

Civil Liability Amendment (Offender Damages) Bill 2004

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 impose special restrictions on the damages that can be recovered by a person for personal injury resulting from the negligence of a **protected defendant** suffered while the person was an **offender in custody**.

An **offender in custody** is a prison inmate, periodic detainee, home detainee or person performing a community service order. **Protected defendants** are the Crown, Government departments and public health organisations and their employees, and other persons exercising official functions with respect to offenders in custody. The Bill extends to children in detention centres and the staff of those detention centres and to children performing work under community service orders.

The special restrictions are as follows:

- (a) No damages can be awarded unless the injury results in the death of the offender or in a degree of permanent impairment of at least 15% (with degree of impairment being assessed in the same way as it is under the *Workplace Injury Management and Workers Compensation Act 1998*).
- (b) Damages for economic loss for past and future loss of earnings will be limited in the same way as those damages are limited under the *Workers Compensation Act 1987* for damages for workplace injury.
- (c) In assessing future loss of earnings, earning capacity after age 65 is to be disregarded (in line with similar provisions for damages for workplace injury).
- (d) Damages for non-economic loss are limited to the equivalent statutory workers compensation that would be payable for workplace injury.

The new restrictions will extend to existing claims unless proceedings on the claim were commenced before 15 January 2004 (being the date of the Minister's announcement of the proposed restrictions) or an award of damages has been made on the claim before the date of assent. If the claim concerns an injured child, the new restrictions will not apply if proceedings were commenced before introduction of this Bill into Parliament.

The Bill also:

- (a) enacts provisions that allow a protected defendant to withhold and deduct from the damages payable to an offender any amount payable by the offender pursuant to an order for restitution under the *Victims Support and Rehabilitation Act 1996*, and
- (b) amends the *Crimes (Administration of Sentences) Act 1999* to make it clear that the work that offenders can be ordered to perform is any work considered suitable (without the need to formally assess offenders as to the work that is suitable for their capacity), and
- (c) enacts consequential savings and transitional provisions, and
- (d) makes clarifying and consequential amendments to the *Children (Community Service Orders) Act 1987* and the *Crimes (Administration of Sentences) 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 on a day or days to be appointed by proclamation.

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

Schedule 1 Amendment of Civil Liability Act 2002

Schedule 1 [3] inserts a new Part 2A in the *Civil Liability Act 2002* (the *Principal Act*). The new Part imposes restrictions on the damages that can be awarded for the death of or injury to an offender in custody caused by the negligence of a protected defendant, as outlined in the Overview. The new Part will not restrict an award of damages to relatives of a deceased offender under the *Compensation to Relatives Act 1897* or an award of damages to a third person for nervous shock arising from the incident that resulted in the offender's injuries (so long as the third person was not an offender in custody at the time of the incident). Part 2 of the Principal Act already provides for limitations on damages for personal injury and the provisions of the new Part will operate in addition to the existing provisions of Part 2. **Schedule 1 [1]** provides that Part 2 of the Principal Act applies subject to the new Part. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [4] amends the Schedule of savings and transitional provisions in the Principal Act to provide power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [5] enacts a transitional provision that provides for new Part 2A to extend to injury or death occurring before the commencement of the amendments, but not so as to apply to proceedings commenced before 15 January 2004 or to an award of damages made before the date of assent to the proposed Act. In the case of injury or death of a person injured while a child detained in a detention centre or performing community service work, new Part 2A will not apply if proceedings on the claim were commenced before the date of introduction of this Bill.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Children (Community Service Orders) Act 1987* to delete a provision of that Act dealing with limits on common law damages that will be made redundant by the proposed new provisions restricting recovery of damages by offenders.

Schedule 2.2 [1]–[4] amend provisions of the *Crimes (Administration of Sentences) Act 1999* dealing with the work that offenders can be ordered to perform. The amendments make it clear that an offender can be ordered to perform work considered to be suitable for the offender, without the need for any formal assessment of an offender's capabilities for work. At the same time it is made clear that an offender is not required to carry out work that the offender is not capable of carrying out.

Schedule 2.2 [6] amends the *Crimes (Administration of Sentences) Act 1999* to delete a provision of that Act dealing with limits on common law damages that will be made redundant by the proposed new provisions restricting recovery of damages by offenders.

Schedule 2.2 [7]–[9] amend the *Crimes (Administration of Sentences) Act 1999* to clarify the operation of a provision that protects certain correctional centre staff from personal liability.

Schedule 2.2 [5] makes a minor law revision amendment.