

[Act 1996 No 115]



Victims Compensation Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
This Bill is cognate with the *Victims Rights Bill 1996*.

Overview of Bill

The Bill repeals the *Victims Compensation Act 1987* and enacts a revised scheme for compensation to victims of violence.

The objects of the Bill are as follows:

- (a) to give effect to a statutory scheme of compensation for victims of crimes of violence,
- (b) to enable compensation paid under the statutory scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation,
- (c) to impose a levy on persons found guilty of crimes punishable by imprisonment for the purpose of funding the statutory scheme,
- (d) to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.

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

The principal changes made under the revised scheme are as follows:

- (a) to confine the expression “act of violence” (which gives rise to a right to statutory compensation) to acts that are of a violent nature, that comprise sexual assault or that involve certain apprehended domestic violence relating to intimidation or stalking,
- (b) to prescribe the personal injuries for which compensation is payable and the standard amount to be paid for each injury (the “schedule of compensable injuries”),
- (c) to provide for the initial determination of applications for statutory compensation to be made by compensation assessors, subject to guidelines issued by the Victims Compensation Tribunal and a full appeal to the Tribunal by any person aggrieved by a decision of a compensation assessor (with a further right of appeal to the District Court on a question of law),
- (d) to confer a right to payment for counselling of victims of crime,
- (e) to give family members of deceased victims an entitlement to the maximum amount of compensation of \$50,000 and to give family members who are financially dependent on the deceased victim priority over other family members,
- (f) to restrict the grounds on which a person may claim compensation as a secondary victim of an act of violence to those who actually witness the act of violence, but to enable the parents of children to claim for injuries suffered as a result of subsequently becoming aware of the act of violence,
- (g) to clarify the circumstances in which multiple awards of compensation are not available to the same person in relation to an act of violence that comprises a series of related acts,
- (h) to provide that convicted prisoners will not be eligible to receive statutory compensation,
- (i) to increase, from \$200 to \$2,400, the threshold below which statutory compensation is not payable,
- (j) to streamline the procedures for the recovery of compensation from persons found guilty of offences that have given rise to an award of compensation,

- (k) to increase the amount that a court can, on conviction, direct an offender to pay to a victim by way of compensation for injury or loss to the maximum amount under the Compensation scheme administered by the Tribunal, namely, \$50,000 (instead of \$20,000 in the case of a major offence and \$1,800 in the case of a minor offence),
- (l) to increase the compensation levy payable by certain offenders convicted of an offence from \$50 to \$70 in the case of a conviction on indictment and from \$20 to \$30 in the case of a summary conviction.

Outline of provisions

Part 1 Preliminary

Clause 1 specifies 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. Certain transitional arrangements are to commence on the date of assent.

Clause 3 sets out the objects of the proposed Act.

Clause 4 provides that expressions used in the proposed Act have the meanings given to them in the Dictionary at the end of the proposed Act.

Clause 5 defines *act of violence* for the purposes of the proposed Act and deals with the circumstances in which a series of related Acts is to be treated as a single act of violence for which only one award of compensation is available.

Part 2 Statutory compensation scheme

Division 1 Victims eligible for statutory compensation

Clause 6 gives primary victims, secondary victims and family victims of acts of violence an entitlement to statutory compensation.

Clause 7 defines a primary victim as a person who receives a compensable injury (as set out in the schedule of compensable injuries) or who dies as a direct result of an act of violence. The category includes certain law enforcement victims.

Clause 8 defines a secondary victim as a person who receives a compensable injury as a result of witnessing an act of violence (including, in the case of a child victim, a parent suffering such an injury after becoming aware of the act of violence).

Clause 9 defines a family victim as a member of the immediate family of a primary victim who dies as a direct result of the act of violence. The category of family members includes spouses, partners, parents, children and siblings.

Division 2 Schedule of compensable injuries

Clause 10 gives effect to the schedule of compensable injuries in Schedule 1, containing descriptions of injuries and the standard amount of compensation payable for each such injury.

Clause 11 enables the prescription of a standard amount or range of amounts of compensation for all injuries received from a particular act of violence (for example, sexual assault).

Clause 12 authorises the regulations to substitute or amend the schedule.

Clause 13 contains general provisions relating to the schedule, including discounting for multiple injuries and compensation for injuries not specifically described.

Division 3 Statutory compensation payable

Clause 14 entitles primary victims to compensation for compensable injuries and compensation for financial loss.

Clause 15 entitles secondary victims to compensation for compensable injuries and compensation for financial loss.

Clause 16 entitles family victims (without the need to establish injury) to \$50,000. If there are a number of family victims, the amount is to be shared equally among them, except that dependent family members are to have priority.

Clause 17 provides that compensation for compensable injuries is to be the standard amount set out in the schedule of compensable injuries, unless the amount is authorised to be reduced because of the conduct of the primary victim or on certain other grounds.

Clause 18 provides that compensation for financial loss is for actual expenses, actual loss of earnings and loss of personal effects. A limit of \$10,000 applies to all financial loss and a limit of \$1,000 applies to any loss

of personal effects. The rate for loss of earnings is limited to the rate prescribed for workers compensation after the first 26 weeks of incapacity.

Clause 19 limits the maximum amount of compensation payable to victims arising from a single act of violence to \$50,000. The limit applies to the primary victim and all other victims claiming through that victim.

Clause 20 imposes a threshold of \$2,400 on compensation payable to any victim (other than a family victim).

Clause 21 provides for special payments for counselling of victims.

Division 4 Persons not eligible for statutory compensation

Clause 22 provides that secondary or family victims are not eligible for compensation if the primary victim through whom they claim is not eligible to receive compensation.

Clause 23 provides for only one award of compensation for a single act of violence (including for a series of related acts).

Clause 24 excludes from statutory compensation persons who claim court awarded compensation under Part 4 of the proposed Act, persons injured or killed in motor accidents, persons engaging in criminal behaviour and convicted prisoners (other than fine defaulters or persons on remand).

Division 5 Applications for statutory compensation

Clause 25 enables an eligible victim (or a person on his or her behalf) to lodge an application for statutory compensation with the Director of Victims Compensation.

Clause 26 requires applications for compensation to be lodged within 2 years after the act of violence or, in the case of a family victim, the death of the victim. The Director may in exceptional circumstances accept a late application.

Clause 27 provides that applications for compensation are to be determined by a compensation assessor without the conduct of a hearing into the matter.

Clause 28 enables the compensation assessor to require an applicant to undergo a reasonable medical examination for the purposes of establishing the claim for compensation.

Clause 29 provides for the determination of applications by a compensation assessor in accordance with the proposed Act and the guidelines issued by the Tribunal. Notice of the determination and the reasons for it is required to be given to the applicant.

Clause 30 sets out reasons for reducing the amount of an award of compensation or for a refusal to make an award. The reasons include behaviour of the primary victim that contributed to the injury or death, a failure to report the act of violence to the police within a reasonable time having regard to the circumstances and participation by the applicant in the act of violence. The clause also provides for regard to be had to the payment of damages to the victim in civil proceedings, under workers compensation legislation or under an insurance policy.

Clause 31 provides that, where the applicant is also involved in the act of violence concerned, a proposed award can be reduced by the amount of a proposed determination under Division 8 for restitution by the applicant.

Clause 32 provides for the payment an award of compensation to the applicant or to the person on whose behalf the application was made.

Clause 33 authorises the making of interim awards of compensation in the case of financial hardship, for the purposes of funeral expenses and in other circumstances.

Clause 34 enables conditions to be imposed on the award of compensation.

Clause 35 deals with the award of costs to applicants in connection with applications for compensation. Costs in accordance with the scale prescribed by the compensation rules are payable whether or not proceedings are taken before the Tribunal and even if an application is dismissed. The clause enables complaints to be made against medical practitioners who charge excessive fees for services they provide in connection with victims compensation proceedings.

Division 6 Appeals and references to Tribunal and District Court

Clause 36 gives an applicant for statutory compensation a right to appeal to the Tribunal against any determination of a compensation assessor in respect of the application.

Clause 37 enables a compensation assessor to have an application for compensation referred to the Tribunal for determination if the assessor considers that the matter requires a hearing. The clause also enables the Chairperson of the Tribunal to refer a determination of an assessor to the Tribunal for re-determination.

Clause 38 provides for the hearing of appeals and references by the Tribunal. The Tribunal has all the powers and obligations imposed on the assessor under the proposed Act when dealing with an application.

Clause 39 provides an appeal to the District Court from a decision of the Tribunal on a question of law. The clause makes it clear that determinations relating to the application of the schedule of compensable injuries, to whether acts of violence are related or to the grant of leave for late applications are not questions of law.

Clause 40 suspends payment of statutory compensation pending the determination of any appeal.

Clause 41 makes the Compensation Fund Corporation the respondent to any appeal.

Division 7 Payment of Compensation

Clause 42 provides for the payment of awards of statutory compensation, costs and victims' counselling from the Victims Compensation Fund (or the Consolidated Fund if that fund does not have sufficient money available).

Clause 43 provides that an award of statutory compensation does not prevent civil proceedings in connection with the same matter but subrogates any such right to damages to the State to the extent of the amount of statutory compensation paid.

Clause 44 enables the recovery of statutory compensation from a fraudulent applicant.

Division 8 Recovery of compensation from offenders

Clause 45 defines relevant expressions used in the Division,

Clause 46 provides that, where a person is convicted of an offence in respect of the act of violence giving rise to an award of statutory compensation, the Director may make a provisional order for restitution (of the amount of compensation) against the person so convicted.

Clause 47 enables a convicted person to object to a provisional order for restitution.

Clause 48 provides that the Tribunal may confirm a provisional order if the convicted person does not object to it.

Clause 49 provides that the Tribunal is to conduct a hearing to determine whether to confirm a provisional order if the convicted person objects to it.

Clause 50 enables the Director and the convicted person to make an arrangement for the payment of the amount of restitution under a provisional order.

Clause 51 makes provision for the matters to be taken into account when the Tribunal confirms a provisional order (including the financial means and the culpability of the convicted person).

Clause 52 contains evidentiary and procedural provisions concerning proceedings for the confirmation of a provisional order.

Clause 53 makes provision with respect to restitution orders consequent on appeals made against the relevant order for compensation.

Clause 54 makes an order for restitution enforceable as a judgment debt against the convicted person.

Clause 55 gives the convicted person the same right of appeal against a restitution order as other persons in civil proceedings before Local Courts.

Clause 56 enables orders for restitution to be set aside by the Tribunal.

Clause 57 deals with civil proceedings in connection with the act of violence to which the order for restitution relates.

Clause 58 provides the Director with access to information about the whereabouts of an offender held by the police, the RTA and other government agencies for the purposes of taking action against a convicted person for restitution under this Division.

Part 3 Administration of statutory scheme

Division 1 Victims Compensation Tribunal

Clause 59 constitutes the Victims Compensation Tribunal (which is a continuation of the existing Tribunal). The Tribunal consists of a Magistrate appointed as Chairperson and such other Magistrates as may be appointed from time to time.

Clause 60 provides that the Tribunal has the jurisdiction and functions conferred by the proposed Act and is to act as quickly as possible.

Clause 61 enables the Chairperson of the Tribunal to authorise other Magistrates to exercise the jurisdiction and functions of the Tribunal.

Clause 62 provides that the jurisdiction and functions of the Tribunal are exercisable by a single member or authorised Magistrate.

Division 2 Director, assessors and other staff

Clause 63 provides for the appointment of a Director of Victims Compensation, a Registrar of the Tribunal and other public service staff for the purposes of the proposed Act.

Clause 64 provides for appointment of members of that staff as compensation assessors. The clause declares that the Director is a compensation assessor.

Clause 65 authorises the Tribunal to issue guidelines to compensation assessors with respect to the exercise of their functions under the proposed Act and enables the Director to allocate the work of the assessors (but without any right to interfere with the determinations of assessors on applications for statutory compensation).

Division 3 Victims Compensation Fund Corporation

Clause 66 continues the Victims Compensation Fund Corporation. The Corporation is controlled by the Director-General of the Attorney General's Department and is responsible for the management of the Victims Compensation Fund and the payment of statutory compensation under the proposed Act from that Fund.

Division 4 Victims Compensation Fund

Clause 67 continues the Victims Compensation Fund.

Clause 68 requires the payment into the Fund of the proceeds of drug trafficking and other crimes that are confiscated under relevant legislation, of money recovered from offenders in respect of whom awards of statutory compensation have been made, of levies imposed on the conviction of offenders and of money appropriated by Parliament for the purpose.

Clause 69 requires payment from the Fund of awards of statutory compensation, of the costs of administration of the Tribunal and staff under the proposed Act and of the costs of administration of the proposed Victims of Crime Bureau and Victims Advisory Board under the proposed *Victims Rights Act 1996*.

Part 4 Compensation awarded by court

Clause 70 defines an aggrieved person as a person who has suffered an injury or loss as a result of an offence committed by a convicted person or who is a member of the family of a person who has been killed as a result of such an offence.

Clause 71 authorises the court that convicts a person to direct the payment of compensation to an aggrieved person from the property of the convicted person. The maximum amount of compensation is \$50,000.

Clause 72 deals with the application of the maximum amount of compensation and other restrictions on the court's power to direct payment of compensation.

Clause 73 specifies the factors to be taken into account by the court.

Clause 74 provides for the payment of the amount directed to be paid.

Clause 75 enables the sum directed to be paid to be enforced as a judgment debt.

Clause 76 deals with the effect of a direction in subsequent civil proceedings.

Clause 77 limits rights of appeal against directions.

Part 5 Compensation levies

Clause 78 applies the Part to offences punishable by imprisonment.

Clause 79 imposes on convicted persons a levy of \$70 for indictable offences and a levy of \$30 for summary offences. The levy is payable into the Compensation Fund that is used to fund the statutory scheme of compensation.

Clause 80 provides for the enforcement of the levy.

Clause 81 deals with the effect, on the payment of the levy, of appeal proceedings in respect of the conviction.

Part 6 Miscellaneous

Clause 82 declares that the proposed Act binds the Crown.

Clause 83 requires the Chairperson of the Tribunal to provide annual reports to Parliament and any special reports required by the Minister.

Clause 84 makes material relating to applications for statutory compensation inadmissible in criminal proceedings.

Clause 85 limits the liability of the Tribunal and others engaged in the administration of the proposed Act for acts done in good faith and with reasonable care.

Clause 86 provides for offences against the proposed Act to be disposed of summarily.

Clause 87 empowers the making of compensation rules dealing with the practice and procedure of the Tribunal and other matters.

Clause 88 empowers the making of regulations for the purposes of the proposed Act.

Clause 89 gives effect to the Schedule of savings and transitional provisions.

Clause 90 repeals the *Victims Compensation Act 1987*.

Clause 91 gives effect to the Schedule of amendments of other Acts.

Clause 92 provides for the review of the proposed Act after 5 years.

Schedules

Schedule 1 contains the schedule of compensable injuries.

Schedule 2 contains provisions relating to the members and procedure of the Tribunal.

Schedule 3 contains savings and transitional provisions.

Schedule 4 contains amendments to other Acts. The proposed amendment to the *Fines and Penalties Act 1901* will enable compensation levies imposed by the proposed Act to be remitted under that Act in the same way as penalties may be remitted. The proposed amendment to section 44 of the *Prisons Act 1952* will enable prisoners to be brought to attend the Tribunal's hearings under the proposed Act.

Dictionary

The dictionary defines various words and expressions used in the proposed Act.