

FIRST PRINT

VICTIMS COMPENSATION (AMENDMENT) BILL 1991

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 enable a person to apply for payment from the Victims Compensation Fund of compensation for injury awarded by a court under Part 6 of that Act as an alternative to seeking payment of the compensation directly from the offender by whom the court has ordered that the compensation be paid (Schedule 1 (18)); and
- (b) to increase, from \$1,000 to \$1,500, the maximum amount of compensation that a court may award under Part 6 of that Act in respect of a "minor" offence (Schedule 1 (20) (c)); and
- (c) to ensure that a direction for compensation may be made under Part 6 of that Act on the basis of a finding of guilt rather than, as is currently the case, on the basis of a conviction (Schedule 1 (16) and (20) (a) and (b)); and
- (d) to make it clear that a determination for restitution under Part 5 of that Act that is made against 2 or more persons results in all persons against whom it is made being jointly and severally liable under the determination (Schedule 1 (14)); and
- (e) to make other provisions of a minor, consequential and ancillary nature.

The Bill also makes minor amendments to the Prisons Act 1952 in connection with the operation of the Victims Compensation Act 1987.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Victims Compensation Act 1987.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Prisons Act 1952.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION ACT 1987

Schedule 1 (1) inserts a new section 2A. The new section sets out the objects of the Principal Act for the assistance of persons using it.

Schedule 1 (2) amends the definition of “act of violence” in section 3 (1) so as to make it clear that the definition is limited to acts that have involved violence, or the threat of violence, against one or more persons.

Schedule 1 (3) inserts a new section 18B. The new section will ensure that the Attorney General is entitled to make representations to the Victims Compensation Tribunal either generally or in respect of particular proceedings before the Tribunal. It is also proposed that the Attorney General be given a right of appeal against the decision of the Tribunal in respect of certain of its decisions (Schedule 1 (9)).

Schedule 1 (4) amends section 20 so as to indicate to the Tribunal that, in determining whether or not to make an award of compensation or in determining the amount of compensation to award, it should have regard to the contributory behaviour etc. of the victim in respect of whom an application for compensation has been made.

Schedule 1 (5) amends section 21 so as to ensure that a person’s future earning capacity is taken into account by the Tribunal in assessing the amount to be paid to the person under an award of compensation. It is also proposed that the regulations will be able to establish guidelines to assist the Tribunal in ascertaining a person’s earning capacity.

Schedule 1 (6) amends section 24A so as to give the Tribunal a discretion as to the amount it may award in respect of an applicant’s costs. The current scale of costs will continue to have effect as a benchmark to which the Tribunal should have regard.

Schedule 1 (7) amends section 25 so as to ensure that any document (such as an application for compensation, any document that supports such an application and any transcript of evidence given in proceedings before the Tribunal on such an application) that is currently inadmissible in criminal proceedings arising from similar facts to those on which an application for compensation is based may not otherwise be used in or in connection with such proceedings.

Schedule 1 (8) amends section 27 so as to require an application for payment of compensation under an award to be made within 18 months after the award is made. No limitation currently applies to the making of such an application.

Schedule 1 (9) amends section 29 so as to give the Attorney General a right of appeal to the District Court against a decision of the Tribunal in respect of an application for compensation.

Schedule 1 (10) amends section 30 so as to ensure that the Attorney General may appear and be heard in any hearing under Part 4. The amendment also makes it clear that a person who has allegedly been involved in the commission of an act of violence is not entitled to appear or be heard at a hearing that is conducted into an application for compensation arising from the act of violence.

Schedule 1 (11) amends section 42 so as to ensure that a reference in Division 1 of Part 5 to a conviction includes a reference to a Visiting Justice’s decision under section 26B of the Prisons Act 1952 by which a penalty has been imposed in relation to a prison offence.

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Schedule 1 (12) amends section 43 so as to require a recovery action under Part 5 to be commenced against a person who has been convicted of an offence arising from the same facts as those on which an award of compensation has been based unless the Attorney General otherwise directs.

Schedule 1 (13) amends section 45 so as to ensure that the Tribunal is not required to conduct a hearing under that section if the defendant fails to appear without having given a satisfactory explanation for his or her non-appearance.

Schedule 1 (14) amends section 47 so as to provide that 2 or more defendants against whom a determination for restitution is made under Part 5 (Recovery of compensation from offenders and fraudulent claimants) are jointly and severally liable under the determination.

Schedule 1 (15) amends the definition of "compensation for loss" in section 52 so as to make it clear that the definition includes compensation for loss of or damage to property.

Schedule 1 (16) amends section 53 so as to ensure that a direction for compensation may be made under that section against a person who has been found guilty rather than, as is currently the case, convicted of a major offence.

Schedule 1 (17) amends section 57 so as to require a certificate under that section to specify how the amount to which it relates is apportioned between compensation for injury and compensation for loss and to provide that payment of an amount towards the determination to which the certificate relates is to be applied to the compensation for loss before it is applied to the compensation for injury.

Schedule 1 (18) inserts a new section 57A. The new section will enable a person for whose benefit a direction for compensation has been made to apply for payment from the Victims Compensation Fund of such part of the amount of the direction as relates to compensation for injury. On payment of such an amount, the person's rights to enforce judgment under the certificate issued under section 57 in respect of the direction are to be subrogated to the Crown.

Schedule 1 (19) amends the definition of "compensation for loss" in section 60 so as to make it clear that the definition includes compensation for loss of or damage to property.

Schedule 1 (20) amends section 61 so as to ensure that a direction for compensation may be made under that section against a person who has been found guilty rather than, as is currently the case, convicted of a major offence. The amendment also increases, from \$1,000 to \$1,500, the maximum amount of compensation that may be awarded by such a direction.

Schedule 1 (21) effects a consequential amendment to section 62 as a result of the proposed increase in the maximum amount of compensation payable under section 61.

Schedule 1 (22) substitutes section 65 so as to provide that a direction for compensation under Division 2 of Part 6 (Minor offences) may be enforced in the same way as a direction for compensation under Division 1 of that Part (Major offences).

Schedule 1 (23) amends section 65A so as to ensure that a reference in Part 6A (Compensation levies) to a conviction includes a reference to an order under section 75B of the Justices Act 1902, being an order by which a penalty may be imposed on a person in respect of an offence for which proceedings have been heard in the absence of the person.

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Schedule 1 (24) amends section 65C so as to ensure that a compensation levy may be imposed against a person who has been convicted pursuant to a committal under section 51A of the Justices Act 1902.

Schedule 1 (25) amends section 65D so as to enable the regulations in relation to the enforcement of compensation levies under Part 6A to provide for deductions to be made from money held by the governors of prisons in respect of convicted prisoners.

Schedule 1 (26) amends section 65E so as to ensure that an appeal against sentence operates to stay any liability to pay a compensation levy under Part 6A.

Schedule 1 (27) amends section 65H so as to enable the Attorney General, with the concurrence of the Treasurer, to authorise payment from the Victims Compensation Fund of funds to facilitate the provision of counselling and other services to victims of crime.

Schedule 1 (28) amends Schedule 2 so as to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act. A new Part 3 contains particular provisions with respect to the amendments to be made by the proposed Act.

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

The Schedule amends section 44 so as to remove the current limitation that any proceedings to which a prisoner may be brought to attend be “pending” and to declare that (for the purposes only of that section) the Victims Compensation Tribunal is to be taken to be a court of record. The effect of the latter amendment will be to enable prisoners to be brought to attend hearings of the Tribunal.

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NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION ACT 1987
SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

VICTIMS COMPENSATION (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Victims Compensation Act 1987 with respect to the payment of compensation under that Act and the recovery from offenders of compensation so paid; to make consequential amendments to the Prisons Act 1952; and for other purposes.

Victims Compensation (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Victims Compensation (Amendment) Act 1991.

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 Schedule 1.

Amendment of Prisons Act 1952 No. 9

4. The Prisons Act 1952 is amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION ACT 1987

(Sec. 3)

(1) Section 2A:

After section 2, insert:

Objects

2A. The objects of this Act are:

- (a) to give effect to a scheme under which any person who is a victim of violent crime, and any person who is injured in the course of law enforcement, is able to claim compensation from the Government for injuries and losses sustained by the person independently of any criminal proceedings that may arise in relation to the crime; and
- (b) to enable amounts of compensation paid under the scheme to be recovered from persons found guilty of such crimes; and

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

- (c) to give effect to an alternative scheme under which a court may award compensation to a victim of a violent crime for injuries and losses sustained by the victim where the court has found a person guilty of the crime; and
 - (d) to impose a levy on persons found guilty of certain crimes for the purpose of funding the scheme referred to in paragraph (a).
- (2) Section 3 (**Definitions**):
- At the end of paragraph (b) of the definition of “act of violence” in section 3 (1), insert:
- and
 - (c) that has involved violence, or the threat of violence, against one or more persons;
- (3) Section 18B:
- After section 18A, insert:
- Attorney General may make representations to the Tribunal**
- 18B. (1) The Attorney General may make representations to the Tribunal either generally or in respect of any particular matter or proceeding.
- (2) The Tribunal must have regard to, but is not bound by, any such representations.
- (4) Section 20 (**Reasons for not making award or for reducing amount of compensation payable**):
- (a) Omit section 20 (1) (a), insert instead:
 - (a) whether, on the balance of probabilities, the behaviour, condition, attitude or disposition of the victim contributed, directly or indirectly, to the injury or death sustained by the victim;
 - (b) Omit section 20 (3) (a), insert instead:
 - (a) whether, on the balance of probabilities, the behaviour, condition, attitude or disposition of the victim contributed, directly or indirectly, to the injury sustained by the victim; and

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

(5) Section 21 (**Factors affecting amount of compensation payable**):

At the end of section 21, insert:

(2) The Tribunal must also have regard to the degree to which the person's earning capacity has been affected by the injury to which the application for compensation relates.

(3) The regulations may establish guidelines to be observed by the Tribunal for the purpose of assessing the degree to which a person's earning capacity has been affected by an injury.

(6) Section 24A (**Costs**):

(a) Omit section 24A (1), insert instead:

(1) An applicant in respect of whom an award of compensation is made is to be awarded costs in relation to both the application and the proceedings on the application.

(1A) Such an award may be made whether or not a hearing is conducted under Part 4.

(b) After section 24A (2), insert:

(2A) In making an award of costs under this section, the Tribunal must have regard to, but is not bound by, the scale of costs prescribed by the rules of the Tribunal.

(c) From section 24A (3), omit "the scale of costs referred to in subsection (1)", insert instead "the award of costs made by the Tribunal".

(7) Section 25 (**Inadmissibility of certain evidence in subsequent criminal proceedings**):

After "based", insert "and may not otherwise be used in or in connection with such proceedings".

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

Omit section 27 (2), insert instead:

(2) Such an application must be in the prescribed form, must be lodged with the Registrar within 18 months after the award is made and must comply with any conditions to which the award is subject.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

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

After section 29 (1), insert:

(1A) The Attorney General may appeal to the District Court from any determination of the Tribunal in respect of an application, whether or not a hearing has been conducted in relation to the application and whether or not the Attorney General has appeared at any such hearing.

(10) Section 30 (**Hearings generally**):

After section 30 (3), insert:

(4) The Attorney General is entitled to appear and be heard at any hearing under this Part.

(5) A person is not entitled to appear or be heard at a hearing under this Part merely because the person is, or is alleged to be, a person involved in the commission of the act of violence to which the hearing relates.

(11) Section 42 (**Definitions**):

At the end of section 42 (2) (b), insert:

; and

(c) a decision under section 26B of the Prisons Act 1952 by which a Visiting Justice has imposed a penalty in relation to a prison offence within the meaning of that Act.

(12) Section 43 (**Registrar to commence recovery action**):

(a) From section 43 (1), omit “may”, insert instead “must”.

(b) After section 43 (1), insert:

(1A) Such an action need not be commenced if the Attorney General, by order in writing, so directs.

(13) Section 45 (**Proceedings on a recovery action**):

After section 45 (3), insert:

(3A) However, a hearing need not be conducted under this section if the defendant fails to appear at the hearing and if the Tribunal is satisfied:

(a) that the defendant has been served with notice of the time and place set down for the hearing; and

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

(b) that the defendant has no reasonable excuse for having failed to appear at the hearing.

(14) Section 47 (**Determinations for restitution**):

(a) In section 47 (4), after “restitution”, insert “(whether made against 1 or more than 1 defendant)”.

(b) After section 47 (4), insert:

(5) If a determination for restitution is made against 2 or more defendants in respect of the same award of compensation, each of the defendants is, on the filing of the prescribed documents under section 48, jointly and severally liable under the determination.

(15) Section 52 (**Definitions**):

Before “does not include” in the definition of “**compensation for loss**” in section 52, insert “includes compensation for loss of or damage to property, but”.

(16) Section 53 (**Directions for compensation**):

(a) From section 53 (1), omit “convicted”, insert instead “found guilty”.

(b) From section 53 (1), omit “conviction”, insert instead “finding of guilt”.

(17) Section 57 (**Enforcement of directions for compensation**):

After section 57 (1), insert:

(1A) A certificate under this section must specify the sum (if any) that relates to compensation for injury and the sum (if any) that relates to compensation for loss.

(1B) For the purposes of subsection (1A), any amount paid to the registrar, officer or clerk under the direction to which the certificate relates is to be regarded as having been applied in respect of the sum (if any) required to be paid in respect of compensation for loss before the sum (if any) required to be paid in respect of compensation for injury.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

(18) Section 57A:

After section 57, insert:

Payment of compensation from the Compensation Fund

57A. (1) An application for payment of such part of the amount specified in a certificate issued under section 57 as relates to compensation for injury may be made to the Registrar who is to forward the application to the Secretary of the Attorney General's Department.

(2) Such an application is to be in the prescribed form and is to be accompanied by a sealed copy of the certificate.

(3) On receiving such an application, the Secretary of the Attorney General's Department is to pay to the aggrieved person such part of the amount specified in the certificate as relates to compensation for injury.

(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.

(5) On the payment to an aggrieved person of such an amount, the person's rights to enforce judgment under the certificate (as referred to in section 57) are, by operation of this section, subrogated to the Crown to the extent of the amount so paid.

(19) Section 60 (**Definitions**):

Before "does not include" in the definition of "**compensation for loss**" in section 60, insert "includes compensation for loss of or damage to property, but".

(20) Section 61 (**Directions for compensation**):

(a) From section 61 (1), omit "convicted", insert instead "found guilty".

(b) From section 61 (1), omit "conviction", insert instead "finding of guilt".

(c) From section 61 (1), omit "\$1,000", insert instead "\$1,500".

(21) Section 62 (**Restrictions on court's power to give directions for compensation**):

From section 62 (1), omit "\$1,000", insert instead "\$1,500".

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

(22) Section 65:

Omit the section, insert instead:

Enforcement of directions for compensation

65. Sections 57–59 apply to and in respect of a direction for compensation under this Division in the same way as they apply to and in respect of a direction for compensation under Division 1.

(23) Section 65A (**Definitions**):

At the end of section 65A (1) (b), insert:

; and

(c) an order under section 75B of the Justices Act 1902.

(24) Section 65C (**Imposition of compensation levy**):

(a) In section 65C (1) (a), after “indictment”, insert “or pursuant to a committal under section 51A of the Justices Act 1902”.

(b) From section 65C (1) (b), omit “on indictment”, insert instead “as referred to in paragraph (a)”.

(25) Section 65D (**Payment and enforcement of compensation levy**):

After “earnings of” in section 65D (2) (a), insert “, and the deduction from money held by the governors of prisons in respect of,”.

(26) Section 65E (**Effect of appeal proceedings**):

In section 65E (1), after “conviction”, insert “or sentence”.

(27) Section 65H (**Payments from the Compensation Fund**):

(a) At the end of section 65H (c), insert:

; and

(d) all amounts authorised to be paid from the Fund in accordance with subsection (2).

(b) At the end of section 65H, insert:

(2) The Attorney General, with the concurrence of the Treasurer, may from time to time authorise payment from the Fund of such amounts as the Attorney General considers appropriate for the purpose of funding the provision of counselling and other services to victims of crime.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

(28) Schedule 2 (**Savings, transitional and other provisions**):

(a) At the end of clause 1 (1), insert:

Victims Compensation (Amendment) Act 1991.

(b) After Part 2, insert:

**Part 3—Provisions consequent on the enactment of the Victims
Compensation (Amendment) Act 1991**

Definition

9. In this Part:

“the amending Act” means the Victims Compensation (Amendment)
Act 1991.

Act of violence

10. The amendment to the definition of “act of violence” in section 3 (1) effected by Schedule 1 (2) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

Attorney General’s representations to the Tribunal

11. Section 18B applies to proceedings under this Act commenced before or after the commencement of that section.

Awards of compensation

12. The amendments to section 20 effected by Schedule 1 (4) to the amending Act have effect for the purposes of proceedings under this Act commenced before or after the commencement of those amendments.

Amount of compensation

13. The amendment to section 21 effected by Schedule 1 (5) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

Costs

14. The amendments to section 24A effected by Schedule 1 (6) to the amending Act have effect for the purposes of proceedings under this Act commenced before or after the commencement of those amendments.

Evidentiary matters

15. The amendment to section 25 effected by Schedule 1 (7) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

Applications for payment of compensation

16. The amendment to section 27 effected by Schedule 1 (8) to the amending Act does not apply to an application for payment of an award of compensation where the award was made before the commencement of that amendment.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued*

Appeals to the District Court by the Attorney General

17. The amendment to section 29 effected by Schedule 1 (9) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

Appearance at hearings by Attorney General

18. The amendment to section 30 effected by Schedule 1 (10) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

References to convictions in Division 1 of Part 5

19. The amendment to section 42 effected by Schedule 1 (11) to the amending Act does not have effect for the purposes of proceedings under this Act commenced before the commencement of that amendment.

Proceedings on a recovery action

20. The amendment to section 45 effected by Schedule 1 (13) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

References to compensation in Part 6

21. The amendments to sections 52 and 60 effected by Schedule 1 (15) and (19) to the amending Act have effect for the purposes of proceedings under this Act commenced before or after the commencement of those amendments.

References to findings of guilt in Part 6

22. The amendments to sections 53 and 61 effected by Schedule 1 (16) and (20) (a) and (b) to the amending Act have effect for the purposes of proceedings under this Act commenced before or after the commencement of those amendments.

Enforcement of directions for compensation

23. The amendment to section 57 effected by Schedule 1 (17) to the amending Act has effect for the purposes of proceedings under this Act commenced before or after the commencement of that amendment.

Payment from the Fund of amounts awarded by directions for compensation under Part 6

24. Section 57A applies to directions for compensation made before or after the commencement of that section.

Maximum compensation under Division 2 of Part 6

25. The amendments to sections 61 and 62 effected by Schedule 1 (20) (c) and (21) to the amending Act have effect for the purposes of proceedings under this Act commenced before or after the commencement of those amendments.

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**SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—*continued***

**Enforcement of directions for compensation under Division 2 of
Part 6**

26. Section 65, as substituted by Schedule 1 (22) to the amending Act, applies to directions for compensation under Division 2 of Part 6 made before or after the commencement of the substituted section.

Compensation levies generally

27. The amendment to section 65A effected by Schedule 1 (23) to the amending Act does not have effect in respect of any conviction arising before the commencement of that amendment.

Imposition of compensation levies

28. The amendments to section 65C effected by Schedule 1 (24) to the amending Act have effect for the purposes of proceedings under this Act commenced before or after the commencement of those amendments.

Enforcement of compensation levies

29. The amendment to section 65D effected by Schedule 1 (25) to the amending Act applies to the enforcement of compensation levies imposed by this Act before or after the commencement of that amendment.

SCHEDULE 2—AMENDMENT OF PRISONS ACT 1952

(Sec. 4)

Section 44 (Attendance of prisoner before court etc.):

(a) From section 44 (1), omit “then pending”.

(b) After section 44 (2), insert:

(3) For the purposes only of this section, the Victims Compensation Tribunal is to be regarded as a court of record.
