

Passed by both Houses



New South Wales

Civil Liability Amendment (Offender Damages) Bill 2007

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2007

Clerk of the Parliaments



New South Wales

Civil Liability Amendment (Offender Damages) Bill 2007

Act No , 2007

An Act to amend the *Civil Liability Act 2002* to make further provision for medical assessment of disputes and transitional arrangements concerning claims for offender damages.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Civil Liability Amendment (Offender Damages) Act 2007*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Civil Liability Act 2002 No 22

The *Civil Liability Act 2002* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 26A Definitions

Insert in alphabetical order in section 26A (1):

injury means personal injury and includes the following:

- (a) impairment of a person's physical or mental condition,
- (b) disease.

personal injury damages means damages that relate to the death of or injury to a person.

[2] Section 26A (2)

Omit the subsection.

[3] Section 26D Assessment of permanent impairment

Insert after section 26D (3):

- (3A) A dispute about the degree of permanent impairment of an injured offender cannot be referred for assessment unless the offender has provided the protected defendant with a medical report by a medical practitioner that assesses that the degree of permanent impairment of the injured offender is at least 15% and sets out the medical practitioner's reasons for that assessment.

[4] Section 26M Victim trust fund available to satisfy eligible victim claims

Omit section 26M (4). Insert instead:

- (4) A claim is not finally determined if:
 - (a) any period for bringing an appeal as of right in respect of the claim has not expired (ignoring any period that may be available by way of extension of time to appeal), or
 - (b) any appeal in respect of the claim is pending (whether or not it is an appeal brought as of right).

[5] Section 26R Payment to offender of trust fund surplus

Insert after section 26R (1):

- (1A) A claim is not finally determined if:
 - (a) any period for bringing an appeal as of right in respect of the claim has not expired (ignoring any period that may be available by way of extension of time to appeal), or

- (b) any appeal in respect of the claim is pending (whether or not it is an appeal brought as of right).

[6] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

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[7] Schedule 1, clause 1A

Insert after clause 1 of Schedule 1:

1A Final determination of proceedings

For the purposes of this Schedule, proceedings are not finally determined if:

- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
- (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

[8] Schedule 1, clause 25 Deemed commencement of, and application of, amendments to section 3B (1) (a)

Omit clause 25 (5). Insert instead:

- (5) Despite subclause (4), this clause does apply for the purpose of the application of Division 6 of Part 2A to an award of damages made against a protected defendant before the commencement of this clause (even if any proceedings resulting in or in respect of that award were finally determined before that commencement). This clause does not apply for that purpose if the award has been wholly or partly satisfied (before or after the commencement of this clause) by payment to or at the direction of the person to whom the damages were awarded.

[9] Schedule 1, clause 26 Definition of “offender in custody” in section 26A

Omit clause 26 (4). Insert instead:

- (4) Despite subclause (3), this clause does apply for the purpose of the application of Division 6 of Part 2A to an award of damages made against a protected defendant before the commencement of this clause (even if any proceedings resulting in or in respect of that award were finally determined before that commencement). This clause does not apply for that purpose if the award has been wholly or partly satisfied (before or after the commencement of

this clause) by payment to or at the direction of the person to whom the damages were awarded.

[10] Schedule 1, Part 10

Insert after Part 9 of Schedule 1:

**Part 10 Provisions consequent on enactment of
Civil Liability Amendment (Offender
Damages) Act 2007**

27 Definition

In this Part, *2007 amending Act* means the *Civil Liability Amendment (Offender Damages) Act 2007*.

28 Definition of “personal injury damages”

- (1) The amendments made by the 2007 amending Act to section 26A (*the 26A amendments*) extend to civil liability arising, and any award of damages in respect of such civil liability made, before the commencement of those amendments.
- (2) The 26A amendments do not affect any final determination of legal proceedings made by a court or tribunal before the commencement of those amendments.
- (3) Despite subclause (2), the 26A amendments do apply for the purpose of the application of Division 6 of Part 2A to an award of damages made against a protected defendant before the commencement of those amendments (even if any proceedings resulting in or in respect of that award were finally determined before that commencement). The 26A amendments do not apply for that purpose if the award has been wholly or partly satisfied (before or after commencement of the amendments) by payment to or at the direction of the person to whom the damages were awarded.

29 Final determination of proceedings

Clause 1A of this Schedule does not affect any decision of a court made before the commencement of that clause (as inserted by the 2007 amending Act).

30 Assessment of medical disputes

The amendment made by the 2007 amending Act to section 26D extends to a dispute in connection with civil liability arising before the commencement of that amendment (whether or not proceedings had been commenced before that commencement), but does not extend to a dispute referred for assessment pursuant to that section before that commencement.