



New South Wales

Civil Liability Amendment (Offender Damages) Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to make amendments to clarify the operation of Part 2A (Special provisions for offenders in custody) of the *Civil Liability Act 2002* (the *Principal Act*).

Outline of provisions

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

Clause 2 provides that the proposed Act commences on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends the definition of *offender in custody* or *offender* in section 26A of the Principal Act to make it clear that the definition includes persons

who are attending a place in compliance with the requirements of a community service order, as well as persons while they are performing community service work.

Schedule 1 [2]–[4] amend section 26D of the Principal Act to make it clear that Part 7 of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998*, as applied by that section to the assessment of the degree of permanent impairment resulting from injuries to offenders, applies with the following additional modifications:

- (a) Section 330 (Costs of medical assessment) of that Act does not apply to any such assessment.
- (b) References to the WorkCover Guidelines are to be read as references to guidelines issued by the Minister administering the *Crimes (Administration of Sentences) Act 1999* by order published in the Gazette. Any such order must be tabled before Parliament and will be disallowable.
- (c) The provisions of Part 7 of Chapter 7 of that Act are to be applied with such other modifications as may be prescribed by the regulations.

Schedule 1 [5] amends section 26I of the Principal Act to make it clear that section 67 of the *Workers Compensation Act 1987*, in its application to determining an offender's entitlement to compensation, is to be read as if the reference in that section to the Workers Compensation Commission were a reference to the court determining the amount of compensation.

Schedule 1 [6] and [7] amend section 26J of the Principal Act to make it clear that any amount of damages withheld by a protected defendant from an offender under that section because of the making of a provisional order for restitution against the offender under the *Victims Support and Rehabilitation Act 1996* is subject to the following additional provisions:

- (a) The protected defendant 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.
- (b) Interest is payable on an amount withheld.
- (c) A proportion of the interest must be paid to the offender if the amount of the provisional order is reduced on its confirmation, otherwise the whole amount of the interest is payable to the person or persons for whom the order was made.
- (d) However, the reasonable costs of the Public Trustee in connection with holding such amount for a protected defendant may be deducted before interest is paid to the offender or the persons entitled to restitution.

Schedule 1 [8] amends Schedule 1 to the Principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

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Schedule 1 [9] amends a transitional provision relating to Part 2A of the Principal Act. The amendment makes it clear that the new Part does not affect any award of damages, settlement or consent order made before the commencement of the Part on 19 November 2004.

Schedule 1 [10] amends Schedule 1 to the Principal Act to insert a new Part containing savings and transitional provisions consequent on the enactment of the proposed Act.

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No. , 2005

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Civil Liability Amendment (Offender Damages) Act 2005</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

Schedule 1 Amendments

		1
	(Section 3)	2
[1]	Section 26A Definitions	3
	Omit “under” from paragraph (e) of the definition of <i>offender in custody</i> or <i>offender</i> in section 26A (1) where firstly occurring.	4
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	Insert instead “under, or attending a place in compliance with the requirements of,”.	6
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[2]	Section 26D Assessment of permanent injury	8
	Insert at the end of section 26D (2) (c):	9
	, and	10
	(d) section 330 (Costs of medical assessment) of the 1998 WC Act were omitted from that Part, and	11
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	(e) a reference in that Part to the WorkCover Guidelines were a reference to guidelines issued under subsection (2A), and	13
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	(f) the provisions of that Part applied with such other modifications as may be prescribed by the regulations.	15
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[3]	Section 26D (2A)–(2C)	17
	Insert after section 26D (2):	18
	(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.	19
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	Note. The Minister may amend or repeal an order made under this subsection. See section 43 of the <i>Interpretation Act 1987</i> .	24
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	(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.	26
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	(2C) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the <i>Interpretation Act 1987</i> apply to an order made under subsection (2A) in the same way as they apply to a statutory rule.	31
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[4] Section 26D (6)	1
Insert after section 26D (5):	2
(6) In this section:	3
<i>modification</i> includes an addition, omission or substitution.	4
<i>WorkCover Guidelines</i> has the same meaning as it has in the	5
1998 WC Act.	6
[5] Section 26I Non-economic loss damages limited to workers	7
 compensation amount	8
Omit section 26I (2). Insert instead:	9
(2) When determining the total amount to which a worker would be	10
entitled as compensation under a provision of the <i>Workers</i>	11
<i>Compensation Act 1987</i> :	12
(a) the amount is to be determined under the provision as it	13
was in force when the injury to the offender was received,	14
and	15
(b) if the provision is section 67 of that Act—the section	16
applies as if the reference to the Commission in	17
subsection (4) of that section were a reference to the court.	18
[6] Section 26J Authority for deduction from damages	19
Insert after section 26J (3):	20
(3A) A protected defendant who withholds an amount under	21
subsection (3) may require the Public Trustee to hold the amount	22
on its behalf. However, the protected defendant must require the	23
Public Trustee to hold the amount if the offender requests it.	24
(3B) Interest is payable on an amount that is withheld under subsection	25
(3). The amount of interest payable on the withheld amount is:	26
(a) if the protected defendant has retained the withheld	27
amount—the amount of interest determined in accordance	28
with the provisions relating to interest payable under a	29
judgment of the same amount of a Local Court in	30
proceedings on a statement of claim under the <i>Local</i>	31
<i>Courts (Civil Claims) Act 1970</i> , or	32
(b) if the Public Trustee holds the withheld amount for the	33
protected defendant—the amount of interest received by	34
the Public Trustee in respect of the investment of the	35
amount as provided by the <i>Public Trustee Act 1913</i> .	36

(3C)	If the provisional order for restitution on the basis of which an amount was withheld under subsection (3) is confirmed under the <i>Victims Support and Rehabilitation Act 1996</i> , any interest payable on the withheld amount under this section must be paid as follows:	1 2 3 4 5
(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,	6 7 8 9
(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 (<i>payee</i>) 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,	10 11 12 13 14 15 16
(c)	if the amount ordered for restitution is reduced on the confirmation:	17 18
(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	19 20 21 22 23
(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.	24 25 26 27
[7]	Section 26J (4) and (5) Insert “or the Public Trustee (as the case may be)” after “protected defendant” wherever occurring.	28 29 30
[8]	Schedule 1 Savings and transitional provisions Insert at the end of clause 1 (1): <i>Civil Liability Amendment (Offender Damages) Act 2005</i>	31 32 33
[9]	Schedule 1, Part 5 Omit “the date of assent to the <i>Civil Liability Amendment (Offender Damages) Act 2004</i> ” from clause 16 (2) (c). Insert instead “19 November 2004 (being the day on which Part 2A commenced)”.	34 35 36 37 38

[10] Schedule 1, Part 6	1
Insert after Part 5:	2
Part 6 Provisions consequent on enactment of Civil Liability Amendment (Offender Damages) Act 2005	3
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17 Definitions	6
In this Part:	7
<i>amending Act</i> means the <i>Civil Liability Amendment (Offender Damages) Act 2005</i> .	8
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<i>commencement day</i> means the day on which the amending Act commences.	10
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18 Application of amendments made by amending Act	12
(1) Part 2A (as amended by the amending Act) applies to any civil liability whether arising before, on or after the commencement day.	13
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(2) Part 2A (as so amended) also extends to proceedings commenced before the commencement day.	16
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(3) However, subclause (1) or (2) does not operate:	18
(a) to apply Part 2A in respect of any decision of a court made before the commencement day, or	19
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(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.	21
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19 WorkCover Guidelines	24
(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).	25
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(2) Subclause (1) applies despite section 26D (2) (e) (as inserted by Schedule 1 [2] to the amending Act).	31
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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).

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