



# NSW Legislative Council Hansard

## Civil Liability Amendment (Offender Damages) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 6 April 2005.

### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [6.26 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This Bill introduces minor amendments, mostly of a procedural nature, to clarify the operation of Part 2A of the *Civil Liability Act 2002*.

Part 2A (Special provisions for offenders in custody) was inserted into the Act by the *Civil Liability Amendment (Offender Damages) Act 2004*.

When the *Civil Liability Amendment (Offender Damages) Act 2004* was passed by Parliament, a senior officers inter-agency working party was formed to establish the administrative arrangements for the operation of the Act—principally, the procedures for obtaining a medical assessment of permanent impairment using the WorkCover Guidelines, and for disputing and appealing against a medical assessment.

This Bill makes minor consequential amendments to Part 2A to clarify its operation and simplify certain processes, as identified by the working party.

I now turn to the detail of the Bill.

Schedule 1 [ 1 ] extends the definition of an "offender in custody" to include persons who are attending a place in compliance with the requirements of a community service order, as well as persons who are performing community service work.

This is a commonsense provision which extends the operation of the offender damages scheme to persons who are injured after arrival at a work-site but before commencing community service work; and to persons who are injured when reporting to an office of the Probation and Parole Service as required by a court—for instance, being assaulted there by another offender.

Schedule 1 [2] omits section 330 of the *Workplace Injury Management and Workers Compensation Act 1998* from the Part of that Act imported into Part 2A of the *Civil Liability Act 2002*.

Schedule 1 [3] provides that the Minister administering the *Crimes (Administration of Sentences) Act 1999* may, by order published in the Gazette, issue Guidelines in respect of the same kinds of matters for which the WorkCover Guidelines may make provision. The Minister may also apply, adopt or incorporate (wholly or in part or with or without modifications) the provisions of the WorkCover Guidelines.

The WorkCover Guidelines are issued under Part 7 of Chapter 7 of the 1998 *Workers Compensation Act*, and are therefore imported into Part 2A of the *Civil Liability Act 2002* by section 26D(1).

The *WorkCover Guides for the Evaluation of Permanent Impairment* (which provide for the medical criteria by which an impairment is to be assessed) can be applied to Part 2A medical assessments either without modifications or with very minimal modifications.

The *WorkCover Medical Assessment Guidelines* (which provide for the administrative process of obtaining and disputing a medical assessment) will require a number of modifications and additions before they can be applied to Part 2A. For example, matters for which Guidelines might be issued include security arrangements for an inmate undergoing a medical assessment (including provisions for correctional officers, who may accompany an offender undergoing a medical assessment).

Schedule 1 [5] of the Bill makes it clear that in section 67(4) of the *Workers Compensation Act 1987* (imported into the *Civil Liability Act 2002* by section 261), a reference to "the Commission" is taken to be a reference to the court.

Schedule 1 [6] provides for the payment of interest on amounts of damages withheld from offenders pending the finalisation of a provisional order for Victims Compensation Restitution, and that a protected defendant may require the Public Trustee to hold the withheld amount on its behalf. The protected defendant must require the Public Trustee to hold the withheld amount if the offender requests it. This provision ensures openness and transparency. Sometimes an order for victims compensation restitution may be made for a lesser amount than a provisional order for restitution—for instance, a

provisional order for restitution in which an offender is jointly and severally liable with co-offenders for the full amount of compensation paid to a victim, may be replaced by a final order for restitution under which the offender is solely liable for a lesser amount. The amendments clarify the payment of interest in such circumstances.

The remaining amendments are procedural in nature.

I commend the Bill to the House.