

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

## Overview of Bill

The objects of this Bill are to implement key recommendations from the report of the statutory review of the Victims Support and Rehabilitation Act 1996 (the Principal Act) and the Victims Rights Act 1996, and to make other reforms to those Acts and the Crimes (Sentencing Procedure) Act 1999.

### 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.

Clause 3 is a formal provision that gives effect to the amendments to the Victims Support and Rehabilitation Act 1996 set out in Schedules 1 and 3.

Clause 4 is a formal provision that gives effect to the amendments to other Acts set out in Schedule 2.

Clause 5 is a formal provision that gives effect to Schedule 4. Schedule 4 comprises the proposed Victims Support and Rehabilitation Regulation 2006 that is to have effect as a regulation under the Principal Act (as amended by the proposed Act).

Clause 6 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 to Victims Support and Rehabilitation Act 1996

#### Statutory compensation for prescribed expenses

Schedule 1 [4] inserts proposed section 14A into the Principal Act. The proposed section provides that the statutory compensation for which a primary victim is eligible includes statutory compensation for prescribed expenses.

Under the proposed section, statutory compensation for prescribed expenses is compensation for actual expenses of such kinds as are prescribed by the regulations and incurred by a primary victim of an act of violence as a direct result of the act of violence. The actual expenses concerned are prescribed by the proposed Victims Support and Rehabilitation Regulation 2006 set out in Schedule 4. The maximum amount that may be awarded under the proposed section in respect of an act of violence is \$1,500. This amount may be varied by the regulations.

Schedule 1 [7], [11], [14] and [20] provide for amendments to the Principal Act that are consequential on the amendment provided for by Schedule 1 [4].

Schedule 1 [16] inserts proposed section 23 (1A) into the Principal Act. Schedule 1 [15] provides for an amendment that is consequential on the amendment to section 23 of the Principal Act that is made by Schedule 1 [16].

Currently, a primary victim of an act of violence can be awarded up to \$50,000 as statutory compensation, comprising (under section 14 of the Principal Act):

(a) compensation for compensable injuries received by the victim as a direct result of the act of violence, and

(b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury.

Currently also, under section 23 of the Principal Act, a person is not eligible to receive more than one award of statutory compensation in respect of the same act of violence. Under proposed section 23 (1A), a primary victim is not prevented from being awarded statutory compensation to which section 14 of the Principal Act applies in addition to statutory compensation for prescribed expenses.

However, to prevent double dipping, proposed section 14A provides that statutory compensation for prescribed expenses is not payable to a primary victim who has already been awarded statutory compensation to which section 14 of the Principal

Act applies. Further, under the amendment to section 14 provided for by Schedule 1 [3], statutory compensation to which that section applies is not payable for financial loss to the extent that statutory compensation for prescribed expenses has been awarded for that loss.

Under section 26 of the Principal Act, an application for statutory compensation must be lodged within 2 years after the relevant act of violence unless leave is given for the acceptance of the application after that period.

Schedule 1 [18] inserts proposed section 26 (2A) into the Principal Act. The proposed subsection provides that leave may not be given for the acceptance of an application for statutory compensation lodged out of time if the application is for statutory compensation for prescribed expenses.

Under section 20 of the Principal Act, no statutory compensation may be awarded to a victim unless the total amount of compensation payable to the victim, as compensation for compensable injuries, is at least \$7,500. A primary victim of an act of violence who is not entitled to statutory compensation to which section 14 applies because of the application of section 20 may, however, be awarded statutory compensation for prescribed expenses.

Schedule 1 [19] inserts proposed section 29 (1AA) into the Principal Act. The proposed subsection deals with a case in which an applicant for statutory compensation has applied for statutory compensation to which section 14 applies and is not eligible to receive that kind of compensation (solely because of the operation of section 20), but is eligible to receive statutory compensation for prescribed expenses. In such a case, the compensation assessor may determine the application as an application for statutory compensation for prescribed expenses.

Schedule 1 [31] inserts proposed section 35 (8) and (9) into the Principal Act. Under proposed section 35 (8), an applicant for statutory compensation for prescribed expenses is not generally entitled to receive costs in respect of the application. However, in the case of an application that has been determined as an application for statutory compensation for prescribed expenses because of the application of proposed section 29 (1AA) (as inserted by Schedule 1 [19]), the applicant may be awarded his or her costs if the Tribunal or compensation assessor concerned is of the opinion that the special circumstances of the case justify such an award being made.

Schedule 1 [33] inserts proposed section 35A into the Principal Act. The proposed section enables the Director, on the application of an applicant for statutory compensation for prescribed expenses, to correct any miscalculation in the amount of an award of that kind of compensation. The proposed section enables an application for the correction of such a miscalculation to be made within 28 days after the relevant notice of determination was duly served.

Schedule 1 [32] provides for an amendment that is consequential on the amendment provided for by Schedule 1 [33].

Schedule 1 [34] inserts proposed section 36 (1A) into the Principal Act. The proposed subsection prevents an applicant for statutory compensation for prescribed expenses from appealing to the Tribunal for the correction of a miscalculation in the amount awarded as statutory compensation for prescribed expenses.

Schedule 1 [37] inserts proposed section 42 (1A) into the Principal Act. The proposed subsection requires the Director, Victims Services, after an award of statutory compensation for prescribed expenses is made, to forward to the Compensation Fund Corporation a copy of the relevant notice of determination.

Under section 42 (2) of the Principal Act (as amended by Schedule 1 [38]), on receiving the notice, the Compensation Fund Corporation is required to pay the relevant amount of the award to the person to whom the award is payable.

Schedule 1 [35] and [36] provide for amendments that are consequential on the amendments provided for by Schedule 1 [37] and [38].

Schedule 1 [49] inserts a definition of statutory compensation for prescribed

expenses in the Dictionary at the end of the Principal Act.

#### Other amendments

Schedule 1 [1] inserts proposed section 5 (1A) into the Principal Act. The proposed subsection clarifies that the reference to an offence in the definition of act of violence in section 5 of the Principal Act extends to conduct of a person that would constitute an offence were it not for the fact that the person cannot be held criminally responsible for the conduct because of the person's age or mental illness or impairment.

Schedule 1 [2] amends the definition of member of the immediate family of a primary victim in section 9 of the Principal Act to include half-brothers and half-sisters of the primary victim. This amendment will enable half-brothers and half-sisters of primary victims to be awarded statutory compensation as family victims.

Schedule 1 [5] inserts proposed section 18 (3A) into the Principal Act. The proposed subsection enables the rules made under the Principal Act to limit the amount of any compensation for the cost of counselling services.

Under section 20 of the Principal Act, statutory compensation is not payable to a victim unless the total amount of compensation payable to the victim, as compensation for compensable injuries, is at least a threshold amount, currently fixed as \$7,500 by proclamation. Schedule 1 [8] amends this section, inserting the threshold amount of \$7,500 into section 20 (1) (a). Schedule 1 [9] amends section 20 (1) (b) to enable the regulations to prescribe the threshold amount.

Schedule 1 [10] provides for an amendment that is consequential on the amendment provided for by Schedule 1 [9].

Schedule 1 [12] inserts proposed section 20 (3A) into the Principal Act. Generally, under section 17 of the Principal Act, the amount of compensation payable as compensation for compensable injuries is the standard amount calculated in accordance with the schedule of compensable injuries set out in Schedule 1 to the Principal Act. The effect of proposed section 20 (3A) is that if the standard amount of this compensation is reduced under certain provisions of the Act, it is the reduced amount that applies in determining whether or not the compensation is at least the threshold amount required for statutory compensation to be payable.

Schedule 1 [13] inserts proposed section 21 (3A) into the Principal Act. Section 21 of the Principal Act enables payments to be made for approved counselling services for victims of acts of violence. The proposed subsection enables an initial 2 hours of counselling to be provided to an applicant under the section if a compensation assessor is satisfied that counselling may assist in establishing whether or not the applicant is a victim.

Schedule 1 [17] provides for an amendment by way of statute law revision.

Schedule 1 [21] inserts proposed section 30 (1) (b1) into the Principal Act to require a compensation assessor in determining an application for statutory compensation to have regard to whether the act of violence concerned was reported to a relevant health professional or practitioner, or a relevant agency.

Among the matters that a compensation assessor must have regard to in determining an application for statutory compensation is whether the victim failed to take reasonable steps to mitigate the extent of the victim's injury, such as seeking appropriate medical advice or treatment, or undertaking counselling, as soon as practicable after the act of violence was committed. Schedule 1 [22] inserts proposed section 30 (2A) into the Principal Act to require that, in determining whether the victim failed to take such steps in cases of acts of violence involving sexual assault or domestic violence, the compensation assessor must have regard to the nature of the relationship between the victim and the person by whom the act of violence is alleged to have been committed.

Under Division 8 of Part 2 of the Principal Act, the amount of an award of

compensation made in respect of an act of violence can be recovered from the offender concerned by way of restitution orders.

Schedule 1 [23] inserts proposed section 30 (4A) into the Principal Act. The proposed subsection enables a compensation assessor to postpone the determination of a person's application for statutory compensation pending the determination of another application for statutory compensation if the person has been convicted of an offence related to the act of violence the subject of the other application. If the other application is determined by the making of an award of statutory compensation, an order for restitution could be made against the person under Division 8 of Part 2 of the Principal Act in respect of the act of violence.

Currently, section 31 of the Principal Act enables the amount of an award for statutory compensation to a person to be reduced by the amount of a determination for restitution proposed to be made against the person as a means of giving effect to the proposed determination. Schedule 1 [24]–[26] provide for amendments to section 31 of the Principal Act that enable an award for statutory compensation to be reduced as a means of giving effect to a determination for restitution that has already been made against the person.

Schedule 1 [27] inserts section 33 (5) into the Principal Act. The proposed subsection ensures that an interim award for funeral expenses can be made only to the extent that those expenses are reasonable.

Schedule 1 [28] inserts proposed section 33A (1) into the Principal Act. Currently, section 33A enables a person who is not a family victim to be reimbursed for expenses relating to the funeral of a primary victim, but only if there is at least one family victim of the act of violence concerned who is eligible for statutory compensation. The proposed subsection enables the person to be reimbursed for the funeral expenses whether or not there is a family victim who is eligible for statutory compensation.

Schedule 1 [29], [30], [39] and [40] provide for amendments by way of statute law revision.

Schedule 1 [42] inserts clause 7A (3) into Schedule 1 to the Principal Act. Clause 7A describes the scope of the compensable injury of domestic violence. The proposed subclause inserts a new definition of domestic violence offence for the purposes of the clause.

Schedule 1 [41] is consequential on the amendment provided for by Schedule 1 [42].

Schedule 1 [43] provides for an amendment by way of statute law revision

Schedule 1 [44] and [46] enact savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1 [45] enacts a savings and transitional provision to enable the scheme of approved counselling services provided for in section 21 of the Principal Act to be extended to a victim of an act of violence in respect of which an application for compensation has been made and dealt with under the Victims Compensation Act 1987.

Schedule 1 [47] amends the definition of injury in the Dictionary at the end of the Principal Act to cover psychological or psychiatric harm.

Schedule 1 [48] amends paragraph (g) of the definition of sexual assault and domestic violence in the Dictionary at the end of the Principal Act to refer to acts resulting in injury occurring in the commission of personal violence offences (within the meaning of the Crimes Act 1900) against specified persons.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the Crimes (Sentencing Procedure) Act 1999 to expand the range of persons who may give victims impact statements under Division 2 of Part 3 of that Act.

Schedule 2.2 amends the Victims Rights Act 1996. In particular:

(a) Schedule 2.2 [1] amends sections 5 and 6 of that Act to replace references to

mental illness or nervous shock with references to psychological or psychiatric harm, and

(b) Schedule 2.2 [2] amends the Charter of Rights appearing in section 6 of that Act to provide that a victim should be treated with cultural sensitivity.

Schedule 3 Amendments to Victims Support and

Rehabilitation Act 1996 consequential on

commencement of Part 15A of Crimes

Act 1900

This Schedule contains amendments consequential on the amendment of the Crimes

Act 1900 by the Crimes Amendment (Apprehended Violence) Act 2006.

Schedule 4 Victims Support and Rehabilitation

Regulation 2006

This Schedule contains the proposed Victims Support and Rehabilitation Regulation

2006. The proposed Regulation prescribes the kinds of actual expenses for which a

primary victim can be compensated in an award of statutory compensation for

prescribed expenses.