

VICTIMS COMPENSATION BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Miscellaneous Acts (Victims Compensation) Repeal and Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to provide for the constitution and functions of the Victims Compensation Tribunal (Part 2);
- (b) to provide for the making of compensation awards by the Tribunal (Parts 3 and 4);
- (c) to enable amounts paid by way of compensation to be recovered from persons convicted of offences in respect of which compensation has been awarded (Part 5);
- (d) to preserve the existing powers of the courts (currently contained in sections 437 and 554 of the Crimes Act 1900) to give directions for the payment of compensation (Part 6); and
- (e) to make other provisions of a minor, consequential or ancillary nature.

PART 1—PRELIMINARY

This Part contains provisions—

- (a) specifying the short title of the proposed Act (clause 1);
- (b) providing that the proposed Act is to commence on a day to be appointed by proclamation (clause 2); and
- (c) defining certain words and expressions for the purposes of the proposed Act (clause 3).

PART 2—THE TRIBUNAL

This Part contains provisions—

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- (a) providing for the constitution of the Victims Compensation Tribunal (clause 4);
- (b) specifying the jurisdiction and functions of the Tribunal (clause 5);
- (c) enabling the Chairperson of the Tribunal to authorise specified Magistrates to exercise the jurisdiction and functions of the Tribunal (clause 6);
- (d) enabling the jurisdiction and functions of the Tribunal to be exercised by a single member of the Tribunal or by an authorised Magistrate (clause 7);
- (e) enabling more than one sitting of the Tribunal to be held at the same time (clause 8); and
- (f) providing for the appointment of a Registrar and other staff for the Tribunal (clause 9).

PART 3—COMPENSATION AWARDED BY THE TRIBUNAL

Division 1—Preliminary

This Division contains a provision defining certain words and expressions for the purposes of the proposed Part 3 (clause 10).

Division 2—Eligibility for compensation

This Division contains provisions—

- (a) specifying the compensation for which a primary victim of an act of violence is eligible (clause 11);
- (b) specifying the compensation for which a secondary victim of an act of violence is eligible (clause 12);
- (c) specifying the compensation for which a close relative of a deceased victim of an act of violence is eligible (clause 13);
- (d) specifying the compensation for which a law enforcement victim is eligible (clause 14);
- (e) specifying certain classes of person who are not eligible for compensation (clause 15); and
- (f) specifying the maximum amount of compensation which is payable in respect of any single event (clause 16).

Division 3—Compensation proceedings

This Division contains provisions—

- (a) providing for the making of applications for compensation (clause 17);
- (b) requiring the Tribunal to consider each application made to it and requiring it, except in certain specified circumstances, to conduct a hearing into each such application (clause 18);
- (c) requiring the Tribunal to determine applications for compensation made to it by making an award of compensation or by dismissing the application (clause 19);
- (d) specifying certain circumstances in which the Tribunal may refuse to award compensation or may reduce the amount of compensation that it might otherwise have awarded (clause 20);
- (e) specifying the factors that the Tribunal should take into consideration in determining how much compensation to award to an applicant (clause 21);
- (f) specifying to whom an award of compensation may be made payable (clause 22);
- (g) enabling the Tribunal to make interim awards of compensation (clause 23);

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- (h) enabling the Tribunal to award compensation subject to certain specified conditions (clause 24); and
- (i) limiting the circumstances in which evidence given to it in compensation proceedings may be used in subsequent criminal proceedings (clause 25).

Division 4—Payment of compensation

This Division contains provisions—

- (a) requiring the Tribunal to notify the Secretary of the Attorney General's Department of awards of compensation made by it (clause 26);
- (b) requiring the Secretary of the Attorney General's Department to pay compensation in accordance with awards made by the Tribunal (clause 27); and
- (c) specifying the effect that an award of compensation has on subsequent civil proceedings (clause 28).

Division 5—Appeals from determinations of the Tribunal

This Division contains a provision enabling an appeal to be made to the District Court in respect of the determination of the Tribunal on an application for compensation (clause 29).

PART 4—COMPENSATION HEARINGS

This Part contains provisions—

- (a) governing the procedure of the Tribunal in respect of hearings conducted by it (clause 30);
- (b) requiring hearings before the Tribunal to be open to the public except in certain specified circumstances (clause 31);
- (c) restricting the publication of the names of persons to whom hearings conducted by the Tribunal relate (clause 32);
- (d) providing for the presentation of cases in hearings conducted by the Tribunal (clause 33);
- (e) enabling the Tribunal to compel witnesses to attend hearings conducted by the Tribunal (clause 34);
- (f) requiring witnesses to answer questions put to them in hearings conducted by the Tribunal (clause 35);
- (g) imposing a penalty of 5 penalty units (that is, \$500) on a witness who fails to comply with a requirement to attend a hearing conducted by the Tribunal or to answer a question put to the witness while appearing at such a hearing (clause 36);
- (h) providing for the payment of witnesses' expenses (clause 37);
- (i) enabling the Tribunal to adjourn hearings, particularly in situations where related criminal proceedings are pending (clause 38);
- (j) enabling the Tribunal to dismiss frivolous or vexatious proceedings (clause 39);
- (k) imposing a penalty of 5 penalty units (that is, \$500) on persons who misconduct themselves in the course of hearings conducted by the Tribunal (clause 40); and
- (l) providing for the payment of costs in relation to proceedings before the Tribunal (clause 41).

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PART 5—RECOVERY OF COMPENSATION FROM OFFENDERS

This Part contains provisions—

- (a) defining certain words and expressions for the purposes of the proposed Part 5 (clause 42);
- (b) enabling recovery actions to be taken before the Tribunal (clause 43);
- (c) providing that a recovery action may be commenced against a person only if the person has been convicted in New South Wales of an offence arising out of substantially the same facts as those on which an award of compensation has been made (clause 44);
- (d) providing that a recovery action is to be heard and determined as if it were a civil claim for damages commenced in a Local Court (clause 45);
- (e) providing that the victim of an act of violence is a competent, but not compellable, witness in a recovery action and that the victim's evidence of an earlier compensation hearing is, subject to certain safeguards, admissible in evidence even though the victim does not appear as a witness in the action (clause 46);
- (f) enabling the Tribunal to make a determination for restitution against a defendant in a recovery action (clause 47);
- (g) providing for the entry of the Tribunal's determination as a judgment in a court having jurisdiction to award payment of the amount of the determination (clause 48);
- (h) providing for appeals from the determinations of the Tribunal (clause 49);
- (i) specifying the effect that a determination for restitution has on subsequent civil proceedings (clause 50); and
- (j) providing that the Tribunal has no jurisdiction to award costs in a recovery action (clause 51).

PART 6—COMPENSATION AWARDED BY A COURT

Division 1—Major offences

This Division contains provisions—

- (a) defining certain words and expressions for the purposes of the proposed Division 1 (clause 52);
- (b) enabling a court to give a direction for compensation (not exceeding \$10,000 in the case of a court, other than the Supreme Court, exercising summary jurisdiction and not exceeding \$20,000 in any other case) if it has convicted a person of a major offence (clause 53);
- (c) imposing certain restrictions on a court's power to give a direction for compensation (clause 54);
- (d) specifying certain factors that a court must take into consideration when deciding whether to give a direction for compensation (clause 55);
- (e) providing for the manner of payment of any sum directed to be paid under a direction for compensation (clause 56);
- (f) providing for the enforcement of a direction for compensation (clause 57);
- (g) specifying the effect of a direction for compensation on subsequent civil proceedings arising from the same facts (clause 58); and

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- (h) ensuring that no appeal lies against a direction for compensation merely because it directs payment of an amount greater than that subsequently awarded by way of damages in civil proceedings arising from the same facts (clause 59).

Division 2—Minor offences

This Division contains provisions—

- (a) defining certain words and expressions for the purposes of the proposed Division 2 (clause 60);
- (b) enabling a court to give a direction for compensation (not exceeding \$1,000) if it has convicted a person of a minor offence (clause 61);
- (c) imposing certain restrictions on a court's power to give a direction for compensation (clause 62);
- (d) specifying certain factors that a court must take into consideration when deciding whether to give a direction for compensation (clause 63);
- (e) providing for the manner of payment of any sum directed to be paid under a direction for compensation (clause 64); and
- (f) providing for the enforcement of a direction for compensation (clause 65).

PART 7—MISCELLANEOUS

This Part contains provisions—

- (a) requiring the Tribunal to cause a record to be kept of its proceedings (clause 66);
- (b) providing for the authentication of documents issued by the Tribunal (clause 67);
- (c) protecting the Tribunal, its members and members of staff from personal liability for anything done or omitted in the execution of their functions under the proposed Act (clause 68);
- (d) ensuring that the proceedings of the Tribunal have the protection of section 18 of the Defamation Act 1974 (clause 69);
- (e) requiring the Chairperson of the Tribunal to furnish reports to the Attorney General on the work and activities of the Tribunal (clause 70);
- (f) providing that, in certain proceedings arising under the proposed Act, the Crown is to be represented by such person as may be authorised by the regulations in that behalf (clause 71);
- (g) requiring proceedings for offences to be dealt with before the Tribunal or before a Local Court constituted by a Magistrate (clause 72);
- (h) providing that money owed to the Crown under the proposed Act may be recovered as a debt in a court of competent jurisdiction (clause 73);
- (i) enabling forms used for the purposes of the proposed Act to require information included in them to be verified by statutory declaration (clause 74);
- (j) enabling the Governor-in-Council to make rules governing the practice and procedure of the Tribunal (clause 75); and
- (k) enabling the Governor-in-Council to make regulations for the purposes of the proposed Act (clause 76).

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
TRIBUNAL

This Schedule contains provisions—

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- (a) ensuring that a Magistrate's status as a Magistrate is not affected merely because of his or her appointment as a member of the Tribunal (clause 1);
 - (b) providing that a member of the Tribunal (who may be full-time or part-time) holds office for a period not exceeding 3 years but is eligible for re-appointment (clause 2);
 - (c) excluding members of the Tribunal from the operation of the Public Service Act 1979 (clause 3);
 - (d) specifying the situations in which a member of the Tribunal shall be deemed to have vacated office (clause 4); and
 - (e) ensuring that a person does not cease to be a Magistrate merely because of his or her resignation from office as a member of the Tribunal or the expiration of his or her term of office as a member of the Tribunal (clause 5).
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