

## VICTIMS COMPENSATION (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Victims Compensation Act 1987 so as:

- (a) to provide for the imposition of compensation levies on persons convicted of certain offences;
  - (b) to establish a Victims Compensation Fund for the purpose of dealing with the revenue and expenses accrued and incurred in connection with the operation of that Act;
  - (c) to revise the provisions of that Act concerning the recovery of money from persons convicted of offences for which compensation has been paid under that Act;
  - (d) to facilitate the recovery of money from persons who have been convicted of obtaining compensation by fraud; and
  - (e) to make minor, consequential and ancillary amendments to that Act,
- and to enact savings, transitional and other provisions as a consequence of the enactment of the proposed Act.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

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### **SCHEDULE 1 - AMENDMENTS RELATING TO THE IMPOSITION OF COMPENSATION LEVIES**

Schedule 1 inserts proposed Parts 6A and 6B into the Principal Act (Schedule 1 (3)) and makes certain consequential amendments (Schedule 1 (1) and (2)).

Proposed Part 6A establishes a scheme for the imposition of compensation levies on persons convicted of certain offences, and includes the following provisions:

Proposed section 65A defines certain expressions for the purposes of the proposed Part.

Proposed section 65B specifies that the proposed Part is to apply to all offences that are punishable by imprisonment or penal servitude and that are dealt with before the Supreme Court, the District Court, a Local Court or the Children's Court.

Proposed section 65C imposes a levy of \$50 (in the case of a person who is convicted on indictment) or \$20 (in the case of a person who is convicted otherwise than on indictment) on a person who is convicted of an offence to which the proposed Part applies.

Proposed section 65D enables the regulations under the Principal Act to make provision for the payment and enforcement of compensation levies. A regulation will be able to make provision for the attachment of the prison earnings of convicted persons and for the imposition of community service orders on persons who fail to pay compensation levies imposed on them.

Proposed section 65E provides that an appeal from a conviction stays the liability of a person to pay a compensation levy, and further provides that the setting aside of any such conviction annuls that liability while dismissal of the appeal removes any stay of liability.

Proposed Part 6B provides for the establishment and operation of a Victims Compensation Fund, and includes the following provisions:

Proposed section 65F provides for the establishment of the Fund as part of the Attorney General's Department Account. The Secretary of the Attorney General's Department will (in the capacity of corporation sole under the Suitors' Fund Act 1951) have the control and management of the Fund.

Proposed section 65G specifies the sources from which the Fund will receive money.

Proposed section 65H specifies the purposes for which money in the Fund may be expended.

### **SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY PROCEEDINGS**

Under the current provisions of Part 5, money paid by way of compensation is recoverable from a person who is convicted of an offence arising out of the same facts as those on which the compensation was paid. A recovery action is commenced by the Crown and determined by the Victims Compensation Tribunal in accordance with the procedures of a Local Court exercising civil jurisdiction. The Tribunal can determine the action by making a determination for restitution that, when filed in a court of competent jurisdiction, becomes a judgment of that court.

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Under the proposed amendments, it is intended that a recovery action will be commenced by the Registrar of the Tribunal by means of a notice to the defendant to show cause why a determination for restitution should not be made against him or her (Schedule 2 (4) - proposed section 43). The defendant will be able to file a notice of intention to show cause (Schedule 2 (4) - proposed section 44). The Tribunal will proceed to determine the matter (whether or not a notice of intention to show cause has been filed) and may decide to proceed with or without a hearing unless such a notice has been filed, in which case it must conduct a hearing (Schedule 2 (4) - proposed section 45). Once satisfied that it is appropriate to do so, the Tribunal may make a determination for restitution against the defendant; provision is to be made enabling the amount of money to be repaid to be agreed on between the Registrar of the Tribunal and the defendant (Schedule 2 (6) - proposed section 47).

Further amendments will provide for:

- (a) the payment of witnesses' expenses (Schedule 2 (7) - proposed section 47A);
- (b) the limiting to 1 month of the time within which an appeal can be made from a determination of the Tribunal (Schedule 2 (9) - proposed section 49 (2));
- (c) the setting aside of determinations for restitution (Schedule 2 (10) - proposed section 49A); and
- (d) the granting of a stay of execution of a judgment of a court that is founded on a determination for restitution that is the subject of proceedings to have the determination set aside (Schedule 2 (10) - proposed section 49B).

A new Division 2 is being inserted into Part 5 in relation to the recovery of money paid to claimants for compensation who are subsequently convicted of fraud in relation to their claims (Schedule 2 (11)). The proposed Division includes the following provisions:

Proposed section 51A defines certain expressions for the purposes of the proposed Division.

Proposed section 51B enables the Tribunal to make a determination for restitution against a person who has been convicted of an offence in relation to the fraudulent obtaining of an award of compensation. Such a determination must be made within 2 years after the person is convicted of the offence.

Proposed section 51C provides for the entry of such a determination as a judgment of a court having jurisdiction to order payment of the amount specified in the determination.

**SCHEDULE 3 - MISCELLANEOUS AMENDMENTS**

This Schedule contains minor amendments and amendments that are merely consequential or ancillary to other amendments to be made by the proposed Act. The minor amendments include provisions:

- (a) enabling the Tribunal to be assisted by the Crown Solicitor in the exercise of its jurisdiction (Schedule 3 (3) - proposed section 9A);

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- (b) enabling a secondary victim of an act of violence to get a speedy determination of his or her claim for compensation by giving notice to the primary victim, or to a close relative of the deceased victim, through whom he or she is claiming that the secondary victim proposes to claim compensation (Schedule 3 (5) (a) - proposed section 15 (2) and (2A));
- (c) enabling a person to claim compensation in relation to an act of violence in more than one capacity (e.g., as a secondary victim and as a close relative of a deceased victim) (Schedule 3 (5) (b) and 3 (6));
- (d) clarifying the Tribunal's discretion as to whether or not a hearing should be conducted into a claim for compensation (Schedule 3 (8));
- (e) enabling the Tribunal to require an applicant for compensation to undergo, at the Tribunal's expense, a medical or psychological examination (Schedule 3 (9) - proposed section 18A);
- (f) varying the matters to be taken into account in determining the amount of compensation that should be paid to a claimant (Schedule 3 (10));
- (g) relocating the provisions relating to the payment of certain costs (Schedule 3 (11) - proposed section 24A and Schedule 3 (17));
- (h) restricting the operation of section 25 (which restricts the admissibility of evidence given at a compensation hearing in subsequent criminal proceedings) to an application for compensation and its supporting documentation and to the transcript of evidence of the proceedings on the application (Schedule 3 (12));
- (i) reducing, from 2 months to 1 month, the period within which an appeal may be made to the District Court against a determination made by the Tribunal with respect to an application for compensation, and ensuring that an appeal operates to stay the liability of the Crown to pay compensation under the determination against which the appeal is made (Schedule 3 (13));
- (j) requiring an applicant for compensation to obtain the leave of the Tribunal in relation to any evidence that he or she wishes to adduce in a compensation hearing (Schedule 3 (14));
- (k) enabling the Registrar to exercise the powers of the Tribunal with respect to the summoning of witnesses (Schedule 3 (15));
- (l) enabling the Secretary of the Attorney General's Department to delegate to a Deputy Secretary or Assistant Secretary of that Department any of his or her functions under the Principal Act (Schedule 3 (19) - proposed section 71A); and
- (m) enabling rules to be made with respect to the service of documents (Schedule 3 (20)).

The Schedule also inserts into the Principal Act a Schedule of savings, transitional and other provisions (Schedule 3 (23) - proposed Schedule 2).

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