

VICTIMS COMPENSATION ACT 1987 No. 237

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL



VICTIMS COMPENSATION ACT 1987 No. 237

NEW SOUTH WALES



Act No. 237, 1987

An Act with respect to compensation for victims of violence. [Assented to
16 December 1987]

See also Miscellaneous Acts (Victims Compensation) Repeal and Amendment Act 1987.

*Victims Compensation 1987***The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Victims Compensation Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—

“authorised Magistrate” means a Magistrate who is authorised to exercise the jurisdiction and functions of the Tribunal by virtue of an order in force under section 6;

“close relative”, in relation to a person, means—

- (a) the person’s spouse or the person who is living with the person as the person’s spouse;
- (b) a parent, guardian, step-parent or grandparent of the person; or
- (c) a child, step-child or grandchild of the person or any other child of whom the person is a guardian;

“injury” means—

- (a) actual physical bodily harm;
- (b) nervous shock;
- (c) mental illness or disorder (whether or not arising from nervous shock);
- (d) pregnancy; or
- (e) any combination of the foregoing,

but does not include injury arising from loss or damage to property;

“rules” means rules of the Tribunal in force under section 75;

“Tribunal” means the Victims Compensation Tribunal constituted by this Act.

- (2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—THE TRIBUNAL**Constitution of the Tribunal**

4. (1) There is constituted by this Act a Victims Compensation Tribunal.

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(2) The Tribunal shall consist of such members as the Governor may, on the recommendation of the Attorney General, appoint.

(3) Only Magistrates are eligible to be appointed as members of the Tribunal.

(4) Of the members of the Tribunal, one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as Chairperson of the Tribunal.

(5) Schedule 1 has effect with respect to the members of the Tribunal.

Jurisdiction and functions of the Tribunal

5. (1) The Tribunal has the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

(2) In the exercise of its jurisdiction and functions, the Tribunal shall do all such things as are necessary to ensure that proceedings before it are disposed of within as short a period as is reasonably practicable.

Authorised Magistrates

6. The Chairperson of the Tribunal may, by order made with the consent of the Chief Magistrate, declare that the jurisdiction and functions of the Tribunal may be exercised by such Magistrate or Magistrates as is or are specified in the order.

Single member etc. to exercise the jurisdiction and functions of the Tribunal

7. The jurisdiction and functions of the Tribunal shall be exercised—

- (a) by a member of the Tribunal; or
- (b) by an authorised Magistrate,

sitting alone.

Sittings of the Tribunal

8. More than one sitting of the Tribunal may be held at the same time.

Registrar and other staff of the Tribunal

9. A Registrar and such other staff as are necessary to enable the Tribunal to exercise its jurisdiction and functions shall be employed under the Public Service Act 1979.

PART 3—COMPENSATION AWARDED BY THE TRIBUNAL**Division 1—Preliminary****Definitions**

10. (1) In this Part—

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“act of violence” means an act or series of related acts (as referred to in subsection (2)), whether committed by one or more persons—

- (a) that has apparently occurred in the course of the commission of an offence; and
- (b) that has resulted in injury or death to one or more persons;

“award of compensation” means an award of compensation under section 19;

“compensation for expenses” means—

- (a) in relation to a primary victim of an act of violence—
 - (i) compensation for actual and future expenses;
 - (ii) compensation for actual loss of earnings; and
 - (iii) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the victim as a direct result of that act;
- (b) in relation to a secondary victim of an act of violence—
 - (i) compensation for actual and future expenses;
 - (ii) compensation for actual loss of earnings; and
 - (iii) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the victim as a direct result of witnessing, or otherwise becoming aware of, injury sustained by a primary victim, or injury or death sustained by a deceased victim, of that act;
- (c) in relation to a close relative of a deceased victim of an act of violence—
 - (i) compensation for actual expenses; and
 - (ii) compensation for loss of material benefits in the nature of support or domestic services, arising from the death of, or from injury sustained by, the deceased victim; or
- (d) in relation to a law enforcement victim—
 - (i) compensation for actual and future expenses;
 - (ii) compensation for actual loss of earnings; and
 - (iii) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the victim in the course of law enforcement;

“compensation for injury” means—

- (a) in relation to a primary or secondary victim of an act of violence or in relation to a law enforcement victim—
 - (i) compensation for pain and suffering; and
 - (ii) compensation for loss of enjoyment of life; or

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- (b) in relation to a close relative of a deceased victim of an act of violence—
- (i) compensation for pain and suffering;
 - (ii) compensation for loss of enjoyment of life; and
 - (iii) compensation for grief;
- “compensation for loss of personal effects”, in relation to a primary victim of an act of violence or in relation to a law enforcement victim, means compensation for the loss of, or for damage to, any personal effects worn or carried by the victim at the time the act of violence occurred, or at the time the injury was sustained in the course of law enforcement, as the case may be;
- “deceased victim”, in relation to an act of violence, means a person who has sustained death as a direct result of that act;
- “law enforcement victim” means a person who has sustained injury (but not death) in the course of law enforcement;
- “notice of determination” means a notice given under section 19;
- “primary victim”, in relation to an act of violence, means a person who has sustained injury as a direct result of that act, but does not include a deceased victim of that act;
- “secondary victim”, in relation to an act of violence, means a person who has sustained injury as a direct result of witnessing, or otherwise becoming aware of, injury sustained by a primary victim, or injury or death sustained by a deceased victim, of that act.
- (2) An act is related to another act if—
- (a) both of the acts were committed against the same person; and
 - (b) in the opinion of the Tribunal, both of the acts were committed at approximately the same time or were, for any other reason, related to each other.
- (3) In this Part, a reference to an injury sustained in the course of law enforcement is a reference to an injury sustained by a person—
- (a) while trying to prevent another person from committing an offence;
 - (b) while trying to help or rescue another person against whom an offence is being committed or has been committed; or
 - (c) while trying to arrest another person who is committing, or who has committed, an offence.
- (4) In this Part, a reference to a secondary victim of an act of violence who claims through a primary victim or a deceased victim of that act is a reference to a secondary victim who has sustained injury as a direct result of witnessing, or otherwise becoming aware of, injury sustained by the primary victim, or injury or death sustained by the deceased victim, of that act.

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Division 2—Eligibility for compensation**Compensation to primary victims**

11. A primary victim of an act of violence is eligible to receive—
- (a) compensation for injury;
 - (b) compensation for expenses; and
 - (c) compensation for loss of personal effects.

Compensation to secondary victims

12. A secondary victim of an act of violence is eligible to receive—
- (a) compensation for injury; and
 - (b) compensation for expenses.

Compensation to close relatives of deceased victims

13. A close relative of a deceased victim of an act of violence is eligible to receive—
- (a) compensation for injury; and
 - (b) compensation for expenses.

Compensation to law enforcement victims

14. A law enforcement victim is eligible to receive—
- (a) compensation for injury;
 - (b) compensation for expenses; and
 - (c) compensation for loss of personal effects.

Certain persons not eligible to receive compensation

15. (1) A secondary victim of an act of violence is not eligible to receive compensation under this Part if—
- (a) the primary victim through whom he or she is claiming is not eligible to receive compensation under this Part; or
 - (b) the deceased victim through whom he or she is claiming (had the deceased victim been injured but not killed as a direct result of that act) would not have been eligible (as a primary victim) to receive compensation under this Part.
- (2) A secondary victim of an act of violence is not eligible to receive compensation under this Part until—
- (a) any application for compensation made by or on behalf of the primary victim through whom he or she is claiming has been finally disposed of; or
 - (b) any application for compensation made by or on behalf of a close relative of the deceased victim through whom he or she is claiming has been finally disposed of.

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as the case may be.

(3) A close relative of a deceased victim of an act of violence is not eligible to receive compensation under this Part if the deceased victim (had he or she been injured but not killed as a direct result of that act) would not have been eligible (as a primary victim) to receive compensation under this Part.

(4) A law enforcement victim is not entitled to receive compensation under this Part if he or she has previously received compensation under this Part in his or her capacity as a primary or secondary victim of an act of violence from which the injury sustained in the course of law enforcement arose.

(5) A person is not eligible to receive more than one award of compensation under this Part in respect of the same act of violence.

(6) A person is not eligible to receive compensation under this Part in respect of—

- (a) an act of violence; or
- (b) an injury sustained in the course of law enforcement,

if the person is entitled to receive compensation under the Transport Accidents Compensation Act 1987 in respect of the same act or injury.

Maximum compensation payable

16. (1) The maximum amount of compensation that a person is eligible to receive under this Part in respect of an act of violence or an injury sustained in the course of law enforcement is \$50,000.

(2) The maximum amount of compensation that—

- (a) a primary victim of an act of violence; and
- (b) all secondary victims claiming through the primary victim of that act,

are together eligible to receive under this Part is \$50,000.

(3) The maximum amount of compensation that—

- (a) all close relatives of a deceased victim of an act of violence; and
- (b) all secondary victims claiming through the deceased victim of that act,

are together eligible to receive under this Part is \$50,000.

(4) Notwithstanding subsection (3), the close relatives of a deceased victim of an act of violence, and the secondary victims claiming through the deceased victim of that act, are not eligible to receive so much of the \$50,000 as is equivalent to the sum of the amounts that have been paid to—

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- (a) the deceased victim (as a primary victim); and
- (b) all secondary victims claiming through the deceased victim (as a primary victim).

(5) Without limiting the generality of the other provisions of this section, the maximum amount of compensation that a person is eligible to receive under this Part in respect of an act of violence or an injury sustained in the course of law enforcement is—

- (a) \$40,000 by way of compensation for injury;
- (b) \$50,000 by way of compensation for expenses; and
- (c) \$1,000 by way of compensation for loss of personal effects.

Division 3—Compensation proceedings

Applications

17. (1) An application for compensation under this Part may be made—

- (a) by a primary or secondary victim of an act of violence;
- (b) by a close relative of a deceased victim of an act of violence;
- (c) by a law enforcement victim; or
- (d) by any other person, on behalf of a person referred to in paragraph (a), (b) or (c), who has a genuine interest in the welfare of that person.

(2) An application—

- (a) shall be in the prescribed form;
- (b) shall be accompanied by such documentary evidence (such as medical certificates) as may be prescribed;
- (c) shall be verified by statutory declaration; and
- (d) shall be lodged with—
 - (i) the Registrar of the Tribunal; or
 - (ii) the Clerk of a Local Court,

within 2 years (or within such longer period as the Tribunal may, in a particular case, allow) after the relevant act of violence or injury sustained in the course of law enforcement occurred.

(3) The Clerk of a Local Court with whom an application is lodged under this section shall cause the application to be forwarded to the Registrar of the Tribunal as soon as practicable after it is so lodged.

Consideration of applications

18. (1) The Tribunal shall consider each application made to it.

(2) For the purpose of considering an application, the Tribunal shall, unless it directs otherwise, conduct a hearing in accordance with Part 4.

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(3) In deciding whether or not to conduct a hearing, the Tribunal shall have regard to, but is not bound to observe, the preference of the applicant.

Determination of applications

19. (1) After considering an application, the Tribunal shall determine the application—

- (a) by making an award of compensation; or
- (b) by dismissing the application.

(2) An award of compensation shall not be made unless the Tribunal is satisfied, on the balance of probabilities, that the person to whom the application for compensation relates—

- (a) is—
 - (i) a primary or secondary victim of an act of violence;
 - (ii) a close relative of a deceased victim of an act of violence; or
 - (iii) a law enforcement victim; and
- (b) is eligible to receive compensation of at least \$200 or such other amount as may be prescribed.

(3) The Tribunal shall cause notice of its determination to be given to the applicant.

(4) Such a notice shall be in the prescribed form and shall include—

- (a) if an award of compensation is made—
 - (i) a statement of the amount (if any) payable by way of compensation for injury;
 - (ii) a statement of the amount (if any) payable by way of compensation for expenses; and
 - (iii) a statement of the amount (if any) payable by way of compensation for loss of personal effects,together with a statement of its reasons for awarding those amounts;
- (b) a statement of the amount (if any) payable by way of costs;
- (c) if the application is dismissed—a statement of the reasons for its dismissal; and
- (d) such other information as may be required by the regulations.

Reasons for not making award or for reducing amount of compensation payable

20. (1) In determining whether or not to make an award of compensation to or for the benefit of a victim of an act of violence and in determining the amount of compensation to award, the Tribunal shall have regard to—

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- (a) any behaviour, condition, attitude or disposition of the victim that directly or indirectly contributed to the injury or death sustained by the victim;
 - (b) whether the act of violence was reported to a member of the police force within a reasonable time;
 - (c) whether the victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed;
 - (d) whether the victim has failed to provide reasonable assistance to the police force in connection with the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed; and
 - (e) such other matters as the Tribunal considers relevant.
- (2) In subsection (1), a reference to a victim of an act of violence is a reference to—
- (a) a primary victim;
 - (b) a secondary victim; or
 - (c) a deceased victim,
- of that act.
- (3) In determining whether or not to make an award of compensation to a law enforcement victim and in determining the amount of compensation to award, the Tribunal shall have regard to—
- (a) any behaviour, condition, attitude or disposition of the victim that directly or indirectly contributed to the injury sustained by the victim; and
 - (b) such other matters as the Tribunal considers relevant.

Factors affecting amount of compensation payable

21. In determining the amount of compensation to award under this Part to a person, the Tribunal shall have regard to—

- (a) any amount which has been paid to the person or which the person is entitled to be paid—
 - (i) pursuant to a direction for compensation under Part 6;
 - (ii) by way of damages awarded in civil proceedings;
 - (iii) under any other Act or law (including any Act or law relating to workers' compensation); or
 - (iv) under any insurance or other agreement; and
- (b) any other amount which has been received by the person or which (in the opinion of the Tribunal) is likely to be received by the person,

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in respect of the act of violence or injury sustained in the course of law enforcement to which the application for compensation relates.

Persons to whom compensation may be made payable

22. (1) An award of compensation may be made payable—

- (a) to the person to whom the application for compensation relates; or
- (b) to any other person for the benefit of that person.

(2) In making a decision as to whom an award of compensation should be made payable, the Tribunal shall have regard to the likelihood that a person by whom an act of violence was allegedly committed may receive the benefit of the award or any part of the award.

Interim awards of compensation

23. (1) Pending the determination of an application for compensation, the Tribunal may—

- (a) in circumstances in which it is apparent that the person to whom the application relates is in severe financial hardship; or
- (b) in such other circumstances as the Tribunal considers appropriate,

make an interim award of compensation to that person.

(2) If, on determining the application, the Tribunal decides to award compensation to the person to whom the application relates, the Tribunal shall deduct the amount of any interim award of compensation from the amount of compensation that it would otherwise have awarded.

Compensation may be awarded subject to conditions

24. An award of compensation (including an interim award of compensation under section 23) may be made subject to such conditions as the Tribunal thinks fit—

- (a) as to the notification to the Tribunal of such matters (including matters relating to the financial circumstances of the person to or for whose benefit the award is made) as may be specified in the notice of determination relating to the award;
- (b) as to the assignment by the person to or for whose benefit the award is made of that person's rights to any entitlement that the person has—
 - (i) pursuant to a direction for compensation under Part 6; or
 - (ii) by way of damages awarded in civil proceedings;
- (c) as to the repayment of the whole or any part of the amount of the award under such circumstances as may be specified in the notice of determination relating to the award; or
- (d) in the case of an award that is payable to a person for the benefit of some other person—

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- (i) as to the payment of the compensation to or for the benefit of that other person; or
- (ii) as to the holding of the whole or any part of the compensation on trust for that other person.

Inadmissibility of certain evidence in subsequent criminal proceedings

25. Notwithstanding any rule of law to the contrary, the evidence given by a person to the Tribunal in connection with an application under this Part is not admissible in evidence against any other person in criminal proceedings arising from substantially the same facts as those on which the application is based.

Division 4—Payment of compensation**Secretary of Attorney General's Department to be notified of determination**

26. On making an award of compensation or costs, the Tribunal shall cause a copy of the relevant notice of determination to be forwarded to the Secretary of the Attorney General's Department.

Secretary of Attorney General's Department to pay compensation

27. (1) An application for payment of the whole or any part of an award of compensation or costs shall be made to the Registrar of the Tribunal who shall forward the application to the Secretary of the Attorney General's Department.

(2) Such an application shall be in the prescribed form and shall comply with any conditions to which the award is subject.

(3) On receiving such an application, the Secretary of the Attorney General's Department shall (subject to the conditions of the award and any deductions made in accordance with those conditions or in accordance with section 23) pay to the person to whom the award is payable—

- (a) the amount (if any) specified in the relevant notice of determination as the amount of compensation; and
- (b) the amount (if any) specified in the relevant notice of determination as the amount of costs,

awarded to the person.

(4) Payment under this section shall be made out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

Effect of award on subsequent civil proceedings

28. (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom an award of compensation has been made under this Part on the basis of the same facts as those on which the civil proceedings are based.

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(2) Subject to subsection (3), an award of compensation does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings shall be assessed without regard to the award.

(3) On the payment to a person of an award of compensation, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the award is based are, by operation of this section, subrogated to the Crown to the extent of the amount of compensation so paid.

(4) This section does not limit the operation of section 50 or 58.

Division 5—Appeals from determinations of the Tribunal

Appeals to the District Court

29. (1) An applicant for compensation under this Part may appeal to the District Court from any determination of the Tribunal in respect of the application.

(2) An appeal by a person under this section shall be instituted—

- (a) within the period of 2 months after the day on which the relevant notice of determination was given to the person; or
- (b) within such further time as the District Court may allow.

(3) The District Court shall hear and determine the appeal and may make such orders as it thinks appropriate in the light of its decision.

(4) Without affecting the generality of subsection (3), the orders that may be made by the District Court on an appeal include—

- (a) an order affirming or setting aside the determination of the Tribunal; and
- (b) an order remitting the application to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the District Court.

PART 4—COMPENSATION HEARINGS

Hearings generally

30. (1) In hearings under this Part, the Tribunal is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Hearings under this Part shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

(3) An applicant for compensation is entitled to be represented in any hearing under this Part by a legal practitioner or, by leave of the Tribunal, by an agent.

*Victims Compensation 1987***Hearings to be open to the public**

31. Hearings under this Part shall be conducted in the presence of the public unless—

- (a) criminal proceedings are pending against any person in respect of substantially the same facts as those alleged in the application for compensation; or
- (b) the Tribunal, in a particular case, determines that the proceedings shall be closed to the public.

Publication of names etc.

32. (1) A person shall not, except with the consent of the Tribunal, publish or broadcast the name of any person—

- (a) who appears as a witness before the Tribunal in any hearing under this Part;
- (b) to whom any hearing under this Part relates; or
- (c) who is mentioned or otherwise involved in any hearing under this Part,

whether before or after the hearing is completed.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

Presentation of cases

33. In any hearing under this Part, the applicant for compensation may—

- (a) call and examine any witness;
- (b) give evidence on oath;
- (c) produce documents and exhibits to the Tribunal; and
- (d) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the hearing.

Tribunal may compel attendance of witnesses etc.

34. (1) For the purposes of any hearing under this Part, the Tribunal may—

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- (a) by instrument in writing require any person on whom the instrument is served personally or by post—
 - (i) to appear at the hearing for the purpose of giving evidence; or
 - (ii) to produce to the Tribunal any document that is relevant to the hearing,
 at a time, date and place specified in the instrument;
- (b) require a person who appears at the hearing to be sworn for the purpose of giving evidence on oath; and
- (c) administer such an oath.

(2) When a document is produced to the Tribunal pursuant to a requirement under this section, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of completing the hearing.

Witnesses to answer questions

35. (1) The Tribunal may require a person who appears at a hearing under this Part to answer any question that is reasonably related to the hearing.

(2) A person may refuse to answer such a question on the ground that the answer might tend to incriminate the person.

Refusal to attend or to answer questions etc.

36. A person shall not—

- (a) fail to comply with a requirement made of the person under section 34 or 35 by the Tribunal to the extent to which the person is lawfully able to comply with the requirement; or
- (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing at a hearing under this Part.

Penalty: 5 penalty units.

Witnesses' expenses

37. A person (other than an officer or temporary employee within the meaning of the Public Service Act 1979) who is required to appear or to give evidence at a hearing under this Part is entitled to be paid such allowances and expenses as may be prescribed by the rules of the Tribunal.

Adjournments

38. (1) The Tribunal may from time to time adjourn a hearing under this Part to such times, dates and places, and for such reasons, as it thinks fit.

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(2) Without limiting the generality of subsection (1), the Tribunal may adjourn a hearing under this Part pending the determination of criminal proceedings against a person in respect of substantially the same facts as those alleged in the application for compensation.

Dismissal of frivolous proceedings etc.

39. The Tribunal may dismiss proceedings before it if, before or during a hearing under this Part, it is satisfied—

- (a) that the proceedings are frivolous or vexatious; or
- (b) that, for any other reason, the proceedings should not be entertained.

Misconduct in proceedings before the Tribunal

40. (1) A person shall not, in a hearing under this Part—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during the hearing;
- (c) wilfully and without lawful excuse interrupt the hearing; or
- (d) without lawful excuse disobey a direction of the Tribunal during the hearing.

Penalty: 5 penalty units.

(2) The Tribunal may direct a person who does any thing referred to in subsection (1) to leave the place where the hearing is being conducted.

(3) A person shall not fail to comply with a direction under this section.

Penalty: 5 penalty units.

Costs

41. (1) The applicant in any proceedings before the Tribunal is entitled to be paid his or her costs in the proceedings (not exceeding \$1,000) in accordance with the scale of costs prescribed by the rules of the Tribunal.

(2) An applicant may, if the Tribunal so directs, be awarded costs under this section even if the application for compensation is dismissed.

(3) Notwithstanding any Act or law to the contrary, but subject to any order of the Tribunal, a legal practitioner is not entitled to charge or recover, by way of costs in respect of proceedings before the Tribunal, any amount in excess of the amount payable under an award of costs under this section.

(4) A provision in any agreement (whether in writing or not and whether entered into before or after the commencement of this Act) under which the operation of subsection (3) is excluded, modified or restricted, or which has the effect of excluding, modifying or restricting subsection (3), is void.

PART 5—RECOVERY OF COMPENSATION FROM OFFENDERS**Definitions**

42. In this Part—

“award of compensation” means an award of compensation under Part 3;

“defendant”, in relation to a recovery action, means the person against whom the recovery action is being taken;

“determination for restitution” means a determination for restitution under section 47;

“recovery action” means an action referred to in section 43;

“victim” means a person to whom an amount has been paid under an award of compensation.

Recovery actions to be taken before the Tribunal

43. (1) An action may be taken before the Tribunal, by or on behalf of the Crown, for the recovery of the whole or any part of an amount paid to a victim under an award of compensation.

(2) A recovery action may not be commenced against a person if civil proceedings have been commenced, or are being maintained, against the person, by or on behalf of the Crown, in respect of an action for damages arising from the same facts as those on which the award of compensation to which the recovery action relates was based.

(3) A recovery action may not be commenced or maintained against a person who is under the age of 16 years.

Recovery action may be commenced only after conviction of the offender

44. A recovery action may not be commenced or maintained against a person unless the person has been convicted in New South Wales of—

- (a) an indictable offence; or
- (b) an offence (whether indictable or summary) under the Crimes Act 1900,

arising from substantially the same facts as those on which the award of compensation to which the action relates was based.

Recovery action to be heard and determined as civil proceedings for damages

45. (1) A recovery action shall be heard and determined as if it were an action for damages in civil proceedings in a Local Court exercising civil jurisdiction.

(2) Subject to the rules of the Tribunal, a recovery action shall be heard and determined in accordance with—

- (a) the rules of law governing the admission of evidence; and

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- (b) the practice and procedure of Local Courts exercising civil jurisdiction.

Evidentiary matters

46. (1) The victim to whom a recovery action relates is competent, but not compellable, to give evidence in proceedings on the action.

(2) Notwithstanding any rule of law to the contrary, evidence given by the victim—

- (a) in any application for an award of compensation; or
- (b) in any hearing relating to that application,

is admissible in proceedings on a recovery action.

(3) If evidence so given by the victim is admitted in proceedings on a recovery action but the victim does not attend as a witness in the proceedings, that evidence shall be given no greater weight than is appropriate as a consequence of there having been no opportunity for the victim to be cross-examined in relation to that evidence.

Determinations for restitution

47. (1) If the Tribunal finds for the Crown in proceedings on a recovery action, it shall, in determining the amount that the defendant shall pay to the Crown by way of restitution, have regard to—

- (a) the financial means of the defendant;
- (b) the Tribunal's assessment of the culpability of the defendant in relation to the act of violence on which the award of compensation to which the action relates was based;
- (c) any arrangement that may have been entered into between the defendant and the Crown for the payment by the defendant to the Crown of an amount by way of restitution in relation to the award of compensation to which the action relates; and
- (d) such other matters as are, in the opinion of the Tribunal, relevant to the determination.

(2) The maximum amount that the Tribunal may determine that the defendant shall pay to the Crown in respect of a recovery action is the amount paid to the victim under the award of compensation to which the action relates.

Entry of judgment

48. (1) A determination for restitution shall, on the filing of the prescribed documents in the office or registry of a court having jurisdiction to order payment of the amount specified in the determination, be deemed to be a judgment of that court for the amount so specified.

(2) The prescribed documents are—

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- (a) a copy of the determination certified by the Registrar of the Tribunal to be a true copy; and
- (b) an affidavit by the Registrar specifying the amount unpaid under the determination.

Appeals

49. A determination for restitution may be appealed against in the same way as a judgment of a Local Court exercising civil jurisdiction may be appealed against.

Effect of determination for restitution on subsequent civil proceedings

50. (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom an award of compensation has been made (being an award in respect of which the Tribunal has made a determination for restitution) on the basis of the same facts as those on which the civil proceedings are based.

(2) Subject to subsection (3), a determination for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings shall be assessed without regard to the determination.

(3) The right of the Crown, pursuant to section 28, to commence or maintain civil proceedings is extinguished by a determination for restitution.

(4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the Crown pursuant to section 28.

(5) This section does not limit the operation of section 28 or 58.

Costs

51. The Tribunal does not have jurisdiction to order payment of costs in relation to proceedings on a recovery action.

PART 6—COMPENSATION AWARDED BY A COURT**Division 1—Major offences****Definitions**

52. In this Division—

“aggrieved person” means—

- (a) in relation to an offence other than an offence in respect of the death of a person, a person who has sustained injury through or by reason of—
 - (i) an offence for which the offender has been convicted; or

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- (ii) an offence taken into account (under section 447B of the Crimes Act 1900) when sentence was passed on the offender for that offence; or
- (b) in relation to an offence in respect of the death of a person, a close relative of the person;

“compensation for expenses” means—

- (a) compensation for actual and future expenses;
- (b) compensation for actual loss of earnings; and
- (c) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the aggrieved person as a direct result of the commission of a major offence;

“compensation for injury” includes compensation for expenses;

“compensation for loss” does not include compensation for injury;

“direction for compensation” means a direction for compensation under section 53;

“major offence” means—

- (a) an indictable offence;
- (b) an offence (whether indictable or summary) under the Crimes Act 1900; or
- (c) an offence for which proceedings are taken in the Supreme Court in its summary jurisdiction;

“prescribed amount”, in relation to a direction for compensation, means—

- (a) except as provided by paragraph (b)—\$20,000; or
- (b) if the direction is given on or after a conviction by a court (other than the Supreme Court) exercising summary jurisdiction—\$10,000.

Directions for compensation

53. (1) If a person is convicted by a court of a major offence, the court may (on the conviction or at any time thereafter) on notice given to the offender direct that a sum not exceeding the prescribed amount be paid out of the property of the offender—

- (a) to any aggrieved person; or
- (b) to any aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any injury or loss sustained through, or by reason of, the offence or, where applicable, any other offence taken into account (under section 447B of the Crimes Act 1900) when sentence was passed on the offender for that offence.

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(2) A direction for compensation may be given by a court on its own motion or on application made to it by or on behalf of the aggrieved person.

(3) A direction for compensation shall specify the sum (if any) to be paid by way of compensation for injury and the sum (if any) to be paid by way of compensation for loss.

Restrictions on court's power to give directions for compensation

54. (1) A direction for compensation shall not be given in respect of the conviction of a person for a major offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Division or a direction for compensation previously given under Division 2—

- (a) on the conviction of any other person for that offence; or
- (b) on the conviction of that or any other person for a related offence,

exceeds the prescribed amount.

(2) A direction for compensation for injury shall not be given if an award of compensation in respect of the injury has been made under Part 3 to or for the benefit of the aggrieved person.

(3) For the purposes of this section, an offence is related to another offence if—

- (a) both of the offences were committed against the same person; and
- (b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

(4) In this section—

- (a) a reference to a direction for compensation previously given under this Division includes a reference to a direction for compensation previously given under section 437 of the Crimes Act 1900; and
- (b) a reference to a direction for compensation previously given under Division 2 includes a reference to a direction for compensation previously given under section 554 (3) of the Crimes Act 1900.

Factors to be taken into consideration

55. In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court shall have regard to—

- (a) any behaviour, condition, attitude or disposition of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person;

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- (b) any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted; and
- (c) such other matters as it considers relevant.

Payment of sum directed

56. Subject to section 9 of the Criminal Appeal Act 1912 and to the provisions of the Justices Act 1902, any sum directed to be paid by an offender to an aggrieved person, pursuant to a direction for compensation, shall be paid forthwith, or within such period (if any) as is specified in the direction—

- (a) in the case of a direction given by the Supreme Court—to the registrar of the Criminal Division of that Court or to an officer authorised by that registrar;
- (b) in the case of a direction given by the District Court—to the registrar of that Court for the proclaimed place (within the meaning of the District Court Act 1973) at which the direction was given; or
- (c) in the case of a direction given by any other court—to the clerk of that court,

for payment to the aggrieved person.

Enforcement of directions for compensation

57. (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar, officer or clerk of the court shall, on the application of the aggrieved person, issue to the aggrieved person a certificate—

- (a) that identifies the direction;
- (b) that specifies the offender; and
- (c) that specifies the amount required by the direction to be paid which has not, as at the date of the certificate, been paid to the registrar, officer or clerk.

(2) If a certificate is issued under this section, the registrar, officer or clerk shall not thereafter accept any payment from the offender in respect of the direction for compensation identified in the certificate.

(3) An aggrieved person may file such a certificate in the office or registry of a court having jurisdiction to order payment of the amount specified in the certificate, and the registrar or clerk of that court shall forthwith enter judgment in favour of the aggrieved person against the offender specified in the certificate for—

- (a) the amount specified in the certificate as having not been paid; and

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- (b) any fees payable to the registrar or clerk in respect of the filing of the certificate.

Effect of directions for compensation on subsequent civil proceedings

58. (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based.

(2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings shall be assessed without regard to the direction.

(3) The judgment of the court in which the civil proceedings are determined—

- (a) shall not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid pursuant to the direction for compensation; and
- (b) shall not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid pursuant to the direction for compensation.

(4) This section does not limit the operation of section 28 or 50.

Directions for compensation not appellable on certain grounds

59. An appeal does not lie against a direction for compensation merely because, in civil proceedings arising from substantially the same facts as those on which the offender was convicted, the aggrieved person is awarded a lesser amount in damages than the amount of compensation required to be paid by the direction.

Division 2—Minor offences**Definitions**

60. In this Division—

“aggrieved person” means a person who has sustained injury through or by reason of an offence for which the offender has been convicted;

“compensation for expenses” means—

- (a) compensation for actual and future expenses;
- (b) compensation for actual loss of earnings; and
- (c) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the aggrieved person as a direct result of the commission of a minor offence;

“compensation for injury” includes compensation for expenses;

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“compensation for loss” does not include compensation for injury;

“direction for compensation” means a direction for compensation under section 61;

“minor offence” means an offence (whether indictable or summary) for which proceedings are taken summarily, other than an offence for which proceedings are taken in the Supreme Court in its summary jurisdiction.

Directions for compensation

61. (1) If a person is convicted by a court of a minor offence, the court may (on the conviction or at any time thereafter) on notice given to the offender direct that a sum not exceeding \$1,000 be paid—

- (a) to any aggrieved person; or
- (b) to any aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any injury or loss sustained through, or by reason of, the offence.

(2) A direction for compensation may be given by a court on its own motion or on application made to it by or on behalf of the aggrieved person.

(3) A direction for compensation shall specify the sum (if any) to be paid by way of compensation for injury and the sum (if any) to be paid by way of compensation for loss.

Restrictions on court's power to give directions for compensation

62. (1) A direction for compensation shall not be given in respect of the conviction of a person for a minor offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Division or a direction for compensation previously given under Division 1—

- (a) on the conviction of any other person for that offence; or
- (b) on the conviction of that or any other person for a related offence,

exceeds \$1,000.

(2) A direction for compensation for injury shall not be given if an award of compensation in respect of the injury has been made under Part 3 to or for the benefit of the aggrieved person.

(3) For the purposes of this section, an offence is related to another offence if—

- (a) both of the offences were committed against the same person; and
- (b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

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(4) In this section—

- (a) a reference to a direction for compensation previously given under this Division includes a reference to a direction for compensation previously given under section 554 (3) of the Crimes Act 1900; and
- (b) a reference to a direction for compensation previously given under Division 1 includes a reference to a direction for compensation previously given under section 437 of the Crimes Act 1900.

Factors to be taken into consideration

63. In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court shall have regard to—

- (a) any behaviour, condition, attitude or disposition of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person;
- (b) any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted; and
- (c) such other matters as it considers relevant.

Payment of sum directed

64. Any sum directed to be paid by an offender to an aggrieved person, pursuant to a direction for compensation, shall be paid by the offender to the registrar or clerk of the court for payment to the aggrieved person.

Enforcement of directions for compensation

65. A direction for compensation shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the Justices Act 1902.

PART 7—MISCELLANEOUS**Record of proceedings**

66. The member constituting the Tribunal at any sitting shall cause a record to be kept of the proceedings at the sitting.

Authentication of documents etc.

67. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the Chairperson or the Registrar of the Tribunal.

(2) Judicial notice shall be taken of the signature of the Chairperson or the Registrar of the Tribunal when appearing on a document issued by the Tribunal.

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Limitation of liability

68. (1) No proceedings lie against the Tribunal or any of its members or members of staff, or against any authorised Magistrate, for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member, member of staff or authorised Magistrate and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, if the Tribunal, member, member of staff or authorised Magistrate has acted in good faith and with reasonable care.

(2) A member of the Tribunal, or authorised Magistrate, shall, in exercising the functions of the Tribunal, have the same protection and immunity as he or she has as a Magistrate.

Application of Defamation Act 1974

69. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

Reports

70. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Chairperson of the Tribunal shall prepare and forward to the Attorney General a report on the work and activities of the Tribunal for the 12 months ending on 30 June in that year.

(2) The Attorney General shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) Without limiting the generality of subsection (1), the Chairperson of the Tribunal shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the work and activities of the Tribunal.

(4) A report shall deal with such matters as the Attorney General directs and with such other matters as the Chairperson of the Tribunal considers appropriate to include in the report.

Representation of the Crown in certain proceedings

71. In any proceedings which the Crown is entitled to commence or maintain, or in which the Crown is entitled to be joined as a party, by virtue of this Act, the Crown shall be represented by such person, or by a person belonging to such class of persons, as may be authorised by the regulations to represent the Crown in those proceedings.

Proceedings for offences

72. Proceedings for an offence against this Act shall be dealt with summarily before the Tribunal or before a Local Court constituted by a Magistrate sitting alone.

*Victims Compensation 1987***Recovery of money owed to the Crown**

73. Any amount of money that is payable to the Crown under this Act may be recovered as a debt in a court of competent jurisdiction.

Forms

74. Any form prescribed by the regulations, or by the rules of the Tribunal, for the purposes of this Act may require any information included in the form to be verified by statutory declaration.

Rules

75. The Governor may make rules, not inconsistent with this Act, for or with respect to—

- (a) the practice and procedure of the Tribunal; and
- (b) costs awarded by the Tribunal.

Regulations

76. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the forms to be used for the purposes of this Act;
- (b) the conditions that may be imposed on an award of compensation under Part 3; and
- (c) the publication of information concerning the provisions of this Act.

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
TRIBUNAL**

(Sec. 4)

Magisterial status etc. not affected

1. (1) A member of the Tribunal does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Tribunal.

(2) The service of a member of the Tribunal in his or her capacity as such a member shall, for all purposes, be taken to be service as a Magistrate.

Term of office

2. (1) A member of the Tribunal shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A member of the Tribunal shall hold office on a full-time or part-time basis, as may be specified in the member's instrument of appointment.

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**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
TRIBUNAL—*continued*****Public Service Act 1979 not to apply to members of the Tribunal**

3. The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Tribunal and a member of the Tribunal is not, as a member of the Tribunal, subject to that Act.

Casual vacancies

4. A person shall be deemed to have vacated office as a member of the Tribunal if the person—

- (a) ceases to be a Magistrate; or
- (b) resigns office by instrument in writing addressed to the Attorney General.

Appointment as Magistrate unaffected by resignation etc.

5. A person does not cease to be a Magistrate merely because of—

- (a) his or her resignation from office as a member of the Tribunal; or
- (b) the expiration of his or her term of office as a member of the Tribunal.

VICTIMS COMPENSATION BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Miscellaneous Acts (Victims Compensation) Repeal and Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to provide for the constitution and functions of the Victims Compensation Tribunal (Part 2);
- (b) to provide for the making of compensation awards by the Tribunal (Parts 3 and 4);
- (c) to enable amounts paid by way of compensation to be recovered from persons convicted of offences in respect of which compensation has been awarded (Part 5);
- (d) to preserve the existing powers of the courts (currently contained in sections 437 and 554 of the Crimes Act 1900) to give directions for the payment of compensation (Part 6); and
- (e) to make other provisions of a minor, consequential or ancillary nature.

PART 1—PRELIMINARY

This Part contains provisions—

- (a) specifying the short title of the proposed Act (clause 1);
- (b) providing that the proposed Act is to commence on a day to be appointed by proclamation (clause 2); and
- (c) defining certain words and expressions for the purposes of the proposed Act (clause 3).

PART 2—THE TRIBUNAL

This Part contains provisions—

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- (a) providing for the constitution of the Victims Compensation Tribunal (clause 4);
- (b) specifying the jurisdiction and functions of the Tribunal (clause 5);
- (c) enabling the Chairperson of the Tribunal to authorise specified Magistrates to exercise the jurisdiction and functions of the Tribunal (clause 6);
- (d) enabling the jurisdiction and functions of the Tribunal to be exercised by a single member of the Tribunal or by an authorised Magistrate (clause 7);
- (e) enabling more than one sitting of the Tribunal to be held at the same time (clause 8); and
- (f) providing for the appointment of a Registrar and other staff for the Tribunal (clause 9).

PART 3—COMPENSATION AWARDED BY THE TRIBUNAL

Division 1—Preliminary

This Division contains a provision defining certain words and expressions for the purposes of the proposed Part 3 (clause 10).

Division 2—Eligibility for compensation

This Division contains provisions—

- (a) specifying the compensation for which a primary victim of an act of violence is eligible (clause 11);
- (b) specifying the compensation for which a secondary victim of an act of violence is eligible (clause 12);
- (c) specifying the compensation for which a close relative of a deceased victim of an act of violence is eligible (clause 13);
- (d) specifying the compensation for which a law enforcement victim is eligible (clause 14);
- (e) specifying certain classes of person who are not eligible for compensation (clause 15); and
- (f) specifying the maximum amount of compensation which is payable in respect of any single event (clause 16).

Division 3—Compensation proceedings

This Division contains provisions—

- (a) providing for the making of applications for compensation (clause 17);
- (b) requiring the Tribunal to consider each application made to it and requiring it, except in certain specified circumstances, to conduct a hearing into each such application (clause 18);
- (c) requiring the Tribunal to determine applications for compensation made to it by making an award of compensation or by dismissing the application (clause 19);
- (d) specifying certain circumstances in which the Tribunal may refuse to award compensation or may reduce the amount of compensation that it might otherwise have awarded (clause 20);
- (e) specifying the factors that the Tribunal should take into consideration in determining how much compensation to award to an applicant (clause 21);
- (f) specifying to whom an award of compensation may be made payable (clause 22);
- (g) enabling the Tribunal to make interim awards of compensation (clause 23);

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- (h) enabling the Tribunal to award compensation subject to certain specified conditions (clause 24); and
- (i) limiting the circumstances in which evidence given to it in compensation proceedings may be used in subsequent criminal proceedings (clause 25).

Division 4—Payment of compensation

This Division contains provisions—

- (a) requiring the Tribunal to notify the Secretary of the Attorney General's Department of awards of compensation made by it (clause 26);
- (b) requiring the Secretary of the Attorney General's Department to pay compensation in accordance with awards made by the Tribunal (clause 27); and
- (c) specifying the effect that an award of compensation has on subsequent civil proceedings (clause 28).

Division 5—Appeals from determinations of the Tribunal

This Division contains a provision enabling an appeal to be made to the District Court in respect of the determination of the Tribunal on an application for compensation (clause 29).

PART 4—COMPENSATION HEARINGS

This Part contains provisions—

- (a) governing the procedure of the Tribunal in respect of hearings conducted by it (clause 30);
- (b) requiring hearings before the Tribunal to be open to the public except in certain specified circumstances (clause 31);
- (c) restricting the publication of the names of persons to whom hearings conducted by the Tribunal relate (clause 32);
- (d) providing for the presentation of cases in hearings conducted by the Tribunal (clause 33);
- (e) enabling the Tribunal to compel witnesses to attend hearings conducted by the Tribunal (clause 34);
- (f) requiring witnesses to answer questions put to them in hearings conducted by the Tribunal (clause 35);
- (g) imposing a penalty of 5 penalty units (that is, \$500) on a witness who fails to comply with a requirement to attend a hearing conducted by the Tribunal or to answer a question put to the witness while appearing at such a hearing (clause 36);
- (h) providing for the payment of witnesses' expenses (clause 37);
- (i) enabling the Tribunal to adjourn hearings, particularly in situations where related criminal proceedings are pending (clause 38);
- (j) enabling the Tribunal to dismiss frivolous or vexatious proceedings (clause 39);
- (k) imposing a penalty of 5 penalty units (that is, \$500) on persons who misconduct themselves in the course of hearings conducted by the Tribunal (clause 40); and
- (l) providing for the payment of costs in relation to proceedings before the Tribunal (clause 41).

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PART 5—RECOVERY OF COMPENSATION FROM OFFENDERS

This Part contains provisions—

- (a) defining certain words and expressions for the purposes of the proposed Part 5 (clause 42);
- (b) enabling recovery actions to be taken before the Tribunal (clause 43);
- (c) providing that a recovery action may be commenced against a person only if the person has been convicted in New South Wales of an offence arising out of substantially the same facts as those on which an award of compensation has been made (clause 44);
- (d) providing that a recovery action is to be heard and determined as if it were a civil claim for damages commenced in a Local Court (clause 45);
- (e) providing that the victim of an act of violence is a competent, but not compellable, witness in a recovery action and that the victim's evidence of an earlier compensation hearing is, subject to certain safeguards, admissible in evidence even though the victim does not appear as a witness in the action (clause 46);
- (f) enabling the Tribunal to make a determination enabling restitution against a defendant in a recovery action (clause 47);
- (g) providing for the entry of the Tribunal's determination as a judgment in a court having jurisdiction to award payment of the amount of the determination (clause 48);
- (h) providing for appeals from the determinations of the Tribunal (clause 49);
- (i) specifying the effect that a determination for restitution has on subsequent civil proceedings (clause 50); and
- (j) providing that the Tribunal has no jurisdiction to award costs in a recovery action (clause 51).

PART 6—COMPENSATION AWARDED BY A COURT

Division 1—Major offences

This Division contains provisions—

- (a) defining certain words and expressions for the purposes of the proposed Division 1 (clause 52);
- (b) enabling a court to give a direction for compensation (not exceeding \$10,000 in the case of a court, other than the Supreme Court, exercising summary jurisdiction and not exceeding \$20,000 in any other case) if it has convicted a person of a major offence (clause 53);
- (c) imposing certain restrictions on a court's power to give a direction for compensation (clause 54);
- (d) specifying certain factors that a court must take into consideration when deciding whether to give a direction for compensation (clause 55);
- (e) providing for the manner of payment of any sum directed to be paid under a direction for compensation (clause 56);
- (f) providing for the enforcement of a direction for compensation (clause 57);
- (g) specifying the effect of a direction for compensation on subsequent civil proceedings arising from the same facts (clause 58); and

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- (h) ensuring that no appeal lies against a direction for compensation merely because it directs payment of an amount greater than that subsequently awarded by way of damages in civil proceedings arising from the same facts (clause 59).

Division 2—Minor offences

This Division contains provisions—

- (a) defining certain words and expressions for the purposes of the proposed Division 2 (clause 60);
- (b) enabling a court to give a direction for compensation (not exceeding \$1,000) if it has convicted a person of a minor offence (clause 61);
- (c) imposing certain restrictions on a court's power to give a direction for compensation (clause 62);
- (d) specifying certain factors that a court must take into consideration when deciding whether to give a direction for compensation (clause 63);
- (e) providing for the manner of payment of any sum directed to be paid under a direction for compensation (clause 64); and
- (f) providing for the enforcement of a direction for compensation (clause 65).

PART 7—MISCELLANEOUS

This Part contains provisions—

- (a) requiring the Tribunal to cause a record to be kept of its proceedings (clause 66);
- (b) providing for the authentication of documents issued by the Tribunal (clause 67);
- (c) protecting the Tribunal, its members and members of staff from personal liability for anything done or omitted in the execution of their functions under the proposed Act (clause 68);
- (d) ensuring that the proceedings of the Tribunal have the protection of section 18 of the Defamation Act 1974 (clause 69);
- (e) requiring the Chairperson of the Tribunal to furnish reports to the Attorney General on the work and activities of the Tribunal (clause 70);
- (f) providing that, in certain proceedings arising under the proposed Act, the Crown is to be represented by such person as may be authorised by the regulations in that behalf (clause 71);
- (g) requiring proceedings for offences to be dealt with before the Tribunal or before a Local Court constituted by a Magistrate (clause 72);
- (h) providing that money owed to the Crown under the proposed Act may be recovered as a debt in a court of competent jurisdiction (clause 73);
- (i) enabling forms used for the purposes of the proposed Act to require information included in them to be verified by statutory declaration (clause 74);
- (j) enabling the Governor-in-Council to make rules governing the practice and procedure of the Tribunal (clause 75); and
- (k) enabling the Governor-in-Council to make regulations for the purposes of the proposed Act (clause 76).

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
TRIBUNAL

This Schedule contains provisions—

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- (a) ensuring that a Magistrate's status as a Magistrate is not affected merely because of his or her appointment as a member of the Tribunal (clause 1);
 - (b) providing that a member of the Tribunal (who may be full-time or part-time) holds office for a period not exceeding 3 years but is eligible for re-appointment (clause 2);
 - (c) excluding members of the Tribunal from the operation of the Public Service Act 1979 (clause 3);
 - (d) specifying the situations in which a member of the Tribunal shall be deemed to have vacated office (clause 4); and
 - (e) ensuring that a person does not cease to be a Magistrate merely because of his or her resignation from office as a member of the Tribunal or the expiration of his or her term of office as a member of the Tribunal (clause 5).
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VICTIMS COMPENSATION BILL 1987

NEW SOUTH WALES



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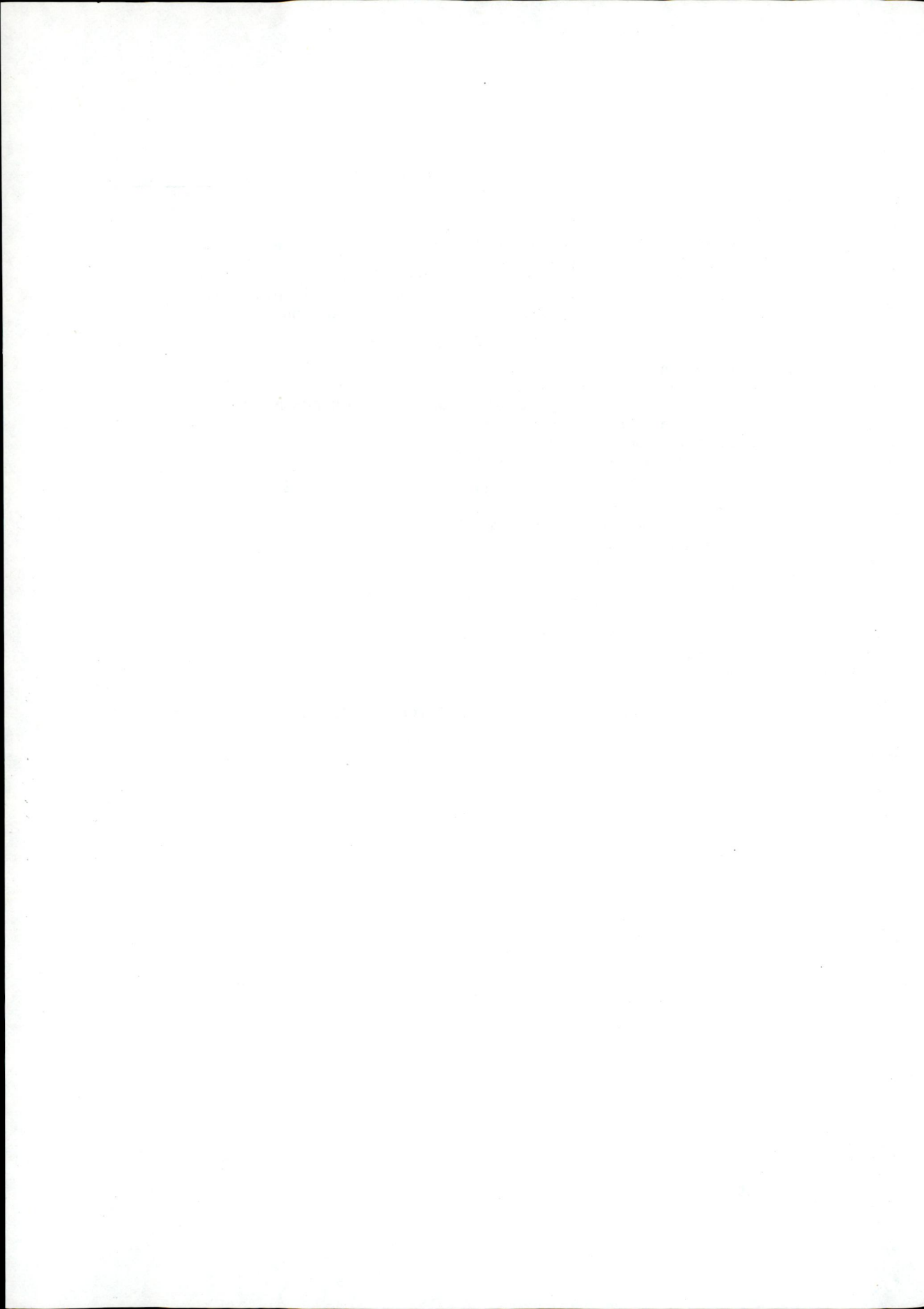
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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL



VICTIMS COMPENSATION BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act with respect to compensation for victims of violence.

See also Miscellaneous Acts (Victims Compensation) Repeal and Amendment Bill 1987.

*Victims Compensation 1987***The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Victims Compensation Act 1987.

5 Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Definitions

3. (1) In this Act—

10 “authorised Magistrate” means a Magistrate who is authorised to exercise the jurisdiction and functions of the Tribunal by virtue of an order in force under section 6;

“close relative”, in relation to a person, means—

- (a) the person’s spouse or the person who is living with the person as the person’s spouse;
- 15 (b) a parent, guardian, step-parent or grandparent of the person; or
- (c) a child, step-child or grandchild of the person or any other child of whom the person is a guardian;

“injury” means—

- (a) actual physical bodily harm;
- 20 (b) nervous shock;
- (c) mental illness or disorder (whether or not arising from nervous shock);
- (d) pregnancy; or
- (e) any combination of the foregoing,

25 but does not include injury arising from loss or damage to property;

“rules” means rules of the Tribunal in force under section 75;

“Tribunal” means the Victims Compensation Tribunal constituted by this Act.

(2) In this Act—

- 30 (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—THE TRIBUNAL**35 Constitution of the Tribunal**

4. (1) There is constituted by this Act a Victims Compensation Tribunal.

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(2) The Tribunal shall consist of such members as the Governor may, on the recommendation of the Attorney General, appoint.

(3) Only Magistrates are eligible to be appointed as members of the Tribunal.

5 (4) Of the members of the Tribunal, one shall (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) be appointed as Chairperson of the Tribunal.

(5) Schedule 1 has effect with respect to the members of the Tribunal.

Jurisdiction and functions of the Tribunal

10 5. (1) The Tribunal has the jurisdiction and functions conferred or imposed on it by or under this or any other Act.

(2) In the exercise of its jurisdiction and functions, the Tribunal shall do all such things as are necessary to ensure that proceedings before it are disposed of within as short a period as is reasonably practicable.

15 Authorised Magistrates

6. The Chairperson of the Tribunal may, by order made with the consent of the Chief Magistrate, declare that the jurisdiction and functions of the Tribunal may be exercised by such Magistrate or Magistrates as is or are specified in the order.

20 Single member etc. to exercise the jurisdiction and functions of the Tribunal

7. The jurisdiction and functions of the Tribunal shall be exercised—

(a) by a member of the Tribunal; or

(b) by an authorised Magistrate,

sitting alone.

25 Sittings of the Tribunal

8. More than one sitting of the Tribunal may be held at the same time.

Registrar and other staff of the Tribunal

9. A Registrar and such other staff as are necessary to enable the Tribunal to exercise its jurisdiction and functions shall be employed under
30 the Public Service Act 1979.

PART 3—COMPENSATION AWARDED BY THE TRIBUNAL**Division 1—Preliminary****Definitions**

10. (1) In this Part—

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“act of violence” means an act or series of related acts (as referred to in subsection (2)), whether committed by one or more persons—

(a) that has apparently occurred in the course of the commission of an offence; and

5 (b) that has resulted in injury or death to one or more persons;

“award of compensation” means an award of compensation under section 19;

“compensation for expenses” means—

(a) in relation to a primary victim of an act of violence—

- 10 (i) compensation for actual and future expenses;
 (ii) compensation for actual loss of earnings; and
 (iii) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the victim as a direct result of that act;

15 (b) in relation to a secondary victim of an act of violence—

- (i) compensation for actual and future expenses;
 (ii) compensation for actual loss of earnings; and
 (iii) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the victim as a direct result of witnessing, or otherwise becoming aware of, injury sustained by a primary victim, or injury or death sustained by a deceased victim, of that act;

(c) in relation to a close relative of a deceased victim of an act of violence—

- 25 (i) compensation for actual expenses; and
 (ii) compensation for loss of material benefits in the nature of support or domestic services, arising from the death of, or from injury sustained by, the deceased victim; or

30 (d) in relation to a law enforcement victim—

- (i) compensation for actual and future expenses;
 (ii) compensation for actual loss of earnings; and
 (iii) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the victim in the course of law enforcement;

35

“compensation for injury” means—

(a) in relation to a primary or secondary victim of an act of violence or in relation to a law enforcement victim—

- (i) compensation for pain and suffering; and
 40 (ii) compensation for loss of enjoyment of life; or

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(b) in relation to a close relative of a deceased victim of an act of violence—

(i) compensation for pain and suffering;

(ii) compensation for loss of enjoyment of life; and

5 (iii) compensation for grief;

“compensation for loss of personal effects”, in relation to a primary victim of an act of violence or in relation to a law enforcement victim, means compensation for the loss of, or for damage to, any personal effects worn or carried by the victim at the time the act of violence
10 occurred, or at the time the injury was sustained in the course of law enforcement, as the case may be;

“deceased victim”, in relation to an act of violence, means a person who has sustained death as a direct result of that act;

15 “law enforcement victim” means a person who has sustained injury (but not death) in the course of law enforcement;

“notice of determination” means a notice given under section 19;

“primary victim”, in relation to an act of violence, means a person who has sustained injury as a direct result of that act, but does not include a deceased victim of that act;

20 “secondary victim”, in relation to an act of violence, means a person who has sustained injury as a direct result of witnessing, or otherwise becoming aware of, injury sustained by a primary victim, or injury or death sustained by a deceased victim, of that act.

(2) An act is related to another act if—

25 (a) both of the acts were committed against the same person; and

(b) in the opinion of the Tribunal, both of the acts were committed at approximately the same time or were, for any other reason, related to each other.

(3) In this Part, a reference to an injury sustained in the course of law
30 enforcement is a reference to an injury sustained by a person—

(a) while trying to prevent another person from committing an offence;

(b) while trying to help or rescue another person against whom an offence is being committed or has been committed; or

35 (c) while trying to arrest another person who is committing, or who has committed, an offence.

(4) In this Part, a reference to a secondary victim of an act of violence who claims through a primary victim or a deceased victim of that act is a reference to a secondary victim who has sustained injury as a direct result of witnessing, or otherwise becoming aware of, injury sustained by the
40 primary victim, or injury or death sustained by the deceased victim, of that act.

*Victims Compensation 1987***Division 2—Eligibility for compensation****Compensation to primary victims**

11. A primary victim of an act of violence is eligible to receive—

- (a) compensation for injury;
- 5 (b) compensation for expenses; and
- (c) compensation for loss of personal effects.

Compensation to secondary victims

12. A secondary victim of an act of violence is eligible to receive—

- (a) compensation for injury; and
- 10 (b) compensation for expenses.

Compensation to close relatives of deceased victims

13. A close relative of a deceased victim of an act of violence is eligible to receive—

- (a) compensation for injury; and
- 15 (b) compensation for expenses.

Compensation to law enforcement victims

14. A law enforcement victim is eligible to receive—

- (a) compensation for injury;
- (b) compensation for expenses; and
- 20 (c) compensation for loss of personal effects.

Certain persons not eligible to receive compensation

15. (1) A secondary victim of an act of violence is not eligible to receive compensation under this Part if—

- 25 (a) the primary victim through whom he or she is claiming is not eligible to receive compensation under this Part; or
- (b) the deceased victim through whom he or she is claiming (had the deceased victim been injured but not killed as a direct result of that act) would not have been eligible (as a primary victim) to receive compensation under this Part.

30 (2) A secondary victim of an act of violence is not eligible to receive compensation under this Part until—

- (a) any application for compensation made by or on behalf of the primary victim through whom he or she is claiming has been finally disposed of; or
- 35 (b) any application for compensation made by or on behalf of a close relative of the deceased victim through whom he or she is claiming has been finally disposed of,

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as the case may be.

(3) A close relative of a deceased victim of an act of violence is not eligible to receive compensation under this Part if the deceased victim (had he or she been injured but not killed as a direct result of that act) would not have been eligible (as a primary victim) to receive compensation under this Part.

(4) A law enforcement victim is not entitled to receive compensation under this Part if he or she has previously received compensation under this Part in his or her capacity as a primary or secondary victim of an act of violence from which the injury sustained in the course of law enforcement arose.

(5) A person is not eligible to receive more than one award of compensation under this Part in respect of the same act of violence.

(6) A person is not eligible to receive compensation under this Part in respect of—

- (a) an act of violence; or
- (b) an injury sustained in the course of law enforcement,

if the person is entitled to receive compensation under the Transport Accidents Compensation Act 1987 in respect of the same act or injury.

20 Maximum compensation payable

16. (1) The maximum amount of compensation that a person is eligible to receive under this Part in respect of an act of violence or an injury sustained in the course of law enforcement is \$50,000.

(2) The maximum amount of compensation that—

- (a) a primary victim of an act of violence; and
- (b) all secondary victims claiming through the primary victim of that act,

are together eligible to receive under this Part is \$50,000.

(3) The maximum amount of compensation that—

- (a) all close relatives of a deceased victim of an act of violence; and
- (b) all secondary victims claiming through the deceased victim of that act,

are together eligible to receive under this Part is \$50,000.

(4) Notwithstanding subsection (3), the close relatives of a deceased victim of an act of violence, and the secondary victims claiming through the deceased victim of that act, are not eligible to receive so much of the \$50,000 as is equivalent to the sum of the amounts that have been paid to—

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- (a) the deceased victim (as a primary victim); and
- (b) all secondary victims claiming through the deceased victim (as a primary victim).

(5) Without limiting the generality of the other provisions of this section, 5 the maximum amount of compensation that a person is eligible to receive under this Part in respect of an act of violence or an injury sustained in the course of law enforcement is—

- (a) \$40,000 by way of compensation for injury;
- (b) \$50,000 by way of compensation for expenses; and
- 10 (c) \$1,000 by way of compensation for loss of personal effects.

Division 3—Compensation proceedings**Applications**

17. (1) An application for compensation under this Part may be made—

- (a) by a primary or secondary victim of an act of violence;
- 15 (b) by a close relative of a deceased victim of an act of violence;
- (c) by a law enforcement victim; or
- (d) by any other person, on behalf of a person referred to in paragraph (a), (b) or (c), who has a genuine interest in the welfare of that person.

20 (2) An application—

- (a) shall be in the prescribed form;
- (b) shall be accompanied by such documentary evidence (such as medical certificates) as may be prescribed;
- (c) shall be verified by statutory declaration; and
- 25 (d) shall be lodged with—
 - (i) the Registrar of the Tribunal; or
 - (ii) the Clerk of a Local Court,
 within 2 years (or within such longer period as the Tribunal may, in a particular case, allow) after the relevant act of violence or injury

30 sustained in the course of law enforcement occurred.

(3) The Clerk of a Local Court with whom an application is lodged under this section shall cause the application to be forwarded to the Registrar of the Tribunal as soon as practicable after it is so lodged.

Consideration of applications

35 18. (1) The Tribunal shall consider each application made to it.

(2) For the purpose of considering an application, the Tribunal shall, unless it directs otherwise, conduct a hearing in accordance with Part 4.

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(3) In deciding whether or not to conduct a hearing, the Tribunal shall have regard to, but is not bound to observe, the preference of the applicant.

Determination of applications

19. (1) After considering an application, the Tribunal shall determine
5 the application—

- (a) by making an award of compensation; or
- (b) by dismissing the application.

(2) An award of compensation shall not be made unless the Tribunal is satisfied, on the balance of probabilities, that the person to whom the
10 application for compensation relates—

- (a) is—
 - (i) a primary or secondary victim of an act of violence;
 - (ii) a close relative of a deceased victim of an act of violence; or
 - (iii) a law enforcement victim; and
- 15 (b) is eligible to receive compensation of at least \$200 or such other amount as may be prescribed.

(3) The Tribunal shall cause notice of its determination to be given to the applicant.

- (4) Such a notice shall be in the prescribed form and shall include—
- 20 (a) if an award of compensation is made—
 - (i) a statement of the amount (if any) payable by way of compensation for injury;
 - (ii) a statement of the amount (if any) payable by way of compensation for expenses; and
 - 25 (iii) a statement of the amount (if any) payable by way of compensation for loss of personal effects,
 together with a statement of its reasons for awarding those amounts;
 - (b) a statement of the amount (if any) payable by way of costs;
 - (c) if the application is dismissed—a statement of the reasons for its
30 dismissal; and
 - (d) such other information as may be required by the regulations.

Reasons for not making award or for reducing amount of compensation payable

20. (1) In determining whether or not to make an award of
35 compensation to or for the benefit of a victim of an act of violence and in determining the amount of compensation to award, the Tribunal shall have regard to—

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- (a) any behaviour, condition, attitude or disposition of the victim that directly or indirectly contributed to the injury or death sustained by the victim;
- 5 (b) whether the act of violence was reported to a member of the police force within a reasonable time;
- (c) whether the victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed;
- 10 (d) whether the victim has failed to provide reasonable assistance to the police force in connection with the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed; and
- (e) such other matters as the Tribunal considers relevant.
- 15 (2) In subsection (1), a reference to a victim of an act of violence is a reference to—
- (a) a primary victim;
- (b) a secondary victim; or
- (c) a deceased victim,
- 20 of that act.

(3) In determining whether or not to make an award of compensation to a law enforcement victim and in determining the amount of compensation to award, the Tribunal shall have regard to—

- 25 (a) any behaviour, condition, attitude or disposition of the victim that directly or indirectly contributed to the injury sustained by the victim; and
- (b) such other matters as the Tribunal considers relevant.

Factors affecting amount of compensation payable

30 21. In determining the amount of compensation to award under this Part to a person, the Tribunal shall have regard to—

- (a) any amount which has been paid to the person or which the person is entitled to be paid—
- (i) pursuant to a direction for compensation under Part 6;
- (ii) by way of damages awarded in civil proceedings;
- 35 (iii) under any other Act or law (including any Act or law relating to workers' compensation); or
- (iv) under any insurance or other agreement; and
- (b) any other amount which has been received by the person or which (in the opinion of the Tribunal) is likely to be received by the person,

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in respect of the act of violence or injury sustained in the course of law enforcement to which the application for compensation relates.

Persons to whom compensation may be made payable

22. (1) An award of compensation may be made payable—

- 5 (a) to the person to whom the application for compensation relates; or
 (b) to any other person for the benefit of that person.

(2) In making a decision as to whom an award of compensation should be made payable, the Tribunal shall have regard to the likelihood that a person by whom an act of violence was allegedly committed may receive
 10 the benefit of the award or any part of the award.

Interim awards of compensation

23. (1) Pending the determination of an application for compensation, the Tribunal may—

- 15 (a) in circumstances in which it is apparent that the person to whom the application relates is in severe financial hardship; or
 (b) in such other circumstances as the Tribunal considers appropriate, make an interim award of compensation to that person.

(2) If, on determining the application, the Tribunal decides to award compensation to the person to whom the application relates, the Tribunal
 20 shall deduct the amount of any interim award of compensation from the amount of compensation that it would otherwise have awarded.

Compensation may be awarded subject to conditions

24. An award of compensation (including an interim award of compensation under section 23) may be made subject to such conditions as
 25 the Tribunal thinks fit—

- (a) as to the notification to the Tribunal of such matters (including matters relating to the financial circumstances of the person to or for whose benefit the award is made) as may be specified in the notice of determination relating to the award;
 30 (b) as to the assignment by the person to or for whose benefit the award is made of that person's rights to any entitlement that the person has—
 (i) pursuant to a direction for compensation under Part 6; or
 (ii) by way of damages awarded in civil proceedings;
 35 (c) as to the repayment of the whole or any part of the amount of the award under such circumstances as may be specified in the notice of determination relating to the award; or
 (d) in the case of an award that is payable to a person for the benefit of some other person—

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- (i) as to the payment of the compensation to or for the benefit of that other person; or
- (ii) as to the holding of the whole or any part of the compensation on trust for that other person.

5 Inadmissibility of certain evidence in subsequent criminal proceedings

25. Notwithstanding any rule of law to the contrary, the evidence given by a person to the Tribunal in connection with an application under this Part is not admissible in evidence against any other person in criminal proceedings arising from substantially the same facts as those on which the
10 application is based.

Division 4—Payment of compensation**Secretary of Attorney General's Department to be notified of determination**

26. On making an award of compensation or costs, the Tribunal shall cause a copy of the relevant notice of determination to be forwarded to the
15 Secretary of the Attorney General's Department.

Secretary of Attorney General's Department to pay compensation

27. (1) An application for payment of the whole or any part of an award of compensation or costs shall be made to the Registrar of the Tribunal who shall forward the application to the Secretary of the Attorney General's
20 Department.

(2) Such an application shall be in the prescribed form and shall comply with any conditions to which the award is subject.

(3) On receiving such an application, the Secretary of the Attorney General's Department shall (subject to the conditions of the award and any
25 deductions made in accordance with those conditions or in accordance with section 23) pay to the person to whom the award is payable—

- (a) the amount (if any) specified in the relevant notice of determination as the amount of compensation; and
- (b) the amount (if any) specified in the relevant notice of determination
30 as the amount of costs,

awarded to the person.

(4) Payment under this section shall be made out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

Effect of award on subsequent civil proceedings

35 28. (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom an award of compensation has been made under this Part on the basis of the same facts as those on which the civil proceedings are based.

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(2) Subject to subsection (3), an award of compensation does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings shall be assessed without regard to the award.

5 (3) On the payment to a person of an award of compensation, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the award is based are, by operation of this section, subrogated to the Crown to the extent of the amount of compensation so paid.

(4) This section does not limit the operation of section 50 or 58.

10 **Division 5—Appeals from determinations of the Tribunal**

Appeals to the District Court

29. (1) An applicant for compensation under this Part may appeal to the District Court from any determination of the Tribunal in respect of the application.

15 (2) An appeal by a person under this section shall be instituted—

(a) within the period of 2 months after the day on which the relevant notice of determination was given to the person; or

(b) within such further time as the District Court may allow.

20 (3) The District Court shall hear and determine the appeal and may make such orders as it thinks appropriate in the light of its decision.

(4) Without affecting the generality of subsection (3), the orders that may be made by the District Court on an appeal include—

(a) an order affirming or setting aside the determination of the Tribunal; and

25 (b) an order remitting the application to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the District Court.

PART 4—COMPENSATION HEARINGS

Hearings generally

30 30. (1) In hearings under this Part, the Tribunal is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Hearings under this Part shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

35 (3) An applicant for compensation is entitled to be represented in any hearing under this Part by a legal practitioner or, by leave of the Tribunal, by an agent.

*Victims Compensation 1987***Hearings to be open to the public**

31. Hearings under this Part shall be conducted in the presence of the public unless—

- 5 (a) criminal proceedings are pending against any person in respect of substantially the same facts as those alleged in the application for compensation; or
- (b) the Tribunal, in a particular case, determines that the proceedings shall be closed to the public.

Publication of names etc.

10 32. (1) A person shall not, except with the consent of the Tribunal, publish or broadcast the name of any person—

- (a) who appears as a witness before the Tribunal in any hearing under this Part;
- (b) to whom any hearing under this Part relates; or
- 15 (c) who is mentioned or otherwise involved in any hearing under this Part,

whether before or after the hearing is completed.

Penalty: 10 penalty units or imprisonment for 12 months, or both.

20 (2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.

25 (3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

Presentation of cases

33. In any hearing under this Part, the applicant for compensation may—

- (a) call and examine any witness;
- 30 (b) give evidence on oath;
- (c) produce documents and exhibits to the Tribunal; and
- (d) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the hearing.

35 Tribunal may compel attendance of witnesses etc.

34. (1) For the purposes of any hearing under this Part, the Tribunal may—

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- (a) by instrument in writing require any person on whom the instrument is served personally or by post—
- 5 (i) to appear at the hearing for the purpose of giving evidence; or
 (ii) to produce to the Tribunal any document that is relevant to the hearing,
 at a time, date and place specified in the instrument;
- (b) require a person who appears at the hearing to be sworn for the purpose of giving evidence on oath; and
- (c) administer such an oath.
- 10 (2) When a document is produced to the Tribunal pursuant to a requirement under this section, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of completing the hearing.

Witnesses to answer questions

- 15 35. (1) The Tribunal may require a person who appears at a hearing under this Part to answer any question that is reasonably related to the hearing.
- (2) A person may refuse to answer such a question on the ground that the answer might tend to incriminate the person.

20 **Refusal to attend or to answer questions etc.**

36. A person shall not—
- (a) fail to comply with a requirement made of the person under section 34 or 35 by the Tribunal to the extent to which the person is lawfully able to comply with the requirement; or
- 25 (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing at a hearing under this Part.

Penalty: 5 penalty units.

Witnesses' expenses

- 30 37. A person (other than an officer or temporary employee within the meaning of the Public Service Act 1979) who is required to appear or to give evidence at a hearing under this Part is entitled to be paid such allowances and expenses as may be prescribed by the rules of the Tribunal.

Adjournments

- 35 38. (1) The Tribunal may from time to time adjourn a hearing under this Part to such times, dates and places, and for such reasons, as it thinks fit.

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(2) Without limiting the generality of subsection (1), the Tribunal may adjourn a hearing under this Part pending the determination of criminal proceedings against a person in respect of substantially the same facts as those alleged in the application for compensation.

5 Dismissal of frivolous proceedings etc.

39. The Tribunal may dismiss proceedings before it if, before or during a hearing under this Part, it is satisfied—

- (a) that the proceedings are frivolous or vexatious; or
- (b) that, for any other reason, the proceedings should not be entertained.

10 Misconduct in proceedings before the Tribunal

40. (1) A person shall not, in a hearing under this Part—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during the hearing;
- (c) wilfully and without lawful excuse interrupt the hearing; or
- 15 (d) without lawful excuse disobey a direction of the Tribunal during the hearing.

Penalty: 5 penalty units.

(2) The Tribunal may direct a person who does any thing referred to in subsection (1) to leave the place where the hearing is being conducted.

20 (3) A person shall not fail to comply with a direction under this section.

Penalty: 5 penalty units.

Costs

25 **41. (1)** The applicant in any proceedings before the Tribunal is entitled to be paid his or her costs in the proceedings (not exceeding \$1,000) in accordance with the scale of costs prescribed by the rules of the Tribunal.

(2) An applicant may, if the Tribunal so directs, be awarded costs under this section even if the application for compensation is dismissed.

30 (3) Notwithstanding any Act or law to the contrary, but subject to any order of the Tribunal, a legal practitioner is not entitled to charge or recover, by way of costs in respect of proceedings before the Tribunal, any amount in excess of the amount payable under an award of costs under this section.

(4) A provision in any agreement (whether in writing or not and whether entered into before or after the commencement of this Act) under which the operation of subsection (3) is excluded, modified or restricted, or which has the effect of excluding, modifying or restricting subsection (3), is void.

PART 5—RECOVERY OF COMPENSATION FROM OFFENDERS**Definitions**

42. In this Part—

- 5 “award of compensation” means an award of compensation under Part 3;
- “defendant”, in relation to a recovery action, means the person against whom the recovery action is being taken;
- “determination for restitution” means a determination for restitution under section 47;
- 10 “recovery action” means an action referred to in section 43;
- “victim” means a person to whom an amount has been paid under an award of compensation.

Recovery actions to be taken before the Tribunal

15 43. (1) An action may be taken before the Tribunal, by or on behalf of the Crown, for the recovery of the whole or any part of an amount paid to a victim under an award of compensation.

20 (2) A recovery action may not be commenced against a person if civil proceedings have been commenced, or are being maintained, against the person, by or on behalf of the Crown, in respect of an action for damages arising from the same facts as those on which the award of compensation to which the recovery action relates was based.

(3) A recovery action may not be commenced or maintained against a person who is under the age of 16 years.

Recovery action may be commenced only after conviction of the offender

25 44. A recovery action may not be commenced or maintained against a person unless the person has been convicted in New South Wales of—

- (a) an indictable offence; or
- (b) an offence (whether indictable or summary) under the Crimes Act 1900,

30 arising from substantially the same facts as those on which the award of compensation to which the action relates was based.

Recovery action to be heard and determined as civil proceedings for damages

35 45. (1) A recovery action shall be heard and determined as if it were an action for damages in civil proceedings in a Local Court exercising civil jurisdiction.

(2) Subject to the rules of the Tribunal, a recovery action shall be heard and determined in accordance with—

- (a) the rules of law governing the admission of evidence; and

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- (b) the practice and procedure of Local Courts exercising civil jurisdiction.

Evidentiary matters

46. (1) The victim to whom a recovery action relates is competent, but not compellable, to give evidence in proceedings on the action.

(2) Notwithstanding any rule of law to the contrary, evidence given by the victim—

- (a) in any application for an award of compensation; or
 (b) in any hearing relating to that application,

is admissible in proceedings on a recovery action.

(3) If evidence so given by the victim is admitted in proceedings on a recovery action but the victim does not attend as a witness in the proceedings, that evidence shall be given no greater weight than is appropriate as a consequence of there having been no opportunity for the victim to be cross-examined in relation to that evidence.

Determinations for restitution

47. (1) If the Tribunal finds for the Crown in proceedings on a recovery action, it shall, in determining the amount that the defendant shall pay to the Crown by way of restitution, have regard to—

- (a) the financial means of the defendant;
 (b) the Tribunal's assessment of the culpability of the defendant in relation to the act of violence on which the award of compensation to which the action relates was based;
 (c) any arrangement that may have been entered into between the defendant and the Crown for the payment by the defendant to the Crown of an amount by way of restitution in relation to the award of compensation to which the action relates; and
 (d) such other matters as are, in the opinion of the Tribunal, relevant to the determination.

(2) The maximum amount that the Tribunal may determine that the defendant shall pay to the Crown in respect of a recovery action is the amount paid to the victim under the award of compensation to which the action relates.

Entry of judgment

48. (1) A determination for restitution shall, on the filing of the prescribed documents in the office or registry of a court having jurisdiction to order payment of the amount specified in the determination, be deemed to be a judgment of that court for the amount so specified.

(2) The prescribed documents are—

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- (a) a copy of the determination certified by the Registrar of the Tribunal to be a true copy; and
- (b) an affidavit by the Registrar specifying the amount unpaid under the determination.

5 Appeals

49. A determination for restitution may be appealed against in the same way as a judgment of a Local Court exercising civil jurisdiction may be appealed against.

Effect of determination for restitution on subsequent civil proceedings

10 **50. (1)** This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom an award of compensation has been made (being an award in respect of which the Tribunal has made a determination for restitution) on the basis of the same facts as those on which the civil proceedings are based.

15 **(2)** Subject to subsection (3), a determination for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings shall be assessed without regard to the determination.

20 **(3)** The right of the Crown, pursuant to section 28, to commence or maintain civil proceedings is extinguished by a determination for restitution.

(4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the Crown pursuant to section 28.

(5) This section does not limit the operation of section 28 or 58.

25 Costs

51. The Tribunal does not have jurisdiction to order payment of costs in relation to proceedings on a recovery action.

PART 6—COMPENSATION AWARDED BY A COURT**Division 1—Major offences****30 Definitions**

52. In this Division—

“aggrieved person” means—

(a) in relation to an offence other than an offence in respect of the death of a person, a person who has sustained injury through or by reason of—

35

(i) an offence for which the offender has been convicted; or

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(ii) an offence taken into account (under section 447B of the Crimes Act 1900) when sentence was passed on the offender for that offence; or

(b) in relation to an offence in respect of the death of a person, a close relative of the person;

“compensation for expenses” means—

(a) compensation for actual and future expenses;

(b) compensation for actual loss of earnings; and

(c) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the aggrieved person as a direct result of the commission of a major offence;

“compensation for injury” includes compensation for expenses;

“compensation for loss” does not include compensation for injury;

“direction for compensation” means a direction for compensation under section 53;

“major offence” means—

(a) an indictable offence;

(b) an offence (whether indictable or summary) under the Crimes Act 1900; or

(c) an offence for which proceedings are taken in the Supreme Court in its summary jurisdiction;

“prescribed amount”, in relation to a direction for compensation, means—

(a) except as provided by paragraph (b)—\$20,000; or

(b) if the direction is given on or after a conviction by a court (other than the Supreme Court) exercising summary jurisdiction—\$10,000.

Directions for compensation

53. (1) If a person is convicted by a court of a major offence, the court may (on the conviction or at any time thereafter) on notice given to the offender direct that a sum not exceeding the prescribed amount be paid out of the property of the offender—

(a) to any aggrieved person; or

(b) to any aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any injury or loss sustained through, or by reason of, the offence or, where applicable, any other offence taken into account (under section 447B of the Crimes Act 1900) when sentence was passed on the offender for that offence.

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(2) A direction for compensation may be given by a court on its own motion or on application made to it by or on behalf of the aggrieved person.

(3) A direction for compensation shall specify the sum (if any) to be paid by way of compensation for injury and the sum (if any) to be paid by way
5 of compensation for loss.

Restrictions on court's power to give directions for compensation

54. (1) A direction for compensation shall not be given in respect of the conviction of a person for a major offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for
10 compensation previously given under this Division or a direction for compensation previously given under Division 2—

(a) on the conviction of any other person for that offence; or

(b) on the conviction of that or any other person for a related offence,

exceeds the prescribed amount.

15 (2) A direction for compensation for injury shall not be given if an award of compensation in respect of the injury has been made under Part 3 to or for the benefit of the aggrieved person.

(3) For the purposes of this section, an offence is related to another offence if—

20 (a) both of the offences were committed against the same person; and

(b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

(4) In this section—

25 (a) a reference to a direction for compensation previously given under this Division includes a reference to a direction for compensation previously given under section 437 of the Crimes Act 1900; and

(b) a reference to a direction for compensation previously given under
30 Division 2 includes a reference to a direction for compensation previously given under section 554 (3) of the Crimes Act 1900.

Factors to be taken into consideration

55. In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court shall have regard to—

35 (a) any behaviour, condition, attitude or disposition of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person;

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- (b) any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted; and
- 5 (c) such other matters as it considers relevant.

Payment of sum directed

56. Subject to section 9 of the Criminal Appeal Act 1912 and to the provisions of the Justices Act 1902, any sum directed to be paid by an offender to an aggrieved person, pursuant to a direction for compensation,

10 shall be paid forthwith, or within such period (if any) as is specified in the direction—

- (a) in the case of a direction given by the Supreme Court—to the registrar of the Criminal Division of that Court or to an officer authorised by that registrar;
- 15 (b) in the case of a direction given by the District Court—to the registrar of that Court for the proclaimed place (within the meaning of the District Court Act 1973) at which the direction was given; or
- (c) in the case of a direction given by any other court—to the clerk of that court,
- 20 for payment to the aggrieved person.

Enforcement of directions for compensation

57. (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar, officer or clerk of the court shall, on the

25 application of the aggrieved person, issue to the aggrieved person a certificate—

- (a) that identifies the direction;
- (b) that specifies the offender; and
- 30 (c) that specifies the amount required by the direction to be paid which has not, as at the date of the certificate, been paid to the registrar, officer or clerk.

(2) If a certificate is issued under this section, the registrar, officer or clerk shall not thereafter accept any payment from the offender in respect of the direction for compensation identified in the certificate.

35 (3) An aggrieved person may file such a certificate in the office or registry of a court having jurisdiction to order payment of the amount specified in the certificate, and the registrar or clerk of that court shall forthwith enter judgment in favour of the aggrieved person against the offender specified in the certificate for—

- 40 (a) the amount specified in the certificate as having not been paid; and

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- (b) any fees payable to the registrar or clerk in respect of the filing of the certificate.

Effect of directions for compensation on subsequent civil proceedings

58. (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based.

(2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings shall be assessed without regard to the direction.

(3) The judgment of the court in which the civil proceedings are determined—

- (a) shall not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid pursuant to the direction for compensation; and
- (b) shall not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid pursuant to the direction for compensation.

(4) This section does not limit the operation of section 28 or 50.

Directions for compensation not appellable on certain grounds

59. An appeal does not lie against a direction for compensation merely because, in civil proceedings arising from substantially the same facts as those on which the offender was convicted, the aggrieved person is awarded a lesser amount in damages than the amount of compensation required to be paid by the direction.

Division 2—Minor offences**Definitions**

60. In this Division—

“aggrieved person” means a person who has sustained injury through or by reason of an offence for which the offender has been convicted;

“compensation for expenses” means—

- (a) compensation for actual and future expenses;
- (b) compensation for actual loss of earnings; and
- (c) compensation for loss of future earnings or capacity to earn, arising from injury sustained by the aggrieved person as a direct result of the commission of a minor offence;

“compensation for injury” includes compensation for expenses;

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“compensation for loss” does not include compensation for injury;

“direction for compensation” means a direction for compensation under section 61;

5 “minor offence” means an offence (whether indictable or summary) for which proceedings are taken summarily, other than an offence for which proceedings are taken in the Supreme Court in its summary jurisdiction.

Directions for compensation

10 **61. (1)** If a person is convicted by a court of a minor offence, the court may (on the conviction or at any time thereafter) on notice given to the offender direct that a sum not exceeding \$1,000 be paid—

(a) to any aggrieved person; or

(b) to any aggrieved persons in such proportions as may be specified in the direction,

15 by way of compensation for any injury or loss sustained through, or by reason of, the offence.

(2) A direction for compensation may be given by a court on its own motion or on application made to it by or on behalf of the aggrieved person.

20 (3) A direction for compensation shall specify the sum (if any) to be paid by way of compensation for injury and the sum (if any) to be paid by way of compensation for loss.

Restrictions on court's power to give directions for compensation

25 **62. (1)** A direction for compensation shall not be given in respect of the conviction of a person for a minor offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Division or a direction for compensation previously given under Division 1—

(a) on the conviction of any other person for that offence; or

30 (b) on the conviction of that or any other person for a related offence, exceeds \$1,000.

(2) A direction for compensation for injury shall not be given if an award of compensation in respect of the injury has been made under Part 3 to or for the benefit of the aggrieved person.

35 (3) For the purposes of this section, an offence is related to another offence if—

(a) both of the offences were committed against the same person; and

(b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

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- (4) In this section—
- (a) a reference to a direction for compensation previously given under this Division includes a reference to a direction for compensation previously given under section 554 (3) of the Crimes Act 1900; and
- 5 (b) a reference to a direction for compensation previously given under Division 1 includes a reference to a direction for compensation previously given under section 437 of the Crimes Act 1900.

Factors to be taken into consideration

63. In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court shall have regard to—
- (a) any behaviour, condition, attitude or disposition of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person;
- 15 (b) any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted; and
- (c) such other matters as it considers relevant.

20 Payment of sum directed

64. Any sum directed to be paid by an offender to an aggrieved person, pursuant to a direction for compensation, shall be paid by the offender to the registrar or clerk of the court for payment to the aggrieved person.

Enforcement of directions for compensation

- 25 65. A direction for compensation shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the Justices Act 1902.

PART 7—MISCELLANEOUS**Record of proceedings**

- 30 66. The member constituting the Tribunal at any sitting shall cause a record to be kept of the proceedings at the sitting.

Authentication of documents etc.

- 35 67. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the Chairperson or the Registrar of the Tribunal.

(2) Judicial notice shall be taken of the signature of the Chairperson or the Registrar of the Tribunal when appearing on a document issued by the Tribunal.

*Victims Compensation 1987***Limitation of liability**

68. (1) No proceedings lie against the Tribunal or any of its members or members of staff, or against any authorised Magistrate, for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member, member of staff or authorised Magistrate and purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, if the Tribunal, member, member of staff or authorised Magistrate has acted in good faith and with reasonable care.

10 (2) A member of the Tribunal, or authorised Magistrate, shall, in exercising the functions of the Tribunal, have the same protection and immunity as he or she has as a Magistrate.

Application of Defamation Act 1974

69. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

Reports

70. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Chairperson of the Tribunal shall prepare and forward to the Attorney General a report on the work and activities of the Tribunal for the 12 months ending on 30 June in that year.

(2) The Attorney General shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

25 (3) Without limiting the generality of subsection (1), the Chairperson of the Tribunal shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the work and activities of the Tribunal.

30 (4) A report shall deal with such matters as the Attorney General directs and with such other matters as the Chairperson of the Tribunal considers appropriate to include in the report.

Representation of the Crown in certain proceedings

71. In any proceedings which the Crown is entitled to commence or maintain, or in which the Crown is entitled to be joined as a party, by virtue of this Act, the Crown shall be represented by such person, or by a person belonging to such class of persons, as may be authorised by the regulations to represent the Crown in those proceedings.

Proceedings for offences

72. Proceedings for an offence against this Act shall be dealt with summarily before the Tribunal or before a Local Court constituted by a Magistrate sitting alone.

*Victims Compensation 1987***Recovery of money owed to the Crown**

73. Any amount of money that is payable to the Crown under this Act may be recovered as a debt in a court of competent jurisdiction.

Forms

5 74. Any form prescribed by the regulations, or by the rules of the Tribunal, for the purposes of this Act may require any information included in the form to be verified by statutory declaration.

Rules

10 75. The Governor may make rules, not inconsistent with this Act, for or with respect to—

- (a) the practice and procedure of the Tribunal; and
- (b) costs awarded by the Tribunal.

Regulations

15 76. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- 20 (a) the forms to be used for the purposes of this Act;
- (b) the conditions that may be imposed on an award of compensation under Part 3; and
- (c) the publication of information concerning the provisions of this Act.

SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL

25

(Sec. 4)

Magisterial status etc. not affected

1. (1) A member of the Tribunal does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Tribunal.

30 (2) The service of a member of the Tribunal in his or her capacity as such a member shall, for all purposes, be taken to be service as a Magistrate.

Term of office

35 2. (1) A member of the Tribunal shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A member of the Tribunal shall hold office on a full-time or part-time basis, as may be specified in the member's instrument of appointment.

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SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
TRIBUNAL—*continued***Public Service Act 1979 not to apply to members of the Tribunal**

3. The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Tribunal and a member of the Tribunal is not, as a member of the Tribunal, subject to that Act.

5 Casual vacancies

4. A person shall be deemed to have vacated office as a member of the Tribunal if the person—

- (a) ceases to be a Magistrate; or
- (b) resigns office by instrument in writing addressed to the Attorney General.

10 Appointment as Magistrate unaffected by resignation etc.

5. A person does not cease to be a Magistrate merely because of—

- (a) his or her resignation from office as a member of the Tribunal; or
- (b) the expiration of his or her term of office as a member of the Tribunal.



