



New South Wales

Civil Liability Amendment (Offender Damages) Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Civil Liability Act 2002* to make the following amendments to Part 2A of that Act, which makes special provision in relation to the recovery of damages (*offender damages*) for injury suffered by a person while an offender in custody:

- (a) to include in Part 2A definitions of terms that are currently defined by reference to their meaning in another Part of the Act, to make it clear that limitations on the operation of that other Part do not also extend to those terms when used in Part 2A,
- (b) to make it clear that a dispute about whether the degree of permanent impairment of an injured offender is at least 15% (which is the threshold for an award of offender damages) cannot be referred for medical assessment unless the offender has provided a medical practitioner's report that assesses permanent impairment to be at least 15%,
- (c) to make it clear for the purposes of Part 2A and savings and transitional provisions of the Act that proceedings are not "finally determined" until any period for bringing an appeal has expired and any pending appeal has been disposed of,

- (d) to clarify the operation of transitional provisions relating to 2006 amendments to the Act (dealing with provisions that require offender damages to be held in trust for the payment of claims by the offender's victims) so that it will be absolutely clear that the amendments extend to cases in which offender damages were awarded before the commencement of the amendments.

The amendments overcome the effect of recent court decisions (*State of New South Wales v Bujdoso* [2007] NSWCA 44, *Hiron v State of New South Wales & Anor* [2007] NSWSC 152 and *State of New South Wales v Napier Keen Pty Limited* [2007] NSWSC 644).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Civil Liability Act 2002* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] and [2] make the amendments referred to in paragraph (a) of the Overview.

Schedule 1 [3] makes the amendment referred to in paragraph (b) of the Overview.

Schedule 1 [4], [5] and [7] make the amendments referred to in paragraph (c) of the Overview.

Schedule 1 [8] and [9] make the amendments referred to in paragraph (d) of the Overview.

Schedule 1 [6] and [10] enact consequential savings and transitional provisions.

First print



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New South Wales

Civil Liability Amendment (Offender Damages) Bill 2007

No. , 2007

A Bill for

An Act to amend the *Civil Liability Act 2002* to make further provision for medical assessment of disputes and transitional arrangements concerning claims for offender damages.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Civil Liability Amendment (Offender Damages) Act 2007</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Civil Liability Act 2002 No 22	7
The <i>Civil Liability Act 2002</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 26A Definitions	3
	Insert in alphabetical order in section 26A (1):	4
	<i>injury</i> means personal injury and includes the following:	5
	(a) impairment of a person’s physical or mental condition,	6
	(b) disease.	7
	<i>personal injury damages</i> means damages that relate to the death of or injury to a person.	8 9
[2]	Section 26A (2)	10
	Omit the subsection.	11
[3]	Section 26D Assessment of permanent impairment	12
	Insert after section 26D (3):	13
	(3A) A dispute about the degree of permanent impairment of an injured offender cannot be referred for assessment unless the offender has provided the protected defendant with a medical report by a medical practitioner that assesses that the degree of permanent impairment of the injured offender is at least 15% and sets out the medical practitioner’s reasons for that assessment.	14 15 16 17 18 19
[4]	Section 26M Victim trust fund available to satisfy eligible victim claims	20
	Omit section 26M (4). Insert instead:	21
	(4) A claim is not finally determined if:	22
	(a) any period for bringing an appeal as of right in respect of the claim has not expired (ignoring any period that may be available by way of extension of time to appeal), or	23 24 25
	(b) any appeal in respect of the claim is pending (whether or not it is an appeal brought as of right).	26 27
[5]	Section 26R Payment to offender of trust fund surplus	28
	Insert after section 26R (1):	29
	(1A) A claim is not finally determined if:	30
	(a) any period for bringing an appeal as of right in respect of the claim has not expired (ignoring any period that may be available by way of extension of time to appeal), or	31 32 33

	(b) any appeal in respect of the claim is pending (whether or not it is an appeal brought as of right).	1 2
[6]	Schedule 1 Savings and transitional provisions	3
	Insert at the end of clause 1 (1):	4
	<i>Civil Liability Amendment (Offender Damages) Act 2007</i>	5
[7]	Schedule 1, clause 1A	6
	Insert after clause 1 of Schedule 1:	7
	1A Final determination of proceedings	8
	For the purposes of this Schedule, proceedings are not finally determined if:	9 10
	(a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or	11 12 13
	(b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).	14 15
[8]	Schedule 1, clause 25 Deemed commencement of, and application of, amendments to section 3B (1) (a)	16 17
	Omit clause 25 (5). Insert instead:	18
	(5) Despite subclause (4), this clause does apply for the purpose of the application of Division 6 of Part 2A to an award of damages made against a protected defendant before the commencement of this clause (even if any proceedings resulting in or in respect of that award were finally determined before that commencement). This clause does not apply for that purpose if the award has been wholly or partly satisfied (before or after the commencement of this clause) by payment to or at the direction of the person to whom the damages were awarded.	19 20 21 22 23 24 25 26 27
[9]	Schedule 1, clause 26 Definition of “offender in custody” in section 26A	28
	Omit clause 26 (4). Insert instead:	29
	(4) Despite subclause (3), this clause does apply for the purpose of the application of Division 6 of Part 2A to an award of damages made against a protected defendant before the commencement of this clause (even if any proceedings resulting in or in respect of that award were finally determined before that commencement). This clause does not apply for that purpose if the award has been wholly or partly satisfied (before or after the commencement of	30 31 32 33 34 35 36

	this clause) by payment to or at the direction of the person to whom the damages were awarded.	1 2
[10]	Schedule 1, Part 10	3
	Insert after Part 9 of Schedule 1:	4
	Part 10 Provisions consequent on enactment of Civil Liability Amendment (Offender Damages) Act 2007	5 6 7
27	Definition	8
	In this Part, <i>2007 amending Act</i> means the <i>Civil Liability Amendment (Offender Damages) Act 2007</i> .	9 10
28	Definition of “personal injury damages”	11
	(1) The amendments made by the 2007 amending Act to section 26A (<i>the 26A amendments</i>) extend to civil liability arising, and any award of damages in respect of such civil liability made, before the commencement of those amendments.	12 13 14 15
	(2) The 26A amendments do not affect any final determination of legal proceedings made by a court or tribunal before the commencement of those amendments.	16 17 18
	(3) Despite subclause (2), the 26A amendments do apply for the purpose of the application of Division 6 of Part 2A to an award of damages made against a protected defendant before the commencement of those amendments (even if any proceedings resulting in or in respect of that award were finally determined before that commencement). The 26A amendments do not apply for that purpose if the award has been wholly or partly satisfied (before or after commencement of the amendments) by payment to or at the direction of the person to whom the damages were awarded.	19 20 21 22 23 24 25 26 27 28
29	Final determination of proceedings	29
	Clause 1A of this Schedule does not affect any decision of a court made before the commencement of that clause (as inserted by the 2007 amending Act).	30 31 32

30 Assessment of medical disputes

The amendment made by the 2007 amending Act to section 26D extends to a dispute in connection with civil liability arising before the commencement of that amendment (whether or not proceedings had been commenced before that commencement), but does not extend to a dispute referred for assessment pursuant to that section before that commencement.

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