

CRIMES (COMPENSATION) AMENDMENT ACT, 1984, No. 70

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 70, 1984.

An Act to amend the Crimes Act, 1900, to increase the maximum amount which a person convicted of an offence may be required to pay by way of compensation for injury or loss and to make further provision in relation to the requirement to make those payments and in other respects; and to amend the Crimes (Community Welfare) Amendment Act, 1982. [Assented to, 27th June, 1984.]

See also Criminal Injuries Compensation (Amendment) Act, 1984; Child Welfare (Criminal Injuries Compensation) Amendment Act, 1984.

Crimes (Compensation) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Crimes (Compensation) Amendment Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 40, 1900.

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

Amendment of Act No. 81, 1982.

4. The Crimes (Community Welfare) Amendment Act, 1982, is amended by omitting Schedule 1 (5).

Transitional.

5. (1) The amendments made by section 3 and Schedule 1 shall apply to and in respect of any direction for payment of compensation given under section 437 or 554 of the Crimes Act, 1900, on or after the day appointed and notified under section 2 (2).

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(2) The Crimes Act, 1900 (as in force immediately before the day appointed and notified under section 2 (2)), shall continue to apply to and in respect of any direction for payment of compensation given under section 437 or 554 of that Act before that day.

SCHEDULE 1.

(Sec 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) Section 437—

Omit the section, insert instead:—

Compensation to person aggrieved by indictable offence, etc.

437. (1) This section applies to—

- (a) an offence punishable on indictment, whether or not tried on indictment;
- (b) an offence under this Act; and
- (c) an offence for which proceedings are taken in the Supreme Court in its summary jurisdiction.

(2) In this section—

“aggrieved person”, in relation to an offence in respect of the death of a person, means, except in subsection (8), the spouse (if any), or the person (if any) who was living with the dead person as the spouse, and any parent or child (as defined in section 7 (1) of the Compensation to Relatives Act of 1897), of the dead person;

“compensation for injury” includes—

- (a) compensation for—
 - (i) actual and future expenses;
 - (ii) actual loss of earnings; and

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 SCHEDULE 1—*continued.*

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- (iii) loss of future earnings or a capacity to earn,
sustained as a direct consequence of injury; and
- (b) in relation to an injury causing the death of a person, compensation for—
 - (i) actual expenses; and
 - (ii) loss of material benefits in the nature of support or domestic services,
sustained as a direct consequence of the injury or death;

“compensation for loss” does not include compensation for injury;

“injury” means bodily harm, and includes pregnancy, mental shock and nervous shock;

“prescribed amount”, in relation to a direction given under this section, means—

- (a) except as provided by paragraph (b)—\$20,000; or
- (b) where the direction is given on or after a conviction by a Court (other than the Supreme Court) exercising summary jurisdiction—\$10,000.

(3) Subject to subsection (6), where a person is convicted of an offence to which this section applies, the Court may, on the conviction or at any time thereafter, direct that a sum not exceeding the prescribed amount be paid out of the property of the offender to any aggrieved person, or to any aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any injury or loss sustained through, or by reason of, the offence or, where applicable, any other offence taken into account pursuant to section 447B in passing sentence for the offence.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(4) A direction under this section that a sum be paid to an aggrieved person may be given by a Court on its own motion or upon application being made to it by or on behalf of the aggrieved person.

(5) A direction given under this section shall specify the sum, if any, to be paid by way of compensation for injury and the sum, if any, to be paid by way of compensation for loss.

(6) A Court shall not give a direction under this section in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums—

(a) specified in a direction previously given under this section or section 554—

(i) on the conviction of any other person for that offence; or

(ii) on the conviction of that or any other person for a related offence; or

(b) stated in a certificate previously granted under section 4 of the Criminal Injuries Compensation Act, 1967—

(i) on the acquittal of, or dismissal of an information against, any other person, being a certificate granted in respect of that offence; or

(ii) on the acquittal of, or dismissal of an information against, that or any other person, being a certificate granted in respect of a related offence,

exceeds the prescribed amount.

(7) For the purposes of subsection (6), an offence is related to another offence if—

(a) both of the offences were committed against the same person; and

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (b) in the opinion of the Court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

(8) In determining whether or not to give a direction under this section and in determining the sum to be paid under such a direction, the Court shall have regard to—

- (a) any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person;
- (b) whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the offence or, where applicable, any other offence taken into account pursuant to section 447B in passing sentence for the offence, living with the convicted person as his wife or her husband or as a member of the convicted person's household;
- (c) the provisions of the Criminal Injuries Compensation Act, 1967; and
- (d) such other circumstances as it considers relevant.

(9) Subject to section 9 of the Criminal Appeal Act, 1912, and to the provisions of the Justices Act, 1902, any sum directed under this section to be paid to an aggrieved person shall be paid forthwith, or within such period (if any) as is specified in the direction, to—

- (a) in the case of a direction given by the Supreme Court or District Court—the Clerk of the Peace; or
- (b) in the case of a direction given by any other Court—the clerk of that Court,

for payment to the aggrieved person.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(10) The power conferred on a Court by subsection (3) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

(2) Section 437A—

Omit "437 (1)" wherever occurring, insert instead "437".

(3) (a) Section 457 (1)—

Omit the subsection, insert instead:—

(1) Where, pursuant to section 437, a Court directs that a sum be paid to an aggrieved person and the whole or any part of the sum is not paid in accordance with section 437, the Clerk of the Peace or, as the case may require, the clerk of the Court shall, on the application of the aggrieved person, issue to the aggrieved person a certificate specifying the direction of the Court and the amount of the sum required by the direction to be paid which has not, at the date of the certificate, been paid to the Clerk of the Peace or the clerk of the Court, as the case may be.

(b) Section 457 (2)—

After "the Clerk of the Peace", insert "or, as the case may require, the clerk of the Court".

(c) Section 457 (3)—

Omit "at Sydney".

(4) Section 554 (3)–(11)—

Omit section 554 (3)–(6), insert instead:—

(3) Subject to subsection (8), where a person is convicted by a Court (other than the Supreme Court) exercising summary jurisdiction of an offence punishable under this or any other Act, the Court

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

may, on the conviction or at any time thereafter, upon notice given to the offender, direct that a sum not exceeding \$1,000 be paid to any aggrieved person, or to any aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any injury or loss sustained through, or by reason of, the offence.

(4) A direction under subsection (3) that a sum be paid to an aggrieved person may be given by a Court on its own motion or upon application being made to it by or on behalf of the aggrieved person.

(5) A sum directed by a Court under subsection (3) to be paid by an offender to an aggrieved person shall be paid by the offender to the clerk of the Court, to be paid by that clerk to the aggrieved person.

(6) A direction under subsection (3) shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the Justices Act, 1902.

(7) A direction given under subsection (3) shall specify the sum, if any, to be paid by way of compensation for injury and the sum, if any, to be paid by way of compensation for loss.

(8) A Court shall not give a direction under subsection (3) in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums—

- (a) specified in a direction previously given under section 437 or subsection (3)—
 - (i) on the conviction of any other person for that offence; or
 - (ii) on the conviction of that or any other person for a related offence; or

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- (b) stated in a certificate previously granted under section 4 of the Criminal Injuries Compensation Act, 1967—
- (i) on the acquittal of, or dismissal of an information against, any other person, being a certificate granted in respect of that offence; or
 - (ii) on the acquittal of, or dismissal of an information against, that or any other person, being a certificate granted in respect of a related offence,
- exceeds \$1,000.
- (9) For the purposes of subsection (8), an offence is related to another offence if—
- (a) both of the offences were committed against the same person; and
 - (b) in the opinion of the Court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.
- (10) In determining whether or not to give a direction under subsection (3) and in determining the sum to be paid under such a direction, the Court shall have regard to—
- (a) any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person;
 - (b) whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the offence, living with the convicted person as his wife or her husband or as a member of the convicted person's household;
 - (c) the provisions of the Criminal Injuries Compensation Act, 1967; and
 - (d) such other circumstances as it considers relevant.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(11) In this section—

“compensation for injury” includes compensation for—

- (a) actual and future expenses;
- (b) actual loss of earnings; and
- (c) loss of future earnings or a capacity to earn, sustained as a direct consequence of injury;

“compensation for loss” does not include compensation for injury;

“injury” means bodily harm, and includes pregnancy, mental shock and nervous shock.

(5) Section 556A (2)—

Omit “437 (1)”, insert instead “437”.
