

## Civil Liability Amendment (Offender Damages) Bill 2007

### 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 make the following amendments to Part 2A of that Act, which makes special provision in relation to the recovery of damages (**offender damages**) for injury suffered by a person while an offender in custody:

- (a) to include in Part 2A definitions of terms that are currently defined by reference to their meaning in another Part of the Act, to make it clear that limitations on the operation of that other Part do not also extend to those terms when used in Part 2A,
- (b) to make it clear that a dispute about whether the degree of permanent impairment of an injured offender is at least 15% (which is the threshold for an award of offender damages) cannot be referred for medical assessment unless the offender has provided a medical practitioner's report that assesses permanent impairment to be at least 15%,
- (c) to make it clear for the purposes of Part 2A and savings and transitional provisions of the Act that proceedings are not "finally determined" until any period for bringing an appeal has expired and any pending appeal has been disposed of,
- (d) to clarify the operation of transitional provisions relating to 2006 amendments to the Act (dealing with provisions that require offender damages to be held in trust for the payment of claims by the offender's victims) so that it will be absolutely clear that the amendments extend to cases in which offender damages were awarded before the commencement of the amendments.

The amendments overcome the effect of recent court decisions (State of New South Wales v Bujdoso [2007] NSWCA 44, Hiron v State of New South Wales & Anor [2007] NSWSC 152 and State of New South Wales v Napier Keen Pty Limited [2007] NSWSC 644).

#### 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 to the proposed Act.

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

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

#### Schedule 1 Amendments

**Schedule 1 [1] and [2]** make the amendments referred to in paragraph (a) of the Overview.

**Schedule 1 [3]** makes the amendment referred to in paragraph (b) of the Overview.

**Schedule 1 [4], [5] and [7]** make the amendments referred to in paragraph (c) of the Overview.

**Schedule 1 [8] and [9]** make the amendments referred to in paragraph (d) of the Overview.

**Schedule 1 [6] and [10]** enact consequential savings and transitional provisions.