

Civil Liability Amendment (Offender Damages) Bill 2005

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to clarify the operation of Part 2A (Special provisions for offenders in custody) of the *Civil Liability Act 2002* (the **Principal Act**).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act commences on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends the definition of **offender in custody** or **offender** in section 26A of the Principal Act to make it clear that the definition includes persons who are attending a place in compliance with the requirements of a community service order, as well as persons while they are performing community service work.

Schedule 1 [2]–[4] amend section 26D of the Principal Act to make it clear that Part 7 of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998*, as applied by that section to the assessment of the degree of permanent impairment resulting from injuries to offenders, applies with the following additional modifications:

(a) Section 330 (Costs of medical assessment) of that Act does not apply to any such assessment.

(b) References to the WorkCover Guidelines are to be read as references to guidelines issued by the Minister administering the *Crimes (Administration of Sentences) Act 1999* by order published in the Gazette. Any such order must be tabled before Parliament and will be disallowable.

(c) The provisions of Part 7 of Chapter 7 of that Act are to be applied with such other modifications as may be prescribed by the regulations.

Schedule 1 [5] amends section 26I of the Principal Act to make it clear that section 67 of the *Workers Compensation Act 1987*, in its application to determining an offender's entitlement to compensation, is to be read as if the reference in that section to the Workers Compensation Commission were a reference to the court determining the amount of compensation.

Schedule 1 [6] and [7] amend section 26J of the Principal Act to make it clear that any amount of damages withheld by a protected defendant from an offender under that section because of the making of a provisional order for restitution against the offender under the *Victims Support and Rehabilitation Act 1996* is subject to the following additional provisions:

(a) The protected defendant may require the Public Trustee to hold the amount on its behalf. However, the protected defendant must require the Public Trustee to hold the amount if the offender requests it.

(b) Interest is payable on an amount withheld.

(c) A proportion of the interest must be paid to the offender if the amount of the provisional order is reduced on its confirmation, otherwise the whole amount of the interest is payable to the person or persons for whom the order was made.

(d) However, the reasonable costs of the Public Trustee in connection with holding such amount for a protected defendant may be deducted before interest is paid to the offender or the persons entitled to restitution.

Schedule 1 [8] amends Schedule 1 to the Principal Act to enable the Governor to

make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [9] amends a transitional provision relating to Part 2A of the Principal Act. The amendment makes it clear that the new Part does not affect any award of damages, settlement or consent order made before the commencement of the Part on 19 November 2004.

Schedule 1 [10] amends Schedule 1 to the Principal Act to insert a new Part containing savings and transitional provisions consequent on the enactment of the proposed Act.