

Civil Liability Amendment (Offender Damages Trust Fund) 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 amend the *Civil Liability Act 2002* to require that damages awarded against the Department of Corrective Services (and other public sector defendants) for injuries suffered by an offender in custody (**offender damages**) are to be held in trust and used to satisfy a claim for damages (a **victim claim**) for death or personal injury suffered by a victim of an offence committed by the offender. Any surplus remaining after victim claims are satisfied will be paid to the offender.

The Bill also allows a victim claim to be made within 6 months after offender damages are awarded despite the claim being barred because of the expiry of the limitation period for the making of the claim, but only for the purpose of the claim being satisfied from those offender damages.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Civil Liability Act 2002* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts a new Division 6 into Part 2A of the *Civil Liability Act 2002*.

Part 2A currently restricts the damages that can be awarded for death or personal injury suffered by an offender in custody when the award is against the Department of Corrective Services or other public sector defendants (referred to as **protected defendants**).

The proposed new Division contains the following provisions:

(a) Proposed section 26K contains definitions.

(b) Proposed section 26L requires offender damages (damages awarded against a protected defendant for death or injury suffered by an offender in custody) to be held in trust as a **victim trust fund** for victims of the offender. There is an exception to cover amounts that a protected defendant is required under an Act of the State or the Commonwealth to pay to some other person.

(c) Proposed section 26M provides that a victim trust fund is available to satisfy claims for damages (**victim claims**) in respect of death or personal injury suffered by victims of offences committed by the offender. To be eligible to be satisfied from a victim trust fund, a victim claim must be made within 6 months (the **eligibility period**) after the award date of the offender's damages and must be notified to the protected defendant. The claimant must also certify to the court in which the victim claim is made that the claim is made as a claim eligible to be satisfied from the victim trust fund.

(d) Proposed section 26N requires the protected defendant responsible for a victim trust fund to give notice about the fund to persons who appear to be entitled to make a victim claim against the offender.

(e) Proposed section 26O provides for the protected defendant to provide a victim with other information about the victim trust fund and other victim claims against the offender.

(f) Proposed section 26P allows proceedings to be taken on a victim claim after the limitation period for the taking of those proceedings has expired but only during the 6-month period after offender damages are awarded. An award of damages that results from such a claim can only be satisfied from the offender damages held in a victim trust fund.

(g) Proposed section 26Q allows a court that awards damages on a victim claim that is eligible to be satisfied from a victim trust fund to order the whole or part of the damages to be satisfied from the fund. In making such an order, a court must inform itself about and allow for the making of similar orders in respect of other claims that are eligible to be satisfied from the victim trust fund.

(h) Proposed section 26R requires payment to the offender of any surplus remaining in a victim trust fund after payment of all victim claims ordered to be paid from the fund and administrative expenses of the fund.

(i) Proposed section 26S provides for victim trust funds to be held and invested by the Public Trustee. The section also provides for a protected defendant to enter into arrangements with the Public Trustee for the Public Trustee to exercise functions on behalf of the protected defendant.

(j) Proposed section 26T provides for legal costs awarded against a protected defendant in connection with an award of offender damages to not form part of a victim trust fund.

(k) Proposed section 26U fixes a scale of maximum legal costs for legal services provided to the plaintiff on a victim claim that is eligible to be satisfied from a victim trust fund.

(l) Proposed section 26V confers protection from personal liability for acts and omissions in good faith for the purpose of executing the proposed Division.

(m) Proposed section 26W provides that the proposed Division overrides proposed Division 2 of Part 7 (which deals with offender damages awarded to persons who are not guilty of an offence because of mental illness).

Schedule 1 [2] and [3] enact savings and transitional provisions for the proposed amendments. The amendments will apply prospectively to all awards of offender damages including awards in respect of proceedings commenced and causes of action that arose before the commencement of the amendments (even though other provisions of Part 2A have a more limited application to damages awarded and proceedings commenced before the commencement of that Part).