



PARLIAMENT OF NEW SOUTH WALES

JOINT SELECT COMMITTEE ON VICTIMS COMPENSATION

***The Collection of
RESTITUTION
from Convicted Offenders***

A Discussion Paper

June 1998

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TERMS OF REFERENCE

The Joint Select Committee on Victims Compensation is inquiring into the long term financial viability of the Victims Compensation Fund in particular the procedures used to recover compensation monies from convicted offenders having regard to:

- A. The rate of recovery of restitution monies and the costs incurred in such collection.
- B. The system of location and pursuit of offenders to ensure maximum recovery of compensation monies.
- C. The method of avoidance by offenders of their obligations to pay restitution.
- D. Any other related matters.

MEMBERSHIP OF THE COMMITTEE

The Joint Select Committee consists of five Members of the Legislative Assembly and four Members of the Legislative Council. These members are:

Legislative Assembly

Mr Anthony Stewart, MP (Chairman)
Mr James Anderson, MP
Ms Marie Andrews, MP
Mr Wayne Merton, MP
The Hon Gerald Peacocke, MP

Legislative Council

The Hon Jan Burnswoods, MLC
The Hon Michael Gallacher, MLC
The Hon Richard Jones, MLC
The Hon Bryan Vaughan, MLC

Consultant to the Committee

Mr Keith Ferguson

Secretariat

Ms Catherine Watson, Director
Ms Meryl James, Research Officer
Glendora Magno, Assistant Committee Officer

INTRODUCTION

Sections 45-58 of the Victims Compensation Act grant power to the Victims Compensation Tribunal to seek repayment from convicted offenders of compensation monies paid to victims of crime (see Appendix 1) . This is in line with government policy which supports vigorous action for recovery from convicted offenders. The Chief Magistrate of the Victims Compensation Tribunal, Mr. C. Brahe, stated in his review of the Victims Compensation Scheme that it was not intended that the establishment of the Victims Compensation Fund should absolve offenders of the responsibility to contribute to the compensation of their victims. He stated rather the Fund is intended to assist victims by providing expeditious and guaranteed payment of any award made. (Mr. C. Brahe, "Review of Victims Compensation Scheme", March 1993, p.52)

Restitution proceedings can only commence if an offender has been convicted of the offence that caused the relevant injury to the victim. In only 51.2 per cent of compensation awards is there any such convicted offender. Traditionally, the monies recovered has been substantially low. This is largely due to the fact that the majority of offenders have little in the way of assets or money. The Auditor-General highlighted these difficulties when he stated:

Given that many of the Corporation's debtors have little or no assets and are repaying debts with small instalments as agreed with the Corporation, actual recovery would be expected to be substantially lower than the amount of the potential debt." (Auditor General's Annual Report 1996, Volume 3, page 547)

Since 1994, the Victims Compensation Tribunal has recovered the following amounts:

- \$0.67 million in 1994-95;
- \$1.55 million in 1995-96; and
- \$1.80 million in 1996-97.

These amounts represent less than 2 per cent of the Fund's expenditure each year.

The 1996 legislative amendments were introduced to streamline a somewhat complex and time consuming recovery process. They provide for a more efficient recovery procedure by reducing the time frame previously required by legislation. Specific power is also given to the Tribunal to obtain

information about offenders' whereabouts and it is given all the powers of a Local Court under the *Local Courts Civil Claims Act (1970)* to order repayments of monies.

Despite these amendments, there are still many impediments to the recovery of restitution from offenders. These include delays between trials and the receipt of applications; the reliance on offenders to list assets; the fact that many offenders are in prison at the time of ordering restitution; and the difficulties in locating the whereabouts of those who aren't.

The recent publicity concerning the case of an offender transferring title in a house for one dollar to his brother in order to avoid paying restitution indicates it may be appropriate to reconsider some aspects of the recovery procedure (see Appendix 2) to ensure that offenders are not avoiding their obligation to the Victims Compensation Fund. As a result of this story, the Premier has written to the Committee and asked it to inquire into avoidance of restitution issues (see Appendix 3).

The paper canvasses a number of areas for consideration.

ISSUE NO. 1.

Disposal of Assets by Offenders To Avoid Paying Restitution

In many victims compensation cases, there is a significant time lag between when the offender is convicted of a criminal offence and when the Tribunal takes restitution action. This is due to the fact that it may take sometime for the victim to lodge an application for compensation following the criminal trial. This time lag provides ample opportunity for offenders to dispose of any assets they may have.

The case of Anthony Reid illustrates this point. Anthony George Reid was found guilty and convicted on 25 May 1997 of two indecent assault charges and one charge of buggery. The offences involved a male relative. Reid was sentenced on 9 October 1997 to 16 years gaol on a number of sexual abuse charges including six charges of sexual intercourse with a child under 10 years of age. At the time of sentencing the Judge took into account a further eight charges of indecent assault, aggravated indecent assault and sexual intercourse with a child under 10 years. The crimes stretched over 15 years and involved children between seven and ten years of age.

In March 1998 one of Reid's victims and the victim's mother applied to the Victims Compensation Tribunal for compensation. The Tribunal is yet to make a determination on the applications. A substantial amount of compensation will most likely be paid to these victims. Potentially, more of Reid's victims may come forward for compensation.

On 23 June 1997 Anthony Reid transferred his Narrabeen property to his brother for the nominal sum of \$1.00. The property had a market value of \$400,000. It is believed that this was done in an attempt to avoid civil liabilities and restitution in relation to his crimes. The transfer of the house prevents the Tribunal from enforcing any restitution order through the seizure and sale of his property as the property is now legally owned by Reid's brother.

This case is not necessarily an isolated one. As reported in the Victims Compensation Tribunal Annual Report of 1995/96 the Chairperson, Mr. Brahe, noted information received by the Tribunal regarding legal advice not to accumulate any assets until restitution action had been completed.

The Tribunal is aware of one case where a solicitor advised his client - a convicted offender - in these terms -

We might add that it has been brought to our attention that Mr...is pursuing a claim for criminal compensation and as indicated to you in the course of conference, it may be that the Government seeks to recouperate (sic) any award made to Mr. from yourself. Accordingly, it is our suggestion that you do nothing to accumulate assets until such time as any claim for reimbursement by the Government has been made against you.

Clearly that firm wants to ensure that the Government recovers little or nothing from the offenders.

Options for reform:

1. **Should the *Victims Compensation Act 1996* be amended to give the Tribunal power to declare a transfer of property void in circumstances where the transfer has clearly been made to defeat the recovery of compensation payments? This would be similar to the provisions of Section 121 of the *Bankruptcy Act* (see Appendix 4).**
2. **Should the Tribunal be given the discretionary power, in cases similar to Reid's matter, to freeze or even seize the assets of an offender until it can be determined whether any applications have been, or will be made? Similar power has been inserted in the *Criminal Injuries Compensation Act (TAS)* following the Port Arthur killings. These amendments provided that where a person is convicted of a serious offence and applications for compensation exceed \$100,000 in value, the court can take control of the property and, on conviction, order forfeiture of the property.**
3. **Should the *Victims Compensation Act 1996* be amended to provide that it is an offence to transfer assets if such transfer has been made to reduce or defeat the offenders obligation to pay restitution.**

ISSUE NO. 2:
Hiding of Assets by Offenders
To Avoid Paying Restitution.

The recovery procedures give the Victims Compensation Tribunal similar standing to a Local Court under the *Local Court (Civil Claims) Act* to enforcement its restitution orders. Despite this, the ability of the Tribunal to locate ownership of assets is limited. In most instances discovery of assets is only determined through examination of the offender before a Registrar or from information received by a Sheriff's Officer when attempting to seize goods. In each case it depends largely on the evidence supplied to the authority by the offender themselves. Offenders seeking to avoid their obligation to pay restitution tend to only very reluctantly provide information concerning any assets they might have and even whether they work and, if so, the name of their employer. Any such information supplied may not be accurate to undertake a detailed investigation and inquiry of the offender's alleged lack of assets can be time consuming and costly.

The difficulties in locating the whereabouts of the offender and then obtaining evidence of his/her assets, results in a low recovery rate of compensation monies. As noted in the Tribunal's Annual Report of 1995-96, in the overall context of the awards paid the amount recovered is infinitesimal.

In the criminal court system, the offender is normally required to provide some information concerning his/her economic situation including income and financial commitments at the time of sentencing. In cases involving injury to a victim, the offender could be required to supply the Court with detailed information concerning his or her assets and liabilities supported by documentary evidence. While it is true that not all possible victims of crime apply for compensation, in cases involving serious injury to victims, for instance sexual assaults, evidence supplied in this forum may be of significant benefit to the Tribunal.

Issues for Consideration:

4. **In criminal cases where a victim has sustained injury and the offender is convicted, should the offender be required to provide the court with evidence of current assets and liabilities? Should this information then be made available to the Tribunal.**

ISSUE NO. 3.

Difficulty in Locating Offenders

Prior to the 1996 legislative amendments in **42 per cent** of cases referred to the Debt Recovery Office for enforcement the location of offenders has been unknown. The inability to locate offenders is due to a number of factors including the time lag between a criminal court conviction and the granting of a compensation award, the transient nature of offenders and limited access to government records.

Traditionally, the delay in issuing enforcement orders has been a contributing factor in the failure to locate offenders. Victims of crime have two years from the date of the act of violence to lodge applications for compensation. Further, a discretion is included in the Act for Victims to lodge applications after the two year period has lapsed. A substantial portion of these late applications are from victims of sexual assault. In particular, child victims of sexual assault who may not have been aware of the provisions of victims compensation at the time of the offender's conviction. Since the conviction the offender may have moved address and it is difficult for the Tribunal to ascertain their whereabouts.

The 1996 amendments provided that all State Government agencies, for example the Roads and Traffic Authority and the Police Service, should provide the Tribunal with all information concerning the whereabouts of the offenders. The amendments enable the Tribunal to locate offenders more efficiently. However, a portion of offenders do not own a car or have a drivers license even have their addresses recorded by other state government departments. Further, drivers licenses are only renewed every five years.

The most valuable and current information on citizens is held by the Commonwealth Government. Offenders who are working are required to lodge taxation returns and if the Tribunal was able to gain access to Department of Taxation records then more offenders could be located. Similarly, offenders who are in receipt of social security benefits, will have their details held by the Department of Social Security. If the Tribunal was given access to these records then more offenders could be called upon to make some contribution towards their victims injuries by means of garnishee

orders on social security benefits. However, In the past the Commonwealth government has been reluctant to release such information to State governments citing privacy legislation.

Issues for Consideration:

- 5. Should further discussion be held with the Commonwealth Government regarding the provision of details relating to offenders through Social Security and Taxation records when these offenders are liable to pay restitution and cannot be otherwise located?**

ISSUE NO. 4: Pursuing Restitution Against Prisoners

The higher awards in victims compensation are paid to victims who have sustained serious injuries. The nature of the injury means that more likely than not the offenders receives a significant gaol term. This is particularly apparent in cases of sexual assault, homicide and robbery with violence.

The Tribunal is required under the legislation to pursue offenders who are currently in prison to recover compensation monies paid to their victims.

At the time of making a restitution order the Tribunal has a discretion to reduce the amount ordered to be recovered having regard to the financial means of the offender. If, at the time of instituting recovery proceedings the offender remains in prison then his or her capacity to pay is minimal. Prisoners can, in certain circumstances, earn money in prison, at times quite significant amounts. In these circumstances the provision in the 1996 amendments which enable the Tribunal to enforce a restitution order against a prisoner by the attachment of a convicted offender's prison earnings ensures wherever possible the monies earned in prison are directed towards compensating the victim. However, in most cases prisoners do not earn sufficient prison wages to make this worthwhile.

It is a question of whether the Tribunal should pursue restitution while the offender remains in prison, unless there is evidence of reasonable prison earnings, or wait until the offender has finished the prison term and is in a position to earn sufficient money to repay the compensation award.

Issues for Consideration:

- 6. Should consideration be given as to whether it is viable for the Tribunal to pursue restitution while the offender remains in prison?**
- 7. Should consideration be given as to whether the Tribunal should defer pursuit of restitution until the offender has been released from prison.**

ISSUE NO. 5: Restitution Orders Against One or More Offenders

In cases where the victim receives an injury at the hands of more than one offender the 1996 Act enables the Tribunal to seek restitution against all convicted offenders. In all instances the Tribunal will initially commence restitution action against all offenders convicted of the crime relating to the injury caused to the victim. The Tribunal has the discretion to reduce the amount each offender has to pay according to their individual financial means. If one offender has greater financial means than his or her co-offenders then they may be ordered to pay a larger portion of the compensation monies. In some cases the one offender may be required to pay the whole amount of restitution. Offenders with little or no assets and minimal financial means may not be required to pay any restitution, irrespective of their culpability in the commission of the offence.

This may result in an injustice to an offender who is required to pay the full amount of restitution if their level of involvement in the crime is low and allow other more culpable offenders to avoid paying their share.

Issues for Consideration:

- 8. Should all offenders be required to contribute restitution according to their levels of culpability?**

Section 43 Victims Compensation Act 1996 No 115

Part 2 Statutory compensation scheme
Division 7

- (2) Subject to subsection (3), an award of statutory compensation does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings must be assessed without regard to the award.
- (3) On the payment to a person of an award of statutory compensation, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the award is based is, by operation of this section, subrogated to the State to the extent of the amount of compensation so paid.
- (4) This section does not limit the operation of section 57 or 76.

44 Recovery from fraudulent claimants

- (1) If a person is convicted of:
 - (a) an offence of obtaining an award of statutory compensation by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement, or
 - (b) an offence, in relation to the obtaining of an award of statutory compensation, of a kind prescribed by the compensation rules,the Tribunal may, on application by the Director, make an order for restitution for such amount as has been paid to the person under the award.
- (2) An order for restitution may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence.
- (3) The provisions of Division 8 relating to the recovery of money under an order for restitution under that Division apply to an order for restitution under this section.

Division 8 Recovery of compensation from offenders

45 Definitions

In this Division:

defendant means the person on whom a provisional order for restitution is served.

notice of objection means notice by the defendant under section 47 of objection to the confirmation of a provisional restitution order.

order for restitution means a provisional order for restitution that is confirmed by the Tribunal under section 48 or 49.

provisional order for restitution means a provisional order for restitution that is made by the Director under section 46.

recovery proceedings means proceedings of the Tribunal concerning the confirmation of a provisional order for restitution.

victim means a person to whom an amount has been paid under an award of statutory compensation.

46 Director may make provisional order for restitution by offender

- (1) If the Director is of the opinion that, before or after an award of statutory compensation is made, a person has been convicted of a relevant offence, the Director may make a provisional order for restitution against the person so convicted.
- (2) A *relevant offence* is:
 - (a) an offence arising from substantially the same facts as those constituting an act of violence in respect of which the award of statutory compensation was made, or
 - (b) any other offence if an offence referred to in paragraph (a) was taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that other offence.
- (3) The Director must cause notice of the provisional order to be served on the person so convicted in accordance with the compensation rules.
- (4) The notice of the provisional order must:
 - (a) set out the terms of the order, and
 - (b) specify the date on which the award of statutory compensation was made and the facts on which the award was based, and

- (c) specify the offence to which the order relates and the date on which it is alleged that the person was convicted of the offence, and
 - (d) state that the person has 28 days in which to object to the order by a notice filed in the office of the Director, and
 - (e) state that if the person does not object the order will be confirmed by the Tribunal and become a judgment debt payable by the person, and
 - (f) state that if the person files a notice of objection the Tribunal will conduct a hearing into whether the order should be confirmed, and
 - (g) contain such other particulars as the compensation rules may require.
- (5) A provisional order for restitution may not be made against a person if:
- (a) 2 years or more have elapsed since the date on which the relevant award of statutory compensation was paid, or
 - (b) civil proceedings have been commenced or are being maintained against the person, by or on behalf of the State, in respect of an action for damages arising from substantially the same facts as those on which the relevant award of statutory compensation was based.

47 Notice of objection by defendant

- (1) A defendant served with a provisional order for restitution may, within 28 days after service, file in the office of the Director a notice of objection to the confirmation of the order.
- (2) A notice of objection must comply with the compensation rules and must include the grounds of the objection on which the defendant intends to rely.

48 Confirmation by Tribunal of provisional order for restitution if defendant does not object to order

The Tribunal may confirm a provisional order for restitution without conducting a hearing if it is satisfied that the defendant has not filed a notice of objection within 28 days after notice of the provisional order was duly served on the defendant.

49 Hearing by Tribunal to confirm provisional order for restitution if defendant objects to order

- (1) If the defendant files a notice of objection to a provisional order for restitution within 28 days after notice of the provisional order was duly served on the defendant, the Tribunal must conduct a hearing to determine whether the provisional order should be confirmed (in this Division called *recovery proceedings*).
- (2) The Tribunal may confirm the provisional order if satisfied that the defendant has been convicted of an offence arising from substantially the same facts as those constituting the act of violence in respect of which an award of statutory compensation was made. If the Tribunal is not so satisfied, it must discharge the provisional order.
- (3) The Tribunal may vary a provisional order for restitution that it confirms.

50 Arrangement between Director and defendant as to payment under order for restitution

- (1) The Director and a defendant may enter into an arrangement with respect to payment under a provisional order for restitution or any such order that is confirmed.
- (2) Such an arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.
- (3) For the purpose of enabling the Director and the defendant to come to such an arrangement, the Tribunal may adjourn recovery proceedings for such period as it considers appropriate.
- (4) If the defendant does not comply with such an arrangement, recovery proceedings may be taken for the purposes of confirming the order for restitution for the total amount payable under the order.

51 Provisions relating to orders for restitution

- (1) The Tribunal may, when it confirms a provisional order, reduce the amount to be paid under the provisional order having regard to:

- (a) the financial means of the defendant, and
 - (b) such other matters as are, in the opinion of the Tribunal, relevant to the determination.
- (2) The maximum amount that may be ordered to be paid under an order for restitution (whether made against one or more defendants) is the amount that has been paid to the victim under the award of statutory compensation to which the order relates.
- (3) If an order for restitution is made against two or more defendants in respect of the same award of statutory compensation, each of the defendants is jointly and severally liable under the order.
- (4) If the Tribunal decides under subsection (1) to reduce the amount payable by a defendant under an order made against two or more defendants, the Tribunal may confirm the order subject to the liability of the defendant concerned being limited under the order to an amount specified in the order.

52 Procedural and evidentiary provisions relating to recovery proceedings

- (1) Subject to this Division and the compensation rules, recovery proceedings must be determined:
- (a) in accordance with the rules of evidence, and
 - (b) in accordance with the practice and procedure of Local Courts exercising civil jurisdiction,
- in the same way as the determination by a Local Court of an action commenced by way of an ordinary statement of claim (within the meaning of the *Local Courts (Civil Claims) Act 1970*).
- (2) The victim to whom recovery proceedings relate is competent, but not compellable, to give evidence in the proceedings.
- (3) Despite any rule of law to the contrary, evidence given by the victim:
- (a) in any application for an award of statutory compensation, or
 - (b) in any hearing relating to that application, or

-
- (c) in any other proceedings (whether civil or criminal) arising from substantially the same facts as those on which the award of statutory compensation was based,
- is admissible in recovery proceedings.
- (4) If evidence so given by the victim is admitted in recovery proceedings but the victim does not attend as a witness in the proceedings, that evidence must be given no greater weight than is appropriate as a consequence of there having been no opportunity for the victim to be cross-examined in relation to that evidence.
- (5) The Tribunal does not have jurisdiction to order payment of costs in relation to recovery proceedings.
- (6) A person (other than a public servant) who is required to attend or to give evidence at recovery proceedings is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules.

53 Orders for restitution to be subject to appeals against relevant awards of statutory compensation

- (1) An order for restitution does not have any effect:
- (a) until the period within which an appeal may be made against the award of statutory compensation from which it arises has expired, or
- (b) if such an appeal is duly made within that period, until the appeal is finally disposed of.
- (2) If the award of statutory compensation to which such an appeal relates is set aside or varied as a result of the appeal, the order for restitution ceases to have effect.
- (3) In the event that the award is varied, a new provisional order for restitution may be made in accordance with this Division as if the original order had not been made.

54 Order for restitution to be a judgment enforceable by Tribunal

- (1) An order for restitution is taken to be a judgment of a Local Court in proceedings on a statement of claim under the *Local Courts (Civil Claims) Act 1970* and may be enforced accordingly by the Tribunal in accordance with the provisions of that Act.

- (2) Interest is payable on the amount payable under an order for restitution in accordance with the provisions relating to interest on the amount payable under such a judgment.
- (3) Money payable under an order for restitution and not paid may be written off in accordance with a relevant policy on the matter determined by the Minister.
- (4) Compensation rules may be made for the purposes of this section, and for that purpose may apply the provisions of the *Local Courts (Civil Claims) Act 1970*, with or without modification.
- (5) In addition, the compensation rules may make provision for the attachment of the prison earnings of convicted persons for the purposes of enforcing orders for restitution.

55 Appeals against orders for restitution

- (1) An order for restitution that is confirmed after a hearing before the Tribunal may be appealed against in the same way as a judgment of a Local Court exercising civil jurisdiction may be appealed against.
- (2) An appeal may not be lodged under this section if 1 month or more has elapsed since the date on which the order for restitution was made.

56 Orders for restitution may be set aside

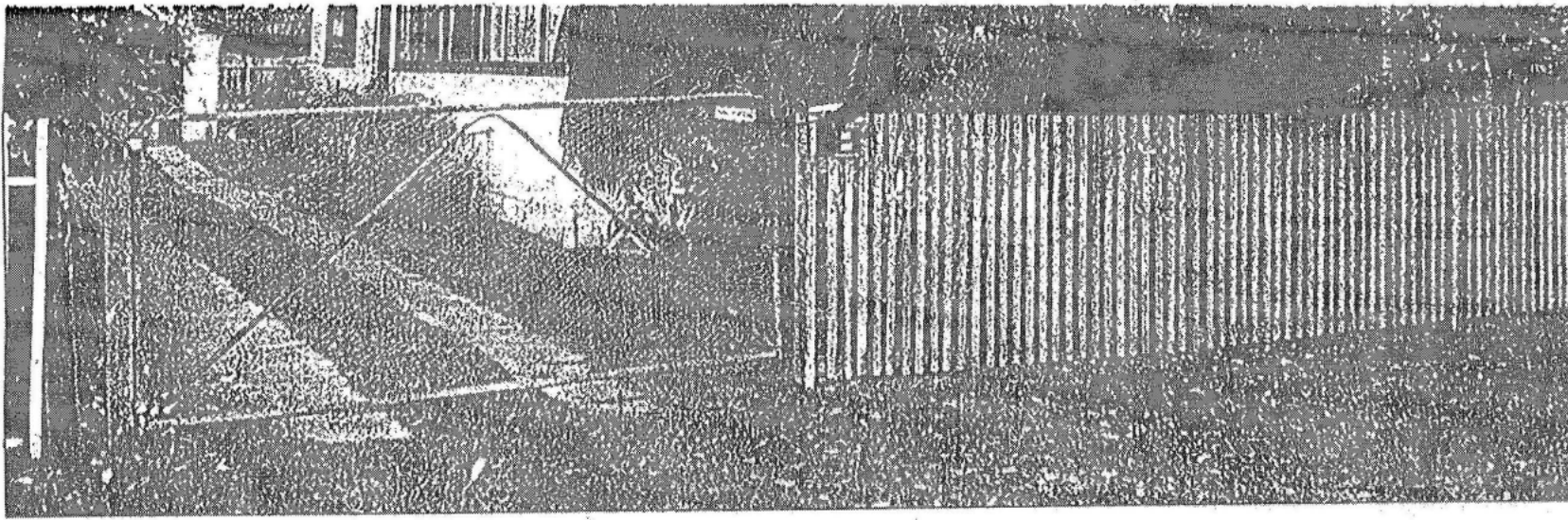
- (1) The Tribunal, on sufficient cause shown, may, by order, set aside an order for restitution.
- (2) The Tribunal may stay the execution of a judgment pending the determination of any proceedings to set aside the order for restitution.
- (3) If the Tribunal makes an order under this section, the defendant is entitled to be paid such amount, by way of costs in relation to the setting aside of the order for restitution, as may be prescribed by the compensation rules.

57 Effect of order for restitution on subsequent civil proceedings

- (1) This section applies to civil proceedings in respect of an injury or loss sustained by a person to whom an award of statutory compensation has been made (being an award in respect of which an order for restitution has been made) on the basis of the same facts as those on which the civil proceedings are based.
- (2) An order for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the order.
- (3) However, the right of the State, under section 43, to commence or maintain civil proceedings is extinguished by an order for restitution.
- (4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the State under section 43.
- (5) This section does not limit the operation of section 43 or 76.

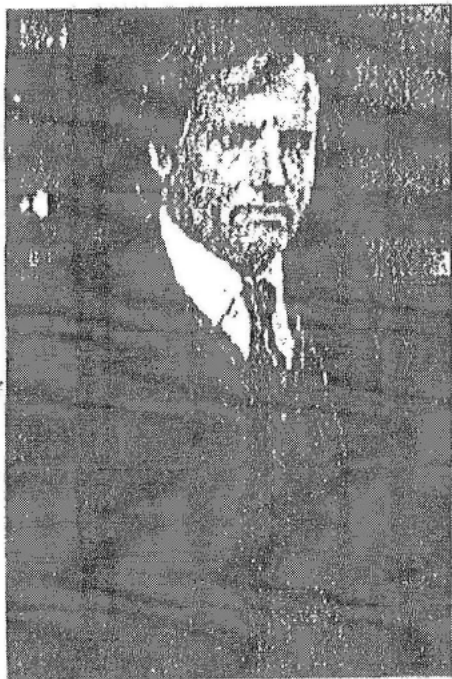
58 Access to information about whereabouts of defendant

Police officers, the Roads and Traffic Authority and other government agencies are authorised to provide the Director with information about the address of a defendant for the purpose of serving a provisional order for restitution on the defendant or taking any action against the defendant to enforce an order for restitution.



HIGHLY DES. RES.: The house at North Narrabeen in northern Sydney yesterday that was sold for just \$1.

Picture: BARRY CHAPMAN



PEDOPHILE: Anthony George Reid.

Jailed pedophile gives brother his \$400,000 house to cheat victims

A CONVICTED pedophile has transferred his \$400,000 beachfront home to his brother for \$1 to avoid paying his victims compensation — and the NSW Government has been powerless to stop him.

The move has left his victims and their families without a cent, despite being legally entitled to damages, and exposed a major loophole in the victims' compen-

EXCLUSIVE

By MARTIN CHULOV

sation legislation. Taxpayers will be left to foot the bill for the victims' claims, which could run into hundreds of thousands of dollars.

Notorious sex offender Anthony George Reid offloaded his Narrabeen home to his brother, Michael Reid, in June

last year. He was sentenced in October to 16 years' jail for a series of sex offences against young boys.

Transfer of ownership documents obtained by *The Sun-Herald* show the amount paid for the Collins Street, Narrabeen, house near Turimetta Beach was \$1.

With the house no longer in his possession, Reid was left with no

Continued Page 4

A \$1 house sale

From Page 1

major assets to pay his victims.

In a letter to Manly Independent MP Peter Macdonald during the week, Attorney-General Jeff Shaw said it was "not appropriate for the Government to interfere in the lawful disposal of assets by its citizens".

Victims said it was "implausible and a disgrace" that Reid's disposal of his assets was lawful.

"I am sickened by this," Mr Macdonald said. "This to me is the salt in the wounds."

"There is a loophole in this legislation which needs to be filled very quickly."

Chairman of State Parliament's victims' compensation select committee Tony Stewart said the matter was the latest in a disturbing trend.

"This situation is alarming and unsatisfactory," he said. "This case and several others that have been occurring in this vein have heightened the need for change."

Mr Shaw retreated

TRANSFEROR ANTHONY REID

acknowledges receipt of the consideration of \$1.00 and as regards the land specified above transfers to the transferee an estate in fee simple.

Encouragements (if applicable) 1. 2. 3.

TRANSFEEEE

TS 0713 6243 TW (Share)	MICHAEL REID
	TENANCY:

We certify this dealing correct for the purposes of the Real Property Act 1900. DATE 23rd August 1998

Signed in my presence by the transferor who is personally known to me.

OUTRAGEOUS: A copy of the \$1 transfer of the beachfront \$400,000 home

from his earlier reluctance to stop the move, committing the State Government to a review of the legislation and ordering officials to take steps to seize the money.

A spokeswoman for Mr Shaw said: "The minister is obviously very concerned and we have asked the victims' compensation committee to pursue a number of options. We are writing to the Stamp Duties Office to see if people are being deprived of their just revenue."

"We have also told them to ask the Crown Solicitor's Office to see if there is any action they can take in the equity division of the Supreme

Court and we have approached the insolvency and trustee service."

Reid's actions underscore a series of problems with the State's victims' compensation scheme which last year cost \$85 million in payouts, only \$2 million of which came in restitution from criminals.

By 2000, the cost of the scheme is forecast to blow out to \$128.7 million.

"We have had a significant problem with restitution since the beginning of the scheme in 1985," Mr Stewart said.

"Most of the people convicted of serious crime come from low socio-economic backgrounds and don't have the money."

Both Mr Stewart and Mr Shaw blamed the Federal Government's refusal to allow NSW access to social security and tax records for their failure to locate criminals, many of whom have fled interstate.

"The RTA (Roads and Traffic Authority) is the only resource base that we have and that is OK interstate but is no good for tracking people interstate," Mr Stewart said.

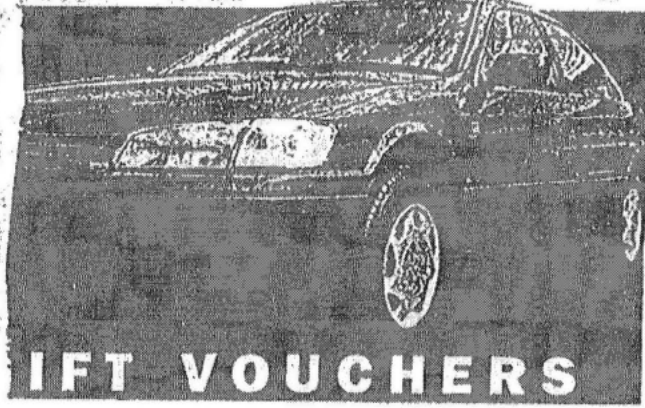
Reid's home was empty yesterday.

Reid's convictions include indecent assault on a minor, buggery, sexual assault on a minor and indecent assault. He is eligible for parole in 12 years.

Mail



Sunday, May 3, 1998 \$1.00



FOR \$1



APPENDIX 3

Premier of New South Wales
Australia

RECEIVED
21/5/98

21 May, 1998

Mr Tony Stewart, MP
Chairman,
Joint Select Committee on Victims Compensation
Parliament House
Macquarie Street
Sydney 2000

Dear Tony

It has come to my attention that there may be issues involving avoidance of restitution by convicted offenders requiring consideration by your Committee.

Given the importance of this issue, I consider it appropriate for the Committee to further investigate these issues and report back to Parliament by September 30 1998.

Yours sincerely



BOB CARR
Premier

Section 121: Transfers to defeat creditors

[121.]

121. Transfers that are void

(1) A transfer of property by a person who later becomes a bankrupt (the “transferor”) to another person (the “transferee”) is void against the trustee in the transferor’s bankruptcy if:

- (a) the property would probably have become part of the transferor’s estate or would probably have been available to creditors if the property had not been transferred; and
- (b) the transferor’s main purpose in making the transfer was:
 - (i) to prevent the transferred property from becoming divisible among the transferor’s creditors; or
 - (ii) to hinder or delay the process of making property available for division among the transferor’s creditors.

Showing the transferor’s main purpose in making a transfer

(2) The transferor’s main purpose in making the transfer is taken to be the purpose described in paragraph (1)(b) if it can reasonably be inferred from all the circumstances that, at the time of the transfer, the transferor was, or was about to become, insolvent.

Other ways of showing the transferor’s main purpose in making a transfer

(3) Subsection (2) does not limit the ways of establishing the transferor’s main purpose in making a transfer.

Transfer not void if transferee acted in good faith

(4) Despite subsection (1), a transfer of property is not void against the trustee if:

- (a) the consideration that the transferee gave for the transfer was at least as valuable as the market value of the property; and
- (b) the transferee did not know that the transferor’s main purpose in making the transfer was the purpose described in paragraph (1)(b); and
- (c) the transferee could not reasonably have inferred that, at the time of the transfer, the transferor was, or was about to become, insolvent.

Refund of consideration

(5) The trustee must pay to the transferee an amount equal to the value of any consideration that the transferee gave for a transfer that is void against the trustee.

What is not consideration

(6) For the purposes of subsections (4) and (5), the following have no value as consideration:

- (a) the fact that the transferee is related to the transferor;
- (b) if the transferee is the spouse or de facto spouse of the transferor — the transferee making a deed in favour of the transferor;
- (c) the transferee's promise to marry, or to become the de facto spouse of, the transferor;
- (d) the transferee's love or affection for the transferor.

Exemption of transfers of property under debt agreements

(7) This section does not apply to a transfer of property under a debt agreement.

Protection of successors in title

(8) This section does not affect the rights of a person who acquired property from the transferee in good faith and for at least the market value of the property.

Meaning of "transfer of property" and "market value"

(9) For the purposes of this section:

- (a) "transfer of property" includes a payment of money; and
- (b) a person who does something that results in another person becoming the owner of property that did not previously exist is taken to have transferred the property to the other person; and
- (c) the "market value" of property transferred is its market value at the time of the transfer.

[S 121 subst Act No 44, 1996, s 3 and Sch 1.]

[Cf 13 Eliz, c 5.]