

Passed by both Houses



New South Wales

Civil Liability Amendment (Offender Damages) Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Civil Liability Amendment (Offender Damages) Bill 2005

Act No , 2005

An Act to amend the *Civil Liability Act 2002* to make further provision with respect to claims for damages for negligence for death or injury suffered by offenders in custody; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Civil Liability Amendment (Offender Damages) Act 2005*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Civil Liability Act 2002 No 22

The *Civil Liability Act 2002* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 26A Definitions

Omit “under” from paragraph (e) of the definition of *offender in custody* or *offender* in section 26A (1) where firstly occurring.

Insert instead “under, or attending a place in compliance with the requirements of,”.

[2] Section 26D Assessment of permanent injury

Insert at the end of section 26D (2) (c):

, and

- (d) section 330 (Costs of medical assessment) of the 1998 WC Act were omitted from that Part, and
- (e) a reference in that Part to the WorkCover Guidelines were a reference to guidelines issued under subsection (2A), and
- (f) the provisions of that Part applied with such other modifications as may be prescribed by the regulations.

[3] Section 26D (2A)–(2C)

Insert after section 26D (2):

- (2A) The Minister administering the CAS Act may, by order published in the Gazette, issue guidelines for the purposes of the application of Part 7 of Chapter 7 of the 1998 WC Act to offenders in respect of the same kinds of matters for which the WorkCover Guidelines may make provision for the purposes of that Part.
Note. The Minister may amend or repeal an order made under this subsection. See section 43 of the *Interpretation Act 1987*.
- (2B) Without limiting subsection (2A), an order made under that subsection may apply, adopt or incorporate (whether wholly or in part or with or without modifications) the provisions of the WorkCover Guidelines, either as published or as in force from time to time.
- (2C) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order made under subsection (2A) in the same way as they apply to a statutory rule.

[4] Section 26D (6)

Insert after section 26D (5):

- (6) In this section:
modification includes an addition, omission or substitution.
WorkCover Guidelines has the same meaning as it has in the 1998 WC Act.

[5] Section 26I Non-economic loss damages limited to workers compensation amount

Omit section 26I (2). Insert instead:

- (2) When determining the total amount to which a worker would be entitled as compensation under a provision of the *Workers Compensation Act 1987*:
- (a) the amount is to be determined under the provision as it was in force when the injury to the offender was received, and
 - (b) if the provision is section 67 of that Act—the section applies as if the reference to the Commission in subsection (4) of that section were a reference to the court.

[6] Section 26J Authority for deduction from damages

Insert after section 26J (3):

- (3A) A protected defendant who withholds an amount under subsection (3) may require the Public Trustee to hold the amount on its behalf. However, the protected defendant must require the Public Trustee to hold the amount if the offender requests it.
- (3B) Interest is payable on an amount that is withheld under subsection (3). The amount of interest payable on the withheld amount is:
 - (a) if the protected defendant has retained the withheld amount—the amount of interest determined in accordance with the provisions relating to interest payable under a judgment of the same amount of a Local Court in proceedings on a statement of claim under the *Local Courts (Civil Claims) Act 1970*, or
 - (b) if the Public Trustee holds the withheld amount for the protected defendant—the amount of interest received by the Public Trustee in respect of the investment of the amount as provided by the *Public Trustee Act 1913*.

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- (3C) If the provisional order for restitution on the basis of which an amount was withheld under subsection (3) is confirmed under the *Victims Support and Rehabilitation Act 1996*, any interest payable on the withheld amount under this section must be paid as follows:
- (a) if the Public Trustee holds the withheld amount for the protected defendant—the reasonable costs of the Public Trustee in connection with that holding are to be paid out of the interest,
 - (b) if the amount ordered for restitution is not reduced on the confirmation—all of the interest (or remaining interest after payment of the Public Trustee’s costs) must be paid to the person (*payee*) to whom the order for restitution requires payment to be made or, if there is more than one payee, to each payee in the same proportion as corresponds to the payee’s proportion of the total amount of restitution,
 - (c) if the amount ordered for restitution is reduced on the confirmation:
 - (i) the offender must be paid the proportion of the interest (or remaining interest after payment of the Public Trustee’s costs) that corresponds to the proportion by which the withheld amount was reduced, and
 - (ii) the rest of the interest must be paid to the payee or, if there is more than one payee, to each payee in the same proportion as corresponds to the payee’s proportion of the reduced amount.

[7] Section 26J (4) and (5)

Insert “or the Public Trustee (as the case may be)” after “protected defendant” wherever occurring.

[8] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Civil Liability Amendment (Offender Damages) Act 2005

[9] Schedule 1, Part 5

Omit “the date of assent to the *Civil Liability Amendment (Offender Damages) Act 2004*” from clause 16 (2) (c).

Insert instead “19 November 2004 (being the day on which Part 2A commenced)”.

[10] Schedule 1, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of Civil Liability Amendment (Offender Damages) Act 2005

17 Definitions

In this Part:

amending Act means the *Civil Liability Amendment (Offender Damages) Act 2005*.

commencement day means the day on which the amending Act commences.

18 Application of amendments made by amending Act

- (1) Part 2A (as amended by the amending Act) applies to any civil liability whether arising before, on or after the commencement day.
- (2) Part 2A (as so amended) also extends to proceedings commenced before the commencement day.
- (3) However, subclause (1) or (2) does not operate:
 - (a) to apply Part 2A in respect of any decision of a court made before the commencement day, or
 - (b) to apply Part 2A in relation to any civil liability or proceedings to which the Part did not apply immediately before the commencement day.

19 WorkCover Guidelines

- (1) A reference to the WorkCover Guidelines in a provision of Part 7 of Chapter 7 of the 1998 WC Act that is extended to an assessment of degree of permanent impairment for the purposes of Part 2A of this Act by section 26D is to continue to be read as a reference to the WorkCover Guidelines until guidelines are issued under section 26D (2A) (as inserted by the amending Act).
- (2) Subclause (1) applies despite section 26D (2) (e) (as inserted by Schedule 1 [2] to the amending Act).

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- (3) In this clause, *1998 WC Act* and *WorkCover Guidelines* have the same meanings as they have in section 26D (as amended by the amending Act).