

[Act 1998 No 134]



New South Wales

Victims Compensation Amendment Bill 1998

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 *Victims Compensation Act 1996*

- (a) to deduct the amount of \$750 from all awards where the total amount of statutory compensation in respect of an offence is less than \$20,001. and
- (b) to reduce the maximum number of additional paid hours of counselling for victims from 20 hours to 6 hours, while retaining the ability of family victims or victims of sexual assault offences or other persons demonstrating need. to apply for additional paid counselling. and
- (c) to extend the period during which a provisional order for restitution may be made against a person to 2 years after the date on which the person was convicted of the offence. and
- (d) to enable persons who obtain property as part of a scheme to avoid paying restitution to be made subject to restitution orders. and

* Amended in committee—see table at end of volume.

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- (e) to enable restitution orders to be registered so as to create charges on property, and
- (f) to enable restraining orders to be obtained to prevent persons who are or may become subject to a restitution order from disposing of property in order to avoid paying restitution and to enable transactions entered into to avoid restitution or restraining orders to be set aside, and
- (g) to establish injuries inflicted in circumstances of domestic violence as a new category of compensable injury under the statutory compensation scheme, and
- (h) to remove statutory compensation for the compensable injury of shock and replace it with a new injury category of psychological or psychiatric disorder, and
- (i) to require applications for compensation for psychological or psychiatric disorder to be accompanied by assessments by approved medical practitioners or psychologists, and
- (j) to make other minor or consequential amendments as well as savings and transitional provisions as a consequence of the proposed Act.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Victims Compensation Act 1996* set out in Schedule 1.

Schedule 1 Amendments

Deduction from compensation

Schedule 1 [2] provides for the deduction of the amount of \$750 (or such other amount as may be prescribed by the regulations) from any statutory compensation award that is less than \$20,001 (or such other amount as may be prescribed by the regulations). The deduction will not apply to an award made to a family victim and will not be taken into account for the purpose of determining whether compensation is payable under section 20 (Threshold amount of compensation). The deduction will not apply unless the total amount of compensation awarded to a primary and all secondary victims, at the time an award is made, is less than \$20,001.

Payments for counselling of victims

Currently, a victim who is eligible for statutory compensation may apply for payment for approved counselling services for an initial 2 hours. An additional 20 hours may be approved by a compensation assessor and further periods may be approved by the Director of Victims Compensation.

Schedule 1 [3] and **[7]** extend the category of persons who may apply for payment for approved counselling services to any person who has suffered an injury as a consequence of an act of violence, whether or not the person has received a compensable injury. **Schedule 1[7]** also excludes persons injured in motor accidents, offenders and convicted inmates from applying for payment of approved counselling services.

Schedule 1 [4] reduces the maximum amount of paid counselling services after the initial 2 hour period to 6 hours but allows a compensation assessor to approve further periods of counselling for family victims, victims of sexual assaults or other victims who demonstrate a special need for additional counselling. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [6] enables the review by the Director of a decision by a compensation assessor about additional hours of paid counselling.

Schedule 1 [8] inserts proposed section 21A which continues the power of the Director to approve counsellors who may provide approved counselling services and which enables such an approval to be subject to conditions. **Schedule 1 [7]** makes a consequential amendment.

Restitution orders

Schedule 1 [11] includes the period of 2 years after a person is convicted of an offence in the periods to be taken into account when considering whether time has run out to obtain a provisional order for restitution.

Schedule 1 [12] inserts proposed section 46A which enables a provisional restitution order to be made by the Director of Victims Compensation against a person (not being an offender) who has obtained property as part of a scheme to avoid liability under the restitution provisions of the Principal Act and who has not paid sufficient consideration for the property.

Schedule 1 [14] empowers the Tribunal to confirm the provisional order for restitution as a restitution order if it is satisfied that the grounds for making the order have been established.

Schedule 1 [10] [13] and **[15]** make consequential amendments.

Charges on property

Schedule 1 [16] inserts proposed sections 58A and 58B. Proposed section 58A enables the Director of Victims Compensation to apply to have the Registrar-General register a restitution order in relation to land owned by the person subject to the order. The effect of registration will be to create a charge on the land to secure payment to the Compensation Fund Corporation of the amount payable under the restitution order. Proposed section 58B provides for cancellation of the charge by the Compensation Fund Corporation. **Schedule 1 [9]** makes a consequential amendment.

Restraining orders and other property orders

Schedule 1 [17] inserts proposed Division 9 of Part 2 (proposed sections 58C–58M). The proposed Division contains a scheme that enables restraining orders to be obtained to prevent persons who may be, or who are, subject to restitution orders under the Principal Act from disposing of property so as to avoid paying restitution. The proposed Division also contains provisions enabling orders to be made setting aside certain transactions contravening restraining orders or entered into for the purpose of avoiding payment of restitution.

Proposed section 58C applies the proposed Division to a person charged with an offence in relation to which an act of violence occurred resulting in an injury to a victim for which statutory compensation may be paid, and to a person convicted of an offence in relation to which such an act of violence occurred. The proposed section will also apply to a person who has obtained property as part of a scheme to avoid liability under the restitution provisions of the Principal Act. The proposed section also contains other interpretation provisions.

Proposed section 58D defines a restraining order as an order directing that property of a defendant is not to be disposed of, or otherwise dealt with, by the defendant or any other person, except in such manner and in such circumstances (if any) as are specified in the order.

Proposed section 58E entitles an appropriate officer (that is, the Director of Victims Compensation, the Director of Public Prosecutions, the Commissioner of Police or any other person prescribed by the regulations) to apply to the Supreme Court for a restraining order. The Court may require notice to be given to persons who have an interest in the property or part of it of the application and such persons may appear and adduce evidence.

Proposed section 58F enables the Supreme Court to make a restraining order if satisfied that the criteria for the application have been met and that it is appropriate in the circumstances to make the order. The Court is also to consider the defendant's circumstances. A restraining order cannot be made if there is already a restraining order in force under the *Criminal Assets Recovery Act 1990* or the *Confiscation of Proceeds of Crime Act 1989*.

Proposed section 58G enables the Supreme Court to refuse to make a restraining order if the person applying for the order fails to give undertakings considered appropriate by the Court with respect to the payment of damages or costs.

Proposed section 58H confers power on the Supreme Court to make ancillary orders.

Proposed section 58I requires authorities to register restraining orders when charges over property may be registered and provides for the consequences of registration. The clause also enables the lodging of caveats in respect of the property concerned.

Proposed section 58J gives the Supreme Court power to revoke a restraining order on the application of a person in relation to whose property it was made or on the application of an appropriate officer.

Proposed section 58K sets out when a restraining order ceases to be in force.

Proposed section 58L makes it an offence to knowingly contravene a restraining order and imposes a maximum penalty of the value of the property or 2 years' imprisonment, or both. The proposed section also makes it an offence to knowingly dispose of, or otherwise deal with, property for the purpose of avoiding a liability (whether actual or potential) under the restitution provisions of the Principal Act and imposes a maximum penalty of the value of the property or 2 years' imprisonment, or both. **Schedule 1 [18]** requires the penalties to be paid into the Compensation Fund.

Proposed section 58M enables an application to be made to have any disposition of or dealing with property that contravenes a restraining order set aside if the disposition or dealing was not done in good faith or was not for sufficient consideration. The proposed section also enables the Supreme Court to make an order setting aside a disposition of, or dealing with, property if a restraining order may be sought against the property, the disposition or dealing occurred before a restraining order was obtained and the disposition or dealing was not done in good faith or was not for sufficient consideration. The proposed section does not affect the rights of a person who obtained property from a person in good faith and gave consideration that was at least as valuable as the market value of the property at the time of its transfer.

Public trustee fees

Schedule 1 [19] enables fees to which the Public Trustee is entitled under the *Confiscation of Proceeds of Crime Act 1989* to be paid from the Compensation Fund.

New compensable injury of domestic violence

Schedule 1 [22] inserts in the Schedule of compensable injuries the injury of domestic violence, consisting of:

- (a) injury resulting from an act that occurred in the commission of an offence arising, in the opinion of a compensation assessor or other person determining whether statutory compensation is available, in a domestic violence context, or
- (b) injury arising from the intimidation or stalking of a person (within the meaning of section 562A of the *Crimes Act 1900*) in apparent contravention of an apprehended violence order in force under Part 15A of that Act.

Guidelines may be issued by the Tribunal as to the circumstances of paragraph (a). **Schedule 1 [1], [30] and [31]** make consequential amendments.

The range of compensation payable for such an injury will be \$2,400–\$10,000 (see **Schedule 1 [23]**).

Nervous shock and psychological or psychiatric disorders

Currently, statutory compensation is payable for the injury of shock. This injury category is to be repealed and replaced by a new injury category of psychological or psychiatric disorder. Statutory compensation may still be obtained for injuries of that kind in respect of injuries suffered in, and covered by, the global categories of sexual assault and domestic violence.

Schedule 1 [21] requires a person applying for statutory compensation for the compensable injury of psychological or psychiatric disorder to obtain an assessment from a list of qualified persons designated by the Director of Victims Compensation. The item also repeals the separate injury category of shock.

Schedule 1 [24] inserts in the Table of compensable injuries the injury of psychological or psychiatric disorder. This covers chronic disorders that are severely disabling (\$30,000–\$50,000 compensation).

Schedule 1 [20], [25], and [29] make consequential amendments.

Production of documents

Schedule 1 [26] enables the Tribunal to require the production of documents to enable assessors to determine applications for statutory compensation and for the purposes of other matters dealt with by the Tribunal.

Savings and transitional provisions

Schedule 1 [27] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 1 [28] inserts savings and transitional provisions consequent on the enactment of the proposed Act. In particular, the provisions apply the procedures relating to restraining orders and other property to transactions and other matters occurring before the commencement of the proposed Act.