting “the claim was lodged”.

## **8. Section 6 substituted**

Section 6 of the Principal Act is repealed and the following sections are substituted:

### **6. When compensation not to be awarded**

- (1) Compensation must not be awarded under this Act –
  - (a) in respect of a death or injury caused by or arising out of the use of a motor vehicle within the meaning of the *Vehicle and Traffic Act 1999*; or
  - (b) by way of exemplary or vindictive damages or by way of aggravated damages; or
  - (c) for loss of, or damage to, property; or

- (d) in respect of a death or injury in the course of employment for which compensation has been paid, or is payable, under a compensation law; or
  - (e) for expenses claimable –
    - (i) under Part II of the *Health Insurance Act 1973* of the Commonwealth; or
    - (ii) from a health benefits organisation registered under the *National Health Act 1953* of the Commonwealth; or
  - (f) in respect of criminal conduct occurring while the primary victim is a prisoner or detainee within the meaning of the *Corrections Act 1997*.
- (2) In subsection (1)(d), “**compensation law**” means any other law of the State or any law of another State, a Territory of the Commonwealth or the Commonwealth that relates to the payment of compensation by an employer in respect of the death or injury of persons employed by the employer.

#### **6A. Limits on amount of awards**

- (1) Subject to subsection (4), the total amount awarded to a primary victim, a secondary victim or a related victim in respect of any particular criminal conduct

must not exceed the prescribed maximum.

- (2) A reference in subsection (1) to particular criminal conduct is to be construed as a reference to –
  - (a) a single offence; or
  - (b) a series of offences committed by the same offender; or
  - (c) a series of offences committed simultaneously or consecutively by offenders acting in concert.
- (3) A different maximum amount may be prescribed for a primary victim in respect of a series of offences than that prescribed in respect of a single offence.
- (4) Any amount awarded under section 4(2)(b), section 4(3)(c) or section 4(4)(c) may be paid in addition to the prescribed maximum if the Commissioner so determines.

#### **6B. Deductions from awards**

- (1) The Commissioner may deduct from an award to a person any one or more of the following amounts:
  - (a) any pecuniary penalty imposed on the person and owing to the Crown;
  - (b) any compensation levy payable by the person under the *Victims of Crime Compensation Act 1994*;

- (c) any unpaid compensation order made against the person under section 68 of the *Sentencing Act 1997*;
  - (d) any compensation order made against the person under section 7A of this Act.
- (2) If an amount is deducted –
- (a) under subsection (1)(a), the penalty is to be treated as paid to the extent of that deduction; or
  - (b) under subsection (1)(b), the levy is to be treated as paid to the extent of that deduction; or
  - (c) under subsection (1)(c), the order is to be treated as discharged to the extent of that deduction; or
  - (d) under subsection (1)(d), the order is to be treated as discharged to the extent of that deduction.

**9. Section 7 amended (Procedure for determining applications for awards)**

Section 7 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (1):
  - (1A) Subject to subsections (1B) and (1C), an application for an award

is to be made within 3 years after the date of the relevant offence.

(1B) If a primary victim, secondary victim or related victim is less than 18 years old at the time of the relevant offence, his or her application for an award must be made no later than 3 years after he or she turns 18.

(1C) The Commissioner may extend the 3-year period referred to in subsection (1A) or (1B) if satisfied that there are special circumstances which justify the extension.

(b) by inserting the following subsections after subsection (7):

(8) An application for an award is to be determined within 3 years of the date of the application.

(9) The Commissioner may extend the 3-year period referred to in subsection (8) if satisfied that there are special circumstances which justify the extension.

(10) Where the Commissioner makes an award in terms consented to by the applicant, the applicant is nevertheless entitled to be heard by the Commissioner in respect of a matter other than the amount of the award.

**10. Section 7A amended (Recovery from offender)**

Section 7A(2) of the Principal Act is amended by omitting “together with the whole of any costs awarded in respect of the application for the award pursuant to section 5(8)”.