

VICTIMS COMPENSATION (AMENDMENT) ACT 1989 No. 217

NEW SOUTH WALES



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VICTIMS COMPENSATION (AMENDMENT) ACT 1989 No. 217

NEW SOUTH WALES



Act No. 217, 1989

An Act to amend the Victims Compensation Act 1987 so as to provide for the imposition of compensation levies on persons convicted of certain offences, for the recovery of money from certain persons and for other matters. [Assented to 21 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Victims Compensation (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Victims Compensation Act 1987 No. 237

3. The Victims Compensation Act 1987 is amended as set out in Schedules 1 - 3.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES**

(Sec. 3)

(1) Section 3 (**Definitions**):

Insert, in alphabetical order, in section 3 (1):

"Compensation Fund" means the Victims Compensation Fund referred to in section 65F;

"compensation levy" means a levy referred to in section 65C;

(2) Section 27 (**Secretary of Attorney General's Department to pay compensation**):

Omit section 27 (4), insert instead:

(4) An amount payable under this section is to be paid out of the Compensation Fund or, if sufficient money is not available in that Fund, out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued***

(3) Parts 6A, 6B:

After Part 6, insert:

PART 6A - COMPENSATION LEVIES

Definition

65A. (1) In this Part, a reference to a conviction includes a reference to:

- (a) an order made under section 556A of the Crimes Act 1900; and
- (b) an order made under section 33 (1) (b) - (g) of the Children (Criminal Proceedings) Act 1987.

(2) In this Part, a reference to a court includes a reference to a justice.

Application of Part

65B. (1) This Part applies to all offences that are:

- (a) punishable by imprisonment or penal servitude, whether or not they are also punishable otherwise than by imprisonment or penal servitude; and
- (b) dealt with before the Supreme Court, the District Court, a Local Court or the Children's Court.

(2) This Part does not apply to an offence merely because it is taken into account (as referred to in section 447B of the Crimes Act 1900 or section 21 of the Criminal Procedure Act 1986) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies.

Imposition of compensation levy

65C. (1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the Crown a levy of:

- (a) \$50, if the person is convicted on indictment; or
- (b) \$20, if the person is convicted otherwise than on indictment.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued***

(2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

(3) Any money paid to the Crown in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

Payment and enforcement of compensation levy

65D. (1) The regulations may make provision for the manner in which compensation levies are to be paid and enforced.

(2) Without limiting the generality of subsection (1), the regulations may make provision for:

- (a) the attachment of the prison earnings of convicted persons; and
- (b) the imposition of community service orders on persons who fail to pay compensation levies.

Effect of appeal proceedings

65E. (1) The commencement of any proceedings by way of appeal against, or review of, a conviction in respect of which a compensation levy has been imposed on a person stays the liability of the person to pay the levy.

(2) The setting aside of any such conviction annuls that liability.

(3) The dismissal of any such proceedings removes the stay of liability.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued***

PART 6B - THE VICTIMS COMPENSATION FUND

Establishment of the Compensation Fund

65F. (1) There is to be a Victims Compensation Fund.

(2) The Compensation Fund is to form part of the Attorney General's Department Account in the Special Deposits Account in the Treasury.

(3) The corporation sole established under section 4 of the Suitors' Fund Act 1951 has the control and management of the Compensation Fund.

(4) Interest at a rate to be determined by the Treasurer is to be allowed on the amount standing to the credit of the Compensation Fund from time to time.

(5) The corporation sole established under section 4 of the Suitors' Fund Act 1951 has, in relation to the assets of the Compensation Fund, the investment powers set out in Part 1 of Schedule 4 to the Public Authorities (Financial Arrangements) Act 1987.

Payments into the Compensation Fund

65G. There are to be paid into the Compensation Fund:

- (a) all proceeds or profits confiscated under the Crimes (Confiscation of Profits) Act 1985 or the Confiscation of Proceeds of Crime Act 1989;
- (b) all money recovered under Part 5 or Part 6A;
- (c) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act; and
- (d) all other money required by or under this or any other Act to be paid into the Fund.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued***

Payments from the Compensation Fund

- 65H. There are to be paid from the Compensation Fund:
- (a) all payments of compensation and costs under this Act;
 - (b) all expenses incurred by the Tribunal in the exercise of its functions under this Act; and
 - (c) all expenses incurred in the administration of the Compensation Fund.

**SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS**

(Sec. 3)

- (1) Part 5, heading:

After "**OFFENDERS**", insert "**AND FRAUDULENT CLAIMANTS**".

- (2) Part 5, Division 1, heading:

Before section 42, insert:

Division 1 - Recovery from offenders

- (3) Section 42 (**Definitions**):

- (a) Omit "In this Part", insert instead "In this Division".
- (b) Omit the definition of "recovery action", insert instead:
 - "notice of intention to show cause" means a notice referred to in section 44;
 - "notice to show cause" means a notice referred to in section 43;
 - "recovery action" means an action commenced under section 43;
- (c) At the end of section 42, insert:
 - (2) In this Division, a reference to a conviction includes a reference to:
 - (a) an order made under section 556A of the Crimes Act 1900; and

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

- (b) an order made under section 33 (1) (b) - (g) of the
Children (Criminal Proceedings) Act 1987.

(4) Sections 43 - 45:

Omit the sections, insert instead:

Registrar may commence recovery action

43. (1) If the Registrar is of the opinion that a person has been convicted of an offence arising from substantially the same facts as those constituting an act of violence in respect of which an award of compensation has been made, the Registrar may, by a notice to show cause served on the person so convicted, commence an action before the Tribunal, on behalf of the Crown, for the recovery of any amount paid or to be paid under the award.

(2) A notice to show cause is a notice inviting the person to whom it is given to show cause to the Tribunal why a determination for restitution should not be made against the person.

(3) An action may not be commenced under this section:

- (a) 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 substantially the same facts as those on which the relevant award of compensation was based; or
- (b) if 2 years or more have elapsed since:
- (i) the date on which the relevant award of compensation was made; or

**SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued***

- (ii) the date on which the person was convicted of the relevant offence,
whichever is the later.

(4) A notice to show cause must be in the prescribed form and must include the following particulars:

- (a) the facts on which the award of compensation was based;
- (b) the date on which the award of compensation was made;
- (c) the amount paid or to be paid under the award;
- (d) the offence pursuant to which the notice to show cause was given;
- (e) the date on which it is alleged that the person was convicted of the offence;
- (f) such other particulars as the regulations may require.

(5) A copy of the notice must be filed in the registry of the Tribunal.

Notice of intention to show cause

44. (1) The defendant in a recovery action may, at any time before the action is determined by the Tribunal, file in the offices of the Tribunal a notice of intention to show cause.

(2) A notice of intention to show cause must be in the prescribed form and must include the grounds of the defence on which the defendant intends to rely.

Proceedings on a recovery action

45. (1) A recovery action may not be determined before the expiration of 2 months after service on the defendant of the notice to show cause by which the action has been commenced.

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

(2) In any recovery action in which the defendant has not filed a notice of intention to show cause, the Tribunal may determine the action without conducting a hearing.

(3) In any recovery action in which the defendant has filed a notice of intention to show cause, the Tribunal must conduct a hearing.

(4) Subject to the rules of the Tribunal, a recovery action must be determined:

- (a) in accordance with the rules of law governing the admission of evidence; and
- (b) in accordance with the practice and procedure of Local Courts exercising civil jurisdiction,

in the same way as an action commenced by way of an ordinary statement of claim (within the meaning of the Local Courts (Civil Claims) Act 1970) must be determined by a Local Court.

(5) Section 46 (**Evidentiary matters**):

- (a) From section 46 (2) (a), omit "or".
- (b) At the end of section 46 (2) (b), insert:
 - ; or
 - (c) in any other proceedings (whether civil or criminal) arising from substantially the same facts as those on which the award of compensation was based,

(6) Section 47:

Omit the section, insert instead:

Determinations for restitution

47. (1) If the Tribunal is satisfied:

- (a) that notice to show cause has been duly served on the defendant; and

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

- (b) that the defendant has been convicted of an offence arising from substantially the same facts as those constituting an act of violence in respect of which an award of compensation has been made,

the Tribunal may make a determination for restitution against the defendant.

(2) The amount ordered to be paid under a determination for restitution is to be fixed having 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 was based;
- (c) any arrangement agreed on between the Registrar and the defendant with respect to the payment of such an amount; and
- (d) such other matters as are, in the opinion of the Tribunal, relevant to the determination.

(3) For the purpose of enabling the Registrar and the defendant to come to an arrangement referred to in subsection (2) (c), the Tribunal may adjourn proceedings for such period (not exceeding 1 month on any 1 occasion) as it considers appropriate.

(4) The maximum amount that may be ordered to be paid under a determination for restitution is the amount that has been paid to a victim under the award of compensation to which the determination relates.

(7) Section 47A:

After section 47, insert:

Witnesses' expenses

47A. A person (other than an officer or temporary employee within the meaning of the Public Sector Management Act 1988) who is required to attend or to give evidence at a hearing under this Part is entitled to be paid

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

such allowances and expenses as may be prescribed by the rules of the Tribunal.

(8) Section 48 (**Entry of judgment**):

(a) From section 48 (1) omit "deemed", insert instead "taken".

(b) After section 48 (2), insert:

(3) The prescribed documents may not be filed until after the expiration of the time within which an appeal may be lodged under section 49.

(9) Section 49 (**Appeals**):

At the end of section 49, insert:

(2) An appeal may not be lodged under this section if 1 month or more has elapsed since the date on which the determination for restitution was made.

(10) Sections 49A, 49B:

After section 49, insert:

Determinations for restitution etc. may be set aside

49A. (1) The Tribunal, on sufficient cause shown, may, by order, set aside a determination for restitution made by the Tribunal in a recovery action in which the defendant did not file a notice of intention to show cause.

(2) On the filing of a copy of such an order in the office or registry of the court whose judgment the determination for restitution is to be taken to be, that judgment is to be taken to have been set aside.

(3) If the Tribunal makes an order under this section, the defendant is entitled to be paid such amount, by way of costs in relation to the setting aside of the determination for restitution, as may be prescribed by the rules of the Tribunal.

Stay of execution

49B. A court whose judgment a determination for restitution is to be taken to be may, on the application of the person against whom the determination was made, grant a

**SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued***

stay of execution of the judgment for such period of time as it considers appropriate to enable the applicant to have the judgment set aside.

(11) Part 5, Division 2:

At the end of Part 5, insert:

Division 2 - Recovery from fraudulent claimants

Definitions

51A. In this Division:

"award of compensation" means an award of compensation under Part 3;

"determination for restitution" means a determination for restitution under section 51B.

Determinations for restitution

51B. (1) If a person is convicted of:

- (a) an offence of obtaining an award of compensation by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement; or
- (b) an offence, in relation to the obtaining of an award of compensation, of a kind prescribed by the regulations,

the Tribunal may, on its own motion, make a determination for restitution for such amount as has been paid to the person under the award.

(2) Such a determination may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence.

Entry of judgment

51C. (1) A determination for restitution is, 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, to be taken to be a judgment of the court for the amount so specified.

**SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued***

- (2) The prescribed documents are:
 - (a) a copy of the determination certified by the Registrar to be a true copy; and
 - (b) an affidavit by the Registrar specifying the amount unpaid under the determination.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS
(Sec. 3)

(1) Section 3 (**Definitions**):

- (a) Insert, in alphabetical order, in section 3 (1):
 - "act of violence" means an act or series of related acts (as referred to in subsection (3)), 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;
 - "costs" includes allowances and expenses;
 - "Registrar" means Registrar of the Tribunal;
- (b) Omit the definition of "close relative" from section 3 (1).
- (c) After section 3 (2), insert:
 - (3) 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 the same time or were, for any other reason, related to each other.

(2) Section 9 (**Registrar and other staff of the Tribunal**):

Omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(3) Section 9A:

After section 9, insert:

Tribunal may be assisted by Crown Solicitor

9A. The Tribunal may be assisted by the Crown Solicitor in the exercise of its jurisdiction under this Act.

(4) Section 10 (**Definitions**):

- (a) Omit the definition of "act of violence" from section 10 (1).
- (b) After the definition of "award of compensation" in section 10 (1), insert:

"close relative", in relation to a deceased victim of an act of violence, means a person who, at the time the act of violence occurred:

- (a) was the deceased victim's spouse or was a person who was living with the deceased victim as the deceased victim's spouse;
 - (b) was a parent, guardian, step-parent or grandparent of the deceased victim; or
 - (c) was a child, step-child or grandchild of the deceased victim or was some other child of whom the deceased victim was a guardian;
- (c) Omit section 10 (2).

(5) Section 15 (**Certain persons not eligible to receive compensation**):

- (a) Omit section 15 (2), insert instead:

(2) A secondary victim of an act of violence is not entitled to claim compensation under this Part before 1 year has elapsed since the act of violence occurred unless:

- (a) a notice of the secondary victim's intention to claim compensation has been served (in accordance with the rules of the Tribunal) on:

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (i) the primary victim through whom he or she is claiming; or
 - (ii) at least one of the close relatives of the deceased victim through whom he or she is claiming; and
 - (b) no application has been made by or on behalf of the primary victim, or by or on behalf of a close relative of the deceased victim, during the period of 3 months next following the date on which the notice was so served.
- (2A) Notwithstanding subsection (2):
- (a) a secondary victim who is claiming through a primary victim is entitled to claim compensation under this Part within the period of 1 year referred to in that subsection if an application for compensation made by or on behalf of the primary victim has been finally disposed of; and
 - (b) a secondary victim who is claiming through a deceased victim is entitled to claim compensation under this Part within the period of 1 year referred to in that subsection if an application for compensation made by a close relative of the deceased victim has been finally disposed of.
- (b) Omit section 15 (4), insert instead:
- (4) Nothing in this section prevents a person from being eligible to receive compensation under this Part in respect of the same act of violence in one or more of the capacities of primary victim, secondary victim, close relative of a deceased victim or law enforcement victim.
- (c) From section 15 (5) omit "A person", insert instead "Subject to subsection (4), a person".
- (d) From section 15 (6) omit "compensation under the Transport Accidents Compensation Act 1987", insert instead "damages in accordance with the Motor Accidents Act 1988".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(6) Section 16 (**Maximum compensation payable**):

Section 16 (1):

After "Part", insert "(whether in one or more capacities)".

(7) Sections 17 (2), (3), 27 (1), 48 (2), 67 (1), (2):

Omit "of the Tribunal" wherever occurring.

(8) Section 18 (**Consideration of applications**):

Omit section 18 (2), insert instead:

(2) For the purpose of considering an application, the Tribunal may conduct a hearing under Part 4.

(9) Section 18A:

After section 18, insert:

Medical examinations

18A. (1) The Tribunal may require an applicant for compensation to undergo an examination (not being an examination that is unreasonable, unnecessarily repetitious or dangerous):

- (a) by a duly qualified medical practitioner or duly qualified psychologist specified by the Tribunal; or
- (b) by a duly qualified medical practitioner or duly qualified psychologist belonging to a class of medical practitioners or class of psychologists so specified.

(2) The costs of any such examination are to be paid for out of the Compensation Fund.

(10) Section 20 (**Reasons for not making award or for reducing amount of compensation payable**):

- (a) From section 20 (1) (d), omit "the police force in connection with", insert instead "any person or body duly engaged in the investigation of the act of violence or in".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(b) After section 20 (3) (a), insert:

- (a1) whether the injury sustained by the victim was reported to a member of the Police Force within a reasonable time; and

(11) Section 24A:

After section 24, insert:

Costs

24A. (1) An applicant for compensation is entitled to be paid his or her costs in respect of the application and of the proceedings on the application (whether or not a hearing is conducted in respect of the proceedings) in accordance with such scale of costs as may be 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 an application for compensation or of the proceedings on such an application, any amount in excess of the amount payable in accordance with the scale of costs referred to in subsection (1).

(4) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section):

- (a) under which the operation of subsection (3) is excluded, modified or restricted; or
(b) which has the effect of excluding, modifying or restricting the operation of subsection (3),

is void.

(5) An award of costs under this section may be made payable:

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (a) to the applicant; or
- (b) to any other person for the benefit of the applicant.

(12) Section 25:

Omit the section, insert instead:

Inadmissibility of certain evidence in subsequent criminal proceedings

25. Notwithstanding any rule of law to the contrary:

- (a) an application for compensation;
- (b) any documents supporting the application (whether or not furnished when the application is lodged); and
- (c) any transcript of evidence given to the Tribunal in proceedings on the application,

are not admissible in evidence against any person in criminal proceedings (other than criminal proceedings in which the applicant is the accused) arising from substantially the same facts as those on which the application is based.

(13) Section 29 (**Appeals to the District Court**):

- (a) From section 29 (2) (a) omit "2 months", insert instead "1 month".

- (b) After section 29 (4), insert:

(5) Subject to any order of the District Court to the contrary, the institution of an appeal under this section suspends the application of section 27, in relation to the payment of compensation, pending the determination of the appeal.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(14) Section 33 (**Presentation of cases**):

After "may", insert ", by leave of the Tribunal".

(15) Section 34 (**Tribunal may compel attendance of witnesses etc.**):

After section 34 (2), insert:

(3) The functions conferred on the Tribunal by subsection (1) (a) may be exercised on behalf of the Tribunal by the Registrar.

(16) Section 37 (**Witnesses' expenses**):

Omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".

(17) Section 41 (**Costs**):

Omit the section.

(18) Section 52 (**Definitions**):

After the definition of "aggrieved person", insert:

"close relative", in relation to a person who has died as a consequence of an offence, means a person who, at the time the offence occurred:

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

(19) Section 71A:

After section 71, insert:

Secretary may delegate certain functions

71A. The Secretary of the Attorney General's Department may delegate to any Deputy Secretary or

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

Assistant Secretary of that Department any of the functions (other than this power of delegation) conferred or imposed on the Secretary by or under this Act.

(20) Section 75 (**Rules**):

- (a) From section 75 (a) omit "and" where secondly occurring.
- (b) At the end of section 75 (b), insert:
; and
- (c) the service of documents under this Act.

(21) Section 77:

After section 76, insert:

Savings, transitional and other provisions

77. Schedule 2 has effect.

(22) Schedule 1 (**Provisions relating to the members of the Tribunal**):

From clause 3 omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".

(23) Schedule 2:

After Schedule 1, insert:

**SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
OTHER PROVISIONS**

(Sec. 77)

Part 1 - Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Victims Compensation (Amendment) Act 1989.

(2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

**Part 2 - Provisions consequent on the enactment of the
Victims Compensation (Amendment) Act 1989**

Definitions

2. In this Part:

"the amending Act" means the Victims Compensation (Amendment) Act 1989.

Compensation levies

3. Part 6A does not apply to or in respect of an offence that was committed before the commencement of that Part.

Recovery proceedings

4. (1) Any proceedings commenced under Part 5 before the commencement of Schedule 2 to the amending Act, but not determined before that commencement, are to continue to be dealt with under that Part as if the amendments made by that Schedule had not been made.

(2) Section 51B applies to and in respect of a person convicted of an offence referred to in that section before the commencement of that section in the same way as it applies to and in respect of a person convicted of such an offence on or after that commencement.

Applications for compensation

5. Any application for compensation under Part 3 made before the commencement of the amendments made to

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

section 15 by the amending Act is to be dealt with as if those amendments had not been made.

Appeals from certain determinations

6. Section 29 (2) continues to apply to a determination of the Tribunal made before the commencement of the amendment to that subsection made by the amending Act as if that amendment had not been made.

Scales of costs

7. Any rules of the Tribunal that, immediately before the repeal of section 41 by the amending Act, prescribed a scale of costs for the purposes of that section are to be taken (until they are amended or repealed) to prescribe a scale of costs for the purposes of section 24A.

Money recovered under the Criminal Injuries Compensation Act 1967

8. Any money that (pursuant to clause 5 of Schedule 2 to the Miscellaneous Acts (Victims Compensation) Repeal and Amendment Act 1987) is recovered under section 7 of the Criminal Injuries Compensation Act 1967 after the commencement of Part 6B is to be paid into the Compensation Fund.

[*Minister's second reading speech made in -
Legislative Assembly on 25 July 1989
Legislative Council on 7 December 1989*]

FIRST PRINT

VICTIMS COMPENSATION (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Victims Compensation Act 1987 so as:

- (a) to provide for the imposition of compensation levies on persons convicted of certain offences;
- (b) to establish a Victims Compensation Fund for the purpose of dealing with the revenue and expenses accrued and incurred in connection with the operation of that Act;
- (c) to revise the provisions of that Act concerning the recovery of money from persons convicted of offences for which compensation has been paid under that Act;
- (d) to facilitate the recovery of money from persons who have been convicted of obtaining compensation by fraud; and
- (e) to make minor, consequential and ancillary amendments to that Act, and to enact savings, transitional and other provisions as a consequence of the enactment of the proposed Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Victims Compensation (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO THE IMPOSITION OF COMPENSATION LEVIES

Schedule 1 inserts proposed Parts 6A and 6B into the Principal Act (Schedule 1 (3)) and makes certain consequential amendments (Schedule 1 (1) and (2)).

Proposed Part 6A establishes a scheme for the imposition of compensation levies on persons convicted of certain offences, and includes the following provisions:

Proposed section 65A defines certain expressions for the purposes of the proposed Part.

Proposed section 65B specifies that the proposed Part is to apply to all offences that are punishable by imprisonment or penal servitude and that are dealt with before the Supreme Court, the District Court, a Local Court or the Children's Court.

Proposed section 65C imposes a levy of \$50 (in the case of a person who is convicted on indictment) or \$20 (in the case of a person who is convicted otherwise than on indictment) on a person who is convicted of an offence to which the proposed Part applies.

Proposed section 65D enables the regulations under the Principal Act to make provision for the payment and enforcement of compensation levies. A regulation will be able to make provision for the attachment of the prison earnings of convicted persons and for the imposition of community service orders on persons who fail to pay compensation levies imposed on them.

Proposed section 65E provides that an appeal from a conviction stays the liability of a person to pay a compensation levy, and further provides that the setting aside of any such conviction annuls that liability while dismissal of the appeal removes any stay of liability.

Proposed Part 6B provides for the establishment and operation of a Victims Compensation Fund, and includes the following provisions:

Proposed section 65F provides for the establishment of the Fund as part of the Attorney General's Department Account. The Secretary of the Attorney General's Department will (in the capacity of corporation sole under the Sutors' Fund Act 1951) have the control and management of the Fund.

Proposed section 65G specifies the sources from which the Fund will receive money.

Proposed section 65H specifies the purposes for which money in the Fund may be expended.

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY PROCEEDINGS

Under the current provisions of Part 5, money paid by way of compensation is recoverable from a person who is convicted of an offence arising out of the same facts as those on which the compensation was paid. A recovery action is commenced by the Crown and determined by the Victims Compensation Tribunal in accordance with the procedures of a Local Court exercising civil jurisdiction. The Tribunal can determine the action by making a determination for restitution that, when filed in a court of competent jurisdiction, becomes a judgment of that court.

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Under the proposed amendments, it is intended that a recovery action will be commenced by the Registrar of the Tribunal by means of a notice to the defendant to show cause why a determination for restitution should not be made against him or her (Schedule 2 (4) - proposed section 43). The defendant will be able to file a notice of intention to show cause (Schedule 2 (4) - proposed section 44). The Tribunal will proceed to determine the matter (whether or not a notice of intention to show cause has been filed) and may decide to proceed with or without a hearing unless such a notice has been filed, in which case it must conduct a hearing (Schedule 2 (4) - proposed section 45). Once satisfied that it is appropriate to do so, the Tribunal may make a determination for restitution against the defendant; provision is to be made enabling the amount of money to be repaid to be agreed on between the Registrar of the Tribunal and the defendant (Schedule 2 (6) - proposed section 47).

Further amendments will provide for:

- (a) the payment of witnesses' expenses (Schedule 2 (7) - proposed section 47A);
- (b) the limiting to 1 month of the time within which an appeal can be made from a determination of the Tribunal (Schedule 2 (9) - proposed section 49 (2));
- (c) the setting aside of determinations for restitution (Schedule 2 (10) - proposed section 49A); and
- (d) the granting of a stay of execution of a judgment of a court that is founded on a determination for restitution that is the subject of proceedings to have the determination set aside (Schedule 2 (10) - proposed section 49B).

A new Division 2 is being inserted into Part 5 in relation to the recovery of money paid to claimants for compensation who are subsequently convicted of fraud in relation to their claims (Schedule 2 (11)). The proposed Division includes the following provisions:

Proposed section 51A defines certain expressions for the purposes of the proposed Division.

Proposed section 51B enables the Tribunal to make a determination for restitution against a person who has been convicted of an offence in relation to the fraudulent obtaining of an award of compensation. Such a determination must be made within 2 years after the person is convicted of the offence.

Proposed section 51C provides for the entry of such a determination as a judgment of a court having jurisdiction to order payment of the amount specified in the determination.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

This Schedule contains minor amendments and amendments that are merely consequential or ancillary to other amendments to be made by the proposed Act. The minor amendments include provisions:

- (a) enabling the Tribunal to be assisted by the Crown Solicitor in the exercise of its jurisdiction (Schedule 3 (3) - proposed section 9A);

Victims Compensation (Amendment) 1989

- (b) enabling a secondary victim of an act of violence to get a speedy determination of his or her claim for compensation by giving notice to the primary victim, or to a close relative of the deceased victim, through whom he or she is claiming that the secondary victim proposes to claim compensation (Schedule 3 (5) (a) - proposed section 15 (2) and (2A));
- (c) enabling a person to claim compensation in relation to an act of violence in more than one capacity (e.g., as a secondary victim and as a close relative of a deceased victim) (Schedule 3 (5) (b) and 3 (6));
- (d) clarifying the Tribunal's discretion as to whether or not a hearing should be conducted into a claim for compensation (Schedule 3 (8));
- (e) enabling the Tribunal to require an applicant for compensation to undergo, at the Tribunal's expense, a medical or psychological examination (Schedule 3 (9) - proposed section 18A);
- (f) varying the matters to be taken into account in determining the amount of compensation that should be paid to a claimant (Schedule 3 (10));
- (g) relocating the provisions relating to the payment of certain costs (Schedule 3 (11) - proposed section 24A and Schedule 3 (17));
- (h) restricting the operation of section 25 (which restricts the admissibility of evidence given at a compensation hearing in subsequent criminal proceedings) to an application for compensation and its supporting documentation and to the transcript of evidence of the proceedings on the application (Schedule 3 (12));
- (i) reducing, from 2 months to 1 month, the period within which an appeal may be made to the District Court against a determination made by the Tribunal with respect to an application for compensation, and ensuring that an appeal operates to stay the liability of the Crown to pay compensation under the determination against which the appeal is made (Schedule 3 (13));
- (j) requiring an applicant for compensation to obtain the leave of the Tribunal in relation to any evidence that he or she wishes to adduce in a compensation hearing (Schedule 3 (14));
- (k) enabling the Registrar to exercise the powers of the Tribunal with respect to the summoning of witnesses (Schedule 3 (15));
- (l) enabling the Secretary of the Attorney General's Department to delegate to a Deputy Secretary or Assistant Secretary of that Department any of his or her functions under the Principal Act (Schedule 3 (19) - proposed section 71A); and
- (m) enabling rules to be made with respect to the service of documents (Schedule 3 (20)).

The Schedule also inserts into the Principal Act a Schedule of savings, transitional and other provisions (Schedule 3 (23) - proposed Schedule 2).

FIRST PRINT

VICTIMS COMPENSATION (AMENDMENT) BILL 1989

NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 3 - MISCELLANEOUS AMENDMENTS

VICTIMS COMPENSATION (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Victims Compensation Act 1987 so as to provide for the imposition of compensation levies on persons convicted of certain offences, for the recovery of money from certain persons and for other matters.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Victims Compensation (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Victims Compensation Act 1987 No. 237

3. The Victims Compensation Act 1987 is amended as set out in Schedules 1 - 3.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES**

(Sec. 3)

(1) Section 3 (**Definitions**):

Insert, in alphabetical order, in section 3 (1):

"Compensation Fund" means the Victims Compensation Fund referred to in section 65F;

"compensation levy" means a levy referred to in section 65C;

(2) Section 27 (**Secretary of Attorney General's Department to pay compensation**):

Omit section 27 (4), insert instead:

(4) An amount payable under this section is to be paid out of the Compensation Fund or, if sufficient money is not available in that Fund, out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued*

(3) Parts 6A, 6B:

After Part 6, insert:

PART 6A - COMPENSATION LEVIES

Definition

65A. (1) In this Part, a reference to a conviction includes a reference to:

- (a) an order made under section 556A of the Crimes Act 1900; and
- (b) an order made under section 33 (1) (b) - (g) of the Children (Criminal Proceedings) Act 1987.

(2) In this Part, a reference to a court includes a reference to a justice.

Application of Part

65B. (1) This Part applies to all offences that are:

- (a) punishable by imprisonment or penal servitude, whether or not they are also punishable otherwise than by imprisonment or penal servitude; and
- (b) dealt with before the Supreme Court, the District Court, a Local Court or the Children's Court.

(2) This Part does not apply to an offence merely because it is taken into account (as referred to in section 447B of the Crimes Act 1900 or section 21 of the Criminal Procedure Act 1986) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies.

Imposition of compensation levy

65C. (1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the Crown a levy of:

- (a) \$50, if the person is convicted on indictment; or
- (b) \$20, if the person is convicted otherwise than on indictment.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued***

(2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

(3) Any money paid to the Crown in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

Payment and enforcement of compensation levy

65D. (1) The regulations may make provision for the manner in which compensation levies are to be paid and enforced.

(2) Without limiting the generality of subsection (1), the regulations may make provision for:

- (a) the attachment of the prison earnings of convicted persons; and
- (b) the imposition of community service orders on persons who fail to pay compensation levies.

Effect of appeal proceedings

65E. (1) The commencement of any proceedings by way of appeal against, or review of, a conviction in respect of which a compensation levy has been imposed on a person stays the liability of the person to pay the levy.

(2) The setting aside of any such conviction annuls that liability.

(3) The dismissal of any such proceedings removes the stay of liability.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued*

PART 6B - THE VICTIMS COMPENSATION FUND

Establishment of the Compensation Fund

65F. (1) There is to be a Victims Compensation Fund.

(2) The Compensation Fund is to form part of the Attorney General's Department Account in the Special Deposits Account in the Treasury.

(3) The corporation sole established under section 4 of the Sutors' Fund Act 1951 has the control and management of the Compensation Fund.

(4) Interest at a rate to be determined by the Treasurer is to be allowed on the amount standing to the credit of the Compensation Fund from time to time.

(5) The corporation sole established under section 4 of the Sutors' Fund Act 1951 has, in relation to the assets of the Compensation Fund, the investment powers set out in Part 1 of Schedule 4 to the Public Authorities (Financial Arrangements) Act 1987.

Payments into the Compensation Fund

65G. There are to be paid into the Compensation Fund:

- (a) all proceeds or profits confiscated under the Crimes (Confiscation of Profits) Act 1985 or the Confiscation of Proceeds of Crime Act 1989;
- (b) all money recovered under Part 5 or Part 6A;
- (c) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act; and
- (d) all other money required by or under this or any other Act to be paid into the Fund.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE
IMPOSITION OF COMPENSATION LEVIES - *continued***

Payments from the Compensation Fund

65H. There are to be paid from the Compensation Fund:

- (a) all payments of compensation and costs under this Act;
- (b) all expenses incurred by the Tribunal in the exercise of its functions under this Act; and
- (c) all expenses incurred in the administration of the Compensation Fund.

**SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS**

(Sec. 3)

(1) Part 5, heading:

After "**OFFENDERS**", insert "**AND FRAUDULENT
CLAIMANTS**".

(2) Part 5, Division 1, heading:

Before section 42, insert:

Division 1 - Recovery from offenders

(3) Section 42 (**Definitions**):

- (a) Omit "In this Part", insert instead "In this Division".
- (b) Omit the definition of "recovery action", insert instead:
 - "notice of intention to show cause" means a notice referred to in section 44;
 - "notice to show cause" means a notice referred to in section 43;
 - "recovery action" means an action commenced under section 43;
- (c) At the end of section 42, insert:
 - (2) In this Division, a reference to a conviction includes a reference to:
 - (a) an order made under section 556A of the Crimes Act 1900; and

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

- (b) an order made under section 33 (1) (b) - (g) of the
Children (Criminal Proceedings) Act 1987.

(4) Sections 43 - 45:

Omit the sections, insert instead:

Registrar may commence recovery action

43. (1) If the Registrar is of the opinion that a person has been convicted of an offence arising from substantially the same facts as those constituting an act of violence in respect of which an award of compensation has been made, the Registrar may, by a notice to show cause served on the person so convicted, commence an action before the Tribunal, on behalf of the Crown, for the recovery of any amount paid or to be paid under the award.

(2) A notice to show cause is a notice inviting the person to whom it is given to show cause to the Tribunal why a determination for restitution should not be made against the person.

(3) An action may not be commenced under this section:

- (a) 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 substantially the same facts as those on which the relevant award of compensation was based; or
- (b) if 2 years or more have elapsed since:
 - (i) the date on which the relevant award of compensation was made; or

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY PROCEEDINGS - *continued*

- (ii) the date on which the person was convicted of the relevant offence,
whichever is the later.

(4) A notice to show cause must be in the prescribed form and must include the following particulars:

- (a) the facts on which the award of compensation was based;
- (b) the date on which the award of compensation was made;
- (c) the amount paid or to be paid under the award;
- (d) the offence pursuant to which the notice to show cause was given;
- (e) the date on which it is alleged that the person was convicted of the offence;
- (f) such other particulars as the regulations may require.

(5) A copy of the notice must be filed in the registry of the Tribunal.

Notice of intention to show cause

44. (1) The defendant in a recovery action may, at any time before the action is determined by the Tribunal, file in the offices of the Tribunal a notice of intention to show cause.

(2) A notice of intention to show cause must be in the prescribed form and must include the grounds of the defence on which the defendant intends to rely.

Proceedings on a recovery action

45. (1) A recovery action may not be determined before the expiration of 2 months after service on the defendant of the notice to show cause by which the action has been commenced.

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

(2) In any recovery action in which the defendant has not filed a notice of intention to show cause, the Tribunal may determine the action without conducting a hearing.

(3) In any recovery action in which the defendant has filed a notice of intention to show cause, the Tribunal must conduct a hearing.

(4) Subject to the rules of the Tribunal, a recovery action must be determined:

- (a) in accordance with the rules of law governing the admission of evidence; and
- (b) in accordance with the practice and procedure of Local Courts exercising civil jurisdiction,

in the same way as an action commenced by way of an ordinary statement of claim (within the meaning of the Local Courts (Civil Claims) Act 1970) must be determined by a Local Court.

(5) Section 46 (**Evidentiary matters**):

- (a) From section 46 (2) (a), omit "or".
- (b) At the end of section 46 (2) (b), insert:
 - ; or
- (c) in any other proceedings (whether civil or criminal) arising from substantially the same facts as those on which the award of compensation was based,

(6) Section 47:

Omit the section, insert instead:

Determinations for restitution

47. (1) If the Tribunal is satisfied:

- (a) that notice to show cause has been duly served on the defendant; and

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

- (b) that the defendant has been convicted of an offence arising from substantially the same facts as those constituting an act of violence in respect of which an award of compensation has been made,

the Tribunal may make a determination for restitution against the defendant.

(2) The amount ordered to be paid under a determination for restitution is to be fixed having 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 was based;
- (c) any arrangement agreed on between the Registrar and the defendant with respect to the payment of such an amount; and
- (d) such other matters as are, in the opinion of the Tribunal, relevant to the determination.

(3) For the purpose of enabling the Registrar and the defendant to come to an arrangement referred to in subsection (2) (c), the Tribunal may adjourn proceedings for such period (not exceeding 1 month on any 1 occasion) as it considers appropriate.

(4) The maximum amount that may be ordered to be paid under a determination for restitution is the amount that has been paid to a victim under the award of compensation to which the determination relates.

(7) Section 47A:

After section 47, insert:

Witnesses' expenses

47A. A person (other than an officer or temporary employee within the meaning of the Public Sector Management Act 1988) who is required to attend or to give evidence at a hearing under this Part is entitled to be paid

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

such allowances and expenses as may be prescribed by the
rules of the Tribunal.

(8) Section 48 (**Entry of judgment**):

- (a) From section 48 (1) omit "deemed", insert instead "taken".
- (b) After section 48 (2), insert:
 - (3) The prescribed documents may not be filed until
after the expiration of the time within which an appeal may
be lodged under section 49.

(9) Section 49 (**Appeals**):

At the end of section 49, insert:

- (2) An appeal may not be lodged under this section if 1
month or more has elapsed since the date on which the
determination for restitution was made.

(10) Sections 49A, 49B:

After section 49, insert:

Determinations for restitution etc. may be set aside

49A. (1) The Tribunal, on sufficient cause shown, may,
by order, set aside a determination for restitution made by
the Tribunal in a recovery action in which the defendant did
not file a notice of intention to show cause.

(2) On the filing of a copy of such an order in the office or
registry of the court whose judgment the determination for
restitution is to be taken to be, that judgment is to be taken
to have been set aside.

(3) If the Tribunal makes an order under this section, the
defendant is entitled to be paid such amount, by way of costs
in relation to the setting aside of the determination for
restitution, as may be prescribed by the rules of the Tribunal.

Stay of execution

49B. A court whose judgment a determination for
restitution is to be taken to be may, on the application of the
person against whom the determination was made, grant a

**SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued***

stay of execution of the judgment for such period of time as it considers appropriate to enable the applicant to have the judgment set aside.

(11) Part 5, Division 2:

At the end of Part 5, insert:

Division 2 - Recovery from fraudulent claimants

Definitions

51A. In this Division:

"award of compensation" means an award of compensation under Part 3;

"determination for restitution" means a determination for restitution under section 51B.

Determinations for restitution

51B. (1) If a person is convicted of:

- (a) an offence of obtaining an award of compensation by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement; or
- (b) an offence, in relation to the obtaining of an award of compensation, of a kind prescribed by the regulations,

the Tribunal may, on its own motion, make a determination for restitution for such amount as has been paid to the person under the award.

(2) Such a determination may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence.

Entry of judgment

51C. (1) A determination for restitution is, 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, to be taken to be a judgment of the court for the amount so specified.

SCHEDULE 2 - AMENDMENTS RELATING TO RECOVERY
PROCEEDINGS - *continued*

- (2) The prescribed documents are:
 - (a) a copy of the determination certified by the Registrar to be a true copy; and
 - (b) an affidavit by the Registrar specifying the amount unpaid under the determination.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS
(Sec. 3)

(1) Section 3 (**Definitions**):

- (a) Insert, in alphabetical order, in section 3 (1):
 - "act of violence" means an act or series of related acts (as referred to in subsection (3)), 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;
 - "costs" includes allowances and expenses;
 - "Registrar" means Registrar of the Tribunal;
- (b) Omit the definition of "close relative" from section 3 (1).
- (c) After section 3 (2), insert:
 - (3) 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 the same time or were, for any other reason, related to each other.

(2) Section 9 (**Registrar and other staff of the Tribunal**):

Omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(3) Section 9A:

After section 9, insert:

Tribunal may be assisted by Crown Solicitor

9A. The Tribunal may be assisted by the Crown Solicitor in the exercise of its jurisdiction under this Act.

(4) Section 10 (**Definitions**):

(a) Omit the definition of "act of violence" from section 10 (1).

(b) After the definition of "award of compensation" in section 10 (1), insert:

"close relative", in relation to a deceased victim of an act of violence, means a person who, at the time the act of violence occurred:

(a) was the deceased victim's spouse or was a person who was living with the deceased victim as the deceased victim's spouse;

(b) was a parent, guardian, step-parent or grandparent of the deceased victim; or

(c) was a child, step-child or grandchild of the deceased victim or was some other child of whom the deceased victim was a guardian;

(c) Omit section 10 (2).

(5) Section 15 (**Certain persons not eligible to receive compensation**):

(a) Omit section 15 (2), insert instead:

(2) A secondary victim of an act of violence is not entitled to claim compensation under this Part before 1 year has elapsed since the act of violence occurred unless:

(a) a notice of the secondary victim's intention to claim compensation has been served (in accordance with the rules of the Tribunal) on:

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (i) the primary victim through whom he or she is claiming; or
 - (ii) at least one of the close relatives of the deceased victim through whom he or she is claiming; and
- (b) no application has been made by or on behalf of the primary victim, or by or on behalf of a close relative of the deceased victim, during the period of 3 months next following the date on which the notice was so served.
- (2A) Notwithstanding subsection (2):
 - (a) a secondary victim who is claiming through a primary victim is entitled to claim compensation under this Part within the period of 1 year referred to in that subsection if an application for compensation made by or on behalf of the primary victim has been finally disposed of; and
 - (b) a secondary victim who is claiming through a deceased victim is entitled to claim compensation under this Part within the period of 1 year referred to in that subsection if an application for compensation made by a close relative of the deceased victim has been finally disposed of.
- (b) Omit section 15 (4), insert instead:
 - (4) Nothing in this section prevents a person from being eligible to receive compensation under this Part in respect of the same act of violence in one or more of the capacities of primary victim, secondary victim, close relative of a deceased victim or law enforcement victim.
- (c) From section 15 (5) omit "A person", insert instead "Subject to subsection (4), a person".
- (d) From section 15 (6) omit "compensation under the Transport Accidents Compensation Act 1987", insert instead "damages in accordance with the Motor Accidents Act 1988".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(6) Section 16 (**Maximum compensation payable**):

Section 16 (1):

After "Part", insert "(whether in one or more capacities)".

(7) Sections 17 (2), (3), 27 (1), 48 (2), 67 (1), (2):

Omit "of the Tribunal" wherever occurring.

(8) Section 18 (**Consideration of applications**):

Omit section 18 (2), insert instead:

(2) For the purpose of considering an application, the Tribunal may conduct a hearing under Part 4.

(9) Section 18A:

After section 18, insert:

Medical examinations

18A. (1) The Tribunal may require an applicant for compensation to undergo an examination (not being an examination that is unreasonable, unnecessarily repetitious or dangerous):

- (a) by a duly qualified medical practitioner or duly qualified psychologist specified by the Tribunal; or
- (b) by a duly qualified medical practitioner or duly qualified psychologist belonging to a class of medical practitioners or class of psychologists so specified.

(2) The costs of any such examination are to be paid for out of the Compensation Fund.

(10) Section 20 (**Reasons for not making award or for reducing amount of compensation payable**):

- (a) From section 20 (1) (d), omit "the police force in connection with", insert instead "any person or body duly engaged in the investigation of the act of violence or in".

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(b) After section 20 (3) (a), insert:

- (a1) whether the injury sustained by the victim was reported to a member of the Police Force within a reasonable time; and

(11) Section 24A:

After section 24, insert:

Costs

24A. (1) An applicant for compensation is entitled to be paid his or her costs in respect of the application and of the proceedings on the application (whether or not a hearing is conducted in respect of the proceedings) in accordance with such scale of costs as may be 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 an application for compensation or of the proceedings on such an application, any amount in excess of the amount payable in accordance with the scale of costs referred to in subsection (1).

(4) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section):

- (a) under which the operation of subsection (3) is excluded, modified or restricted; or
- (b) which has the effect of excluding, modifying or restricting the operation of subsection (3),

is void.

(5) An award of costs under this section may be made payable:

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

- (a) to the applicant; or
- (b) to any other person for the benefit of the applicant.

(12) Section 25:

Omit the section, insert instead:

Inadmissibility of certain evidence in subsequent criminal proceedings

25. Notwithstanding any rule of law to the contrary:

- (a) an application for compensation;
- (b) any documents supporting the application (whether or not furnished when the application is lodged); and
- (c) any transcript of evidence given to the Tribunal in proceedings on the application,

are not admissible in evidence against any person in criminal proceedings (other than criminal proceedings in which the applicant is the accused) arising from substantially the same facts as those on which the application is based.

(13) Section 29 (**Appeals to the District Court**):

- (a) From section 29 (2) (a) omit "2 months", insert instead "1 month".
- (b) After section 29 (4), insert:
 - (5) Subject to any order of the District Court to the contrary, the institution of an appeal under this section suspends the application of section 27, in relation to the payment of compensation, pending the determination of the appeal.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(14) Section 33 (**Presentation of cases**):

After "may", insert ", by leave of the Tribunal".

(15) Section 34 (**Tribunal may compel attendance of witnesses etc.**):

After section 34 (2), insert:

(3) The functions conferred on the Tribunal by subsection (1) (a) may be exercised on behalf of the Tribunal by the Registrar.

(16) Section 37 (**Witnesses' expenses**):

Omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".

(17) Section 41 (**Costs**):

Omit the section.

(18) Section 52 (**Definitions**):

After the definition of "aggrieved person", insert:

"close relative", in relation to a person who has died as a consequence of an offence, means a person who, at the time the offence occurred:

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

(19) Section 71A:

After section 71, insert:

Secretary may delegate certain functions

71A. The Secretary of the Attorney General's Department may delegate to any Deputy Secretary or

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

Assistant Secretary of that Department any of the functions (other than this power of delegation) conferred or imposed on the Secretary by or under this Act.

(20) Section 75 (Rules):

- (a) From section 75 (a) omit "and" where secondly occurring.
- (b) At the end of section 75 (b), insert:
 - ; and
- (c) the service of documents under this Act.

(21) Section 77:

After section 76, insert:

Savings, transitional and other provisions

77. Schedule 2 has effect.

(22) Schedule 1 (Provisions relating to the members of the Tribunal):

From clause 3 omit "Public Service Act 1979", insert instead "Public Sector Management Act 1988".

(23) Schedule 2:

After Schedule 1, insert:

**SCHEDULE 2 - SAVINGS, TRANSITIONAL AND OTHER
OTHER PROVISIONS**

(Sec. 77)

Part 1 - Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Victims Compensation (Amendment) Act 1989.

(2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

**Part 2 - Provisions consequent on the enactment of the
Victims Compensation (Amendment) Act 1989**

Definitions

2. In this Part:

"the amending Act" means the Victims Compensation (Amendment) Act 1989.

Compensation levies

3. Part 6A does not apply to or in respect of an offence that was committed before the commencement of that Part.

Recovery proceedings

4. (1) Any proceedings commenced under Part 5 before the commencement of Schedule 2 to the amending Act, but not determined before that commencement, are to continue to be dealt with under that Part as if the amendments made by that Schedule had not been made.

(2) Section 51B applies to and in respect of a person convicted of an offence referred to in that section before the commencement of that section in the same way as it applies to and in respect of a person convicted of such an offence on or after that commencement.

Applications for compensation

5. Any application for compensation under Part 3 made before the commencement of the amendments made to

SCHEDULE 3 - MISCELLANEOUS AMENDMENTS - *continued*

section 15 by the amending Act is to be dealt with as if those amendments had not been made.

Appeals from certain determinations

6. Section 29 (2) continues to apply to a determination of the Tribunal made before the commencement of the amendment to that subsection made by the amending Act as if that amendment had not been made.

Scales of costs

7. Any rules of the Tribunal that, immediately before the repeal of section 41 by the amending Act, prescribed a scale of costs for the purposes of that section are to be taken (until they are amended or repealed) to prescribe a scale of costs for the purposes of section 24A.

Money recovered under the Criminal Injuries Compensation Act 1967

8. Any money that (pursuant to clause 5 of Schedule 2 to the Miscellaneous Acts (Victims Compensation) Repeal and Amendment Act 1987) is recovered under section 7 of the Criminal Injuries Compensation Act 1967 after the commencement of Part 6B is to be paid into the Compensation Fund.
