



# Anti-Discrimination Amendment (Offender Compensation) Bill 2007 (Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday 30 May 2007 (Proof).

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### ANTI-DISCRIMINATION AMENDMENT (OFFENDER COMPENSATION) BILL 2007

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#### Second Reading

**The Hon. TONY KELLY** (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [4.53 p.m.]: I move:

That this bill be now read a second time.

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

#### Leave granted.

It is proposed to amend the NSW Anti-Discrimination Act 1977 so that compensation awarded to prisoners for acts of discrimination against them by the State, whilst they are incarcerated, is paid to the Victims Compensation Fund.

The amendment will operate to restrict prisoners' access to compensation for breaches of the NSW Anti-Discrimination Act 1977.

While it is incumbent on government agencies to deliver their services in a non-discriminatory way and in conformity with State and Commonwealth anti-discrimination laws, prisoners should not benefit from an award of financial compensation payable by the State for alleged discrimination.

The amending legislation is consistent with provisions in the Civil Liability Act 2002 restricting prisoners' rights to access compensation for injury caused by the negligence of the State. Appropriately, this Bill defines 'offenders in custody' and 'protected defendants' in similar terms to the definitions used in the Civil Liability Act 2002. Under section 26A of this Act, 'protected defendants' are defined to include the crown, a Government department members of staff of a Government department, a public health organisation within the meaning of the Health Services Act 1997 and members of staff of a public health organisation, any person having public official functions or acting in a public official capacity (whether or not employed as a public official), but only in relation to the exercise of the person's public official functions, and a management company or submanagement company (within the meaning of the Crimes (Administration of Sentences) Act

1999 and members of staff of such a company.

The redirection of compensation monies to the Victims Compensation Fund, to assist in the task of compensating victims of crime, is consistent with the community's expectation that criminals should contribute to the rehabilitation of victims of crime. This redirection of compensation monies will also include any interest that accrues on an amount of damages.

This ought not, however, to be at the expense of the prisoner's other rights. Such rights, as they currently exist under the Anti-Discrimination Act, will be maintained. Remedies other than monetary compensation will continue to be available to prisoners who prove unlawful discrimination by a public sector agency while they are incarcerated. For example, the Tribunal will still be able order the agency to cease the discriminatory conduct and fix the problem or to apologise.

Proposed section 111A(6) of the Bill also allows for the making of regulations to exempt certain classes of prisoners from the operation of the amendments, in appropriate circumstances. Accordingly, it will be possible to exclude certain categories of people from the operation of this amendment where required.

To ensure that the Victims Compensation Fund has the immediate benefit of this proposal, the bill provides that damages awards made by the Tribunal on or after 29 May 2007, (being the date of which notice of motion for the introduction of the Bill was given in Parliament), will be paid to the Victims Compensation Fund instead of the prisoner complainant.

I commend the bill to the House.