

FIRST PRINT

VICTIMS COMPENSATION (AMENDMENT) BILL 1994

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 confine the expression "act of violence" to acts that are of a violent nature, that comprise sexual assault or that involve intimidation or stalking in the context of an apprehended violence order in force under the Crimes Act 1900; and
- (b) to declare that compensation for injury that is awarded under the Act is intended to be by way of consolation only, and is not intended to reflect the compensation to which a person may otherwise be entitled; and
- (c) to extend the definition of "injury" to include the psychological trauma suffered by victims of sexual assault; and
- (d) to declare that compensation under Part 3 of the Act is not payable with respect to injury arising out of a motor accident within the meaning of the Motor Accidents Act 1988; and
- (e) to restrict the compensation for loss of earnings that may be awarded under Part 3 of the Act to the amount payable to an incapacitated worker under the Workers Compensation Act 1987; and
- (f) to specify the matters to which the Victims Compensation Tribunal ("the Tribunal") may have regard when deciding whether to allow an out of time application for compensation; and
- (g) to make provision for the making of multiple awards of compensation to the same person in relation to an act of violence that comprises a series of related acts; and
- (h) to increase, from \$200 to \$4,000, the threshold below which compensation is not payable under Part 3 of the Act, and to allow future variations of that threshold to be effected by proclamation rather than regulation; and
- (i) to specify the matters to which the Tribunal may have regard when deciding whether an act of violence has been reported to the police within a reasonable time; and

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- (j) to enable the Tribunal to deduct from a proposed award of compensation the amount of any determination for restitution that is proposed to be made against the person for whose benefit the award is to be made; and
- (k) to enable complaints to be made against medical practitioners who charge excessive fees for services they provide in connection with victims compensation proceedings; and
- (l) to enable the Tribunal to reconsider applications for compensation that it has previously determined; and
- (m) to provide that the Victims Compensation Fund Corporation is to be the respondent to any appeal to the District Court against the Tribunal's determinations; and
- (n) to remove doubt as to the manner in which the District Court is to hear appeals from the Tribunal's determinations, and to regulate the legal costs that can be charged in respect of such appeals; and
- (o) to enable the Registrar of the Tribunal to refer applications for compensation for assessment; and
- (p) to restrict the payment of compensation in connection with a deceased victim to persons who are financially dependent on the deceased victim; and
- (q) to restrict the grounds on which a person may claim compensation as a secondary victim of an act of violence; and
- (r) to streamline the procedures for the recovery of compensation from persons found guilty of offences that have given rise to an award of compensation; and
- (s) to enact other provisions of a minor, consequential and ancillary nature.

This Bill also makes minor amendments to the Fines and Penalties Act 1901 and the Prisons Act 1952.

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 Schedule amending the Victims Compensation Act 1987.

Clause 4 is a formal provision that gives effect to the Schedule amending the Fines and Penalties Act 1901 and the Prisons Act 1952.

Clause 5 provides that the explanatory notes appearing in the text of the Bill do not form part of the proposed Act.

Further explanatory notes appear in the text of the Bill below the amendments to which they relate.

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VICTIMS COMPENSATION (AMENDMENT) BILL 1994

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No. , 1994

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; and to make consequential amendments to other Acts.

Victims Compensation (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Victims Compensation (Amendment) Act 1994.

5 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 other Acts

4. Each Act referred to in Schedule 2 is amended as set out in that Schedule.

Explanatory notes

5. The matter appearing under the heading "Explanatory Note" in either of the Schedules does not form part of this Act.

SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION ACT 1987

(Sec. 3)

20 Amendments: definition of "act of violence"

(1) Section 3 (Definitions):

Omit the definition of "act of violence" from section 3 (1), insert instead:

"act of violence" has the meaning given by section 3A;

25 (2) Section 3A:

After section 3, insert:

Act of violence

3A. (1) In this Act, a reference to an act of violence is a reference to an act or series of related acts, whether committed by one or more persons:

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

- (a) that has apparently occurred in the course of the commission of an offence; and
- (b) that has involved violent or offensive conduct against one or more persons; and 5
- (c) that has resulted in injury or death to one or more of those persons.
- (2) For the purposes of this section, conduct is offensive only if it involves: 10
- (a) the commission of an act of indecency against a person; or
- (b) sexual intercourse (within the meaning of section 61H of the Crimes Act 1900) with a person without his or her consent (within the meaning of section 61R of the Crimes Act 1900) or with consent obtained by means of a non-violent threat (within the meaning of section 65A of the Crimes Act 1900); or 15
- (c) sexual intercourse (within the meaning of section 61H of the Crimes Act 1900) with a child under the age of 16 years or with a person having an intellectual disability (within the meaning of section 66F of the Crimes Act 1900); or 20
- (d) participation with a child under the age of 18 years in an act of child prostitution (within the meaning of section 91C of the Crimes Act 1900) or the employment of a child under the age of 18 years for pornographic purposes (within the meaning of section 91G of the Crimes Act 1900); or 25
- (e) the intimidation or stalking of a person (within the meaning of section 562A of the Crimes Act 1900) in apparent contravention of an apprehended violence order in force under Part 15A of that Act. 30
- (3) An act is related to another act:
- (a) if both of the acts were committed against the same person; and 35

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

- 5 (b) if, in the opinion of the Tribunal, both of the acts were related to each other because they happened at the same time, because they happened over a period of time during the course of a continuing relationship or because they share some other common factor.

Explanatory note

10 “Act of violence” is currently defined as involving the commission of an offence coupled with consequent injury or death. Applications for compensation have been made in situations where the offence has been completely non-violent.

Item (1) substitutes the definition of “act of violence” in section 3 (1) as a consequence of proposed section 3A.

15 **Item (2)** inserts proposed section 3A. The new section redefines “act of violence” so as to restrict the definition to those acts that are violent in nature, that arise from sexual assault or that arise in the context of apprehended violence orders under Part 15A of the Crimes Act 1900. It also clarifies the concept of a related act (an expression used in the definition of “act of violence”).

Amendment: principles of compensation

20 (3) Section 3B:

At the end of Part 1, insert:

Nature of compensation for injury

3B. Compensation for injury awarded to a person under this Act:

- 25 (a) is intended to be by way of consolation only; and
(b) in particular, is not intended to reflect the compensation to which the person may be entitled, whether at common law or otherwise,
and this Act is to be construed accordingly.

30 **Explanatory note**

The Act is currently silent as to the basis on which compensation is to be awarded under the Act.

35 **Item (3)** inserts proposed section 3B. The new section states that compensation for injury that is awarded under the Act is intended to be by way of consolation only, and not as a reflection of other entitlements.

Victims Compensation (Amendment) 1994

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

Amendments: definition of “injury”

(4) Section 3 (**Definitions**):

In section 3 (1), after paragraph (b) of the definition of “injury”, insert: 5

(b1) psychological trauma;

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

After section 15 (6), insert: 10

(7) Compensation for injury, to the extent to which it comprises compensation for psychological trauma, is payable only to a primary victim of a sexual assault.

Explanatory note

The Act currently defines injury in terms of actual physical injury, nervous shock, mental illness and pregnancy. The psychological trauma suffered by victims of sexual assault does not fall easily within the definition. 15

Item (4) extends the definition of “injury” in section 3 (1) to include psychological trauma.

Item (5) provides that compensation for psychological trauma is payable only to a primary victim of a sexual assault. 20

Amendment: injuries arising out of motor accidents

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

From section 15 (6), omit “if the person is entitled to receive damages in accordance with the Motor Accidents Act 1988 in respect of the same act or injury”, insert instead “if the act of violence took the form of, or the injury arose as a direct consequence of, a motor accident within the meaning of the Motor Accidents Act 1988”. 25
30

Explanatory note

Section 15 (6) currently provides that compensation is not payable with respect to an act of violence if compensation is payable under the Motor Accidents Act 1988 with respect to the same act of violence. The existence of minimum thresholds under that Act gives rise to the argument that compensation remains payable under the Victims Compensation Act 1987 for losses below those thresholds. 35

Victims Compensation (Amendment) 1994

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

5 **Item (6)** amends section 15 (6) so as to ensure that no compensation is payable under the Victims Compensation Act 1987 in the case of an act of violence comprising a motor accident within the meaning of the Motor Accidents Act 1988, even if compensation is not payable under that Act in a particular case.

Amendment: compensation for loss of earnings

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

After section 16 (5), insert:

10 (6) The maximum rate at which compensation for actual loss of earnings and compensation for loss of future earnings or capacity to earn may be calculated is the maximum rate at which compensation is payable to a totally incapacitated worker after the first 26 weeks of the worker's incapacity, as
15 determined in accordance with section 37 of the Workers Compensation Act 1987.

Explanatory note

There is currently no maximum rate at which compensation for loss of earnings may be calculated.

20 **Item (7)** amends section 16 so as to provide such a maximum, being the maximum rate at which compensation for loss of earnings is payable to a totally incapacitated worker after the first 26 weeks of the worker's incapacity, as determined in accordance with section 37 of the Workers Compensation Act 1987.

Amendment: out of time applications for compensation

25 (8) Section 17 (**Applications**):

After section 17 (2), insert:

(2A) In deciding whether or not to allow a longer period for the lodgment of an application for compensation in respect of a victim of an act of violence, the Tribunal may
30 have regard to such matters as it considers relevant, including the following:

- (a) the age of the victim when the act of violence is alleged to have occurred;
- (b) any intellectual or psychiatric disability to which the
35 victim is subject;

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

- (c) the nature of the relationship between the victim and the person or persons by whom the act of violence is alleged to have been committed; 5
- (d) the nature of any injury alleged to have been sustained by the victim;
- (e) in the case of an application relating to a sexual assault, any policy of the Director of Public Prosecutions with respect to the prosecution of an offence arising out of the assault. 10

Explanatory note

The Tribunal has a discretion to accept applications for compensation that are lodged after the 2 year closing date provided by section 17 (2).

Item (8) amends section 17 so as to give examples of the matters to which the Tribunal may have regard when deciding whether or not to accept such an application. 15

Amendments: multiple awards of compensation with respect to related acts

(9) Section 18 (**Consideration of applications**):
After section 18 (3), insert: 20

(4) Separate applications for compensation may only be made with respect to acts that are related within the meaning of section 3A (3) if the acts in respect of which the second or subsequent application is made occurred after any earlier application or applications were made. 25

(10) Section 19 (**Determination of applications**):

After section 19 (4), insert:

(5) No more than one award of compensation may be made with respect to any one application.

Explanatory note 30

Multiple awards of compensation have been made with respect to a single application that has been made in connection with a series of related acts, even where the same kinds of act of violence and the same offender have been involved.

Item (9) amends section 18 so as to require the Tribunal to refuse to consider successive applications for compensation in respect of the same act of violence unless the particular acts to which a later application relates have occurred since all earlier applications were made. 35

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

Item (10) amends section 19 so as to ensure that no more than one award of compensation may be made with respect to any one application.

5 Amendment: minimum thresholds for compensation

(11) Section 19 (Determination of applications):

From section 19 (2) (b), omit “\$200 or such other amount as may be prescribed”, insert instead “\$4,000 or such other amount as may from time to time be fixed by proclamation”.

10 Explanatory note

The minimum compensation payable under the Act is \$200 or such other amount as may be prescribed by regulation. No such other amount is currently prescribed.

Item (11) amends section 19 so as to increase the minimum threshold to \$4,000 and to allow future variations of the threshold to be fixed by proclamation rather than by regulation.

Amendments: delays in reporting matters to the police

(12) Section 20 (Factors to be taken into consideration):

- (a) From section 20 (1) (b), omit “member of the police force”, insert instead “police officer”.
- 20** (b) From section 20 (3) (a1), omit “member of the Police Force”, insert instead “police officer”.
- (c) After section 20 (3), insert:
 - 25** (4) In determining whether a matter relating to a victim of an act of violence was reported to a police officer within a reasonable time, the Tribunal may have regard to such matters as it considers relevant, including the following:
 - (a) the age of the victim when the act of violence is alleged to have occurred;
 - 30** (b) any intellectual or psychiatric disability to which the victim is subject;
 - (c) the nature of the relationship between the victim and the person or persons by whom the act of violence is alleged to have been committed;
 - 35** (d) any fear of retaliation by any such person or persons to which the victim is subject;
 - (e) the nature of any injury alleged to have been sustained by the victim.

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

Explanatory note

One factor that the Tribunal is required to take into consideration when deciding on a person's eligibility for compensation is whether the person has reported the relevant act of violence to the police within a reasonable time. 5

Item (12) amends section 20 so as to give examples of the matters to which the Tribunal may have regard when deciding whether or not a particular act of violence has been reported to the police within a reasonable time. It also amends the section so as to update references to police officers. 10

Amendment: reduction of awards of compensation by determinations for restitution

(13) Section 21A:

After section 21, insert:

Determination for restitution may be set off against award of compensation 15

21A. (1) For the purpose of giving effect to a determination for restitution under Part 5 that it proposes to make against a person to whom it proposes to award compensation, the Tribunal may reduce the amount of the proposed award by the amount of the proposed determination. 20

(2) On the making of a determination for restitution that has given rise to the reduction of an award of compensation under this section, the person against whom the determination is made is taken to have paid the amount of the determination. 25

Explanatory note

Awards of compensation are sometimes made in favour of persons who are themselves the persons by whom other acts of violence have been committed. Such persons may be the subject of determinations for restitution, requiring them to contribute to the costs of paying awards of compensation arising from the acts of violence they have committed. 30

Item (13) inserts proposed section 21A. The new section will enable the Tribunal to reduce the amount of a proposed award by the amount of any determination for restitution that is proposed to be made with respect to the person to whom the award is to be made, and will provide that the determination will be taken to have been satisfied by the reduction so made. 35

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

Amendments: professional fees

(14) Section 24A (Costs):

5 (a) After section 24A (2), insert:

(2A) The Tribunal may award an applicant costs in excess of the amount to which the applicant would otherwise be entitled under this section if it is of the opinion that the special circumstances of the case justify such an award being made.

10

(b) After section 24A (5), insert:

(6) The Tribunal may cause a complaint to be made to:

(a) the Health Care Complaints Commission; or

(b) any other relevant body concerned with the practice of medicine,

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if it is of the opinion that the fees charged by a registered medical practitioner, in connection with an application for compensation heard by the Tribunal, are grossly excessive for the services to which they relate.

20 **Explanatory note**

The costs that may be recovered by a lawyer for acting for a person in relation to an application for compensation are strictly regulated. A major component of the costs incurred by the applicant is frequently the cost of medical services (such as the provision of a medical report to support the application) provided by medical practitioners.

25

Item (14) (a) amends section 24A so as to make the amount of the costs allowable with respect to an application for compensation to be subject to the order of the Tribunal.

Item (14) (b) amends section 24A so as to enable complaints to be made to the Health Care Complaints Commission or other relevant body about excessive fees charged by medical practitioners with respect to matters that are heard before the Tribunal.

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Victims Compensation (Amendment) 1994

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

Amendment: reconsideration of determinations by the Tribunal

(15) Section 24B:

After section 24A, insert:

5

Tribunal may reconsider certain determinations

24B. (1) The Tribunal may reconsider an application for compensation that it has previously determined, and may do so on the request of the applicant or otherwise.

(2) The Tribunal may reconsider an application for compensation only if it is of the opinion that: 10

(a) evidence (including fresh evidence) that was not previously available to the Tribunal has become available; and

(b) the evidence warrants reconsideration of the application. 15

(3) However, the Tribunal may not reconsider an application for compensation:

(a) if an appeal has been made from its previous determination of the application, and has not been withdrawn; or 20

(b) if more than 3 months have elapsed since notice of its previous determination was given to the applicant.

(4) The applicant is not entitled to commence an appeal under section 29 while the application is being reconsidered. 25

(5) The application is to be reconsidered and determined in accordance with this Division as if the original determination had not been made, and the determination of the application has effect as if it were an original determination.

(6) An award of compensation made by a determination under this section may not be for a lesser amount than the award of compensation (if any) made by the original determination. 30

(7) An application for compensation may be reconsidered more than once. 35

(8) Section 24A applies to an application that is reconsidered under this section in the same way as it applies to any other application for compensation.

Victims Compensation (Amendment) 1994

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

Explanatory note

5 It sometimes occurs that new information comes to light that justifies the granting of compensation (where compensation has previously been denied) or the increasing of an award of compensation. This is particularly the case with estimates of costs and expenses that are likely to be incurred by the person to whom compensation is granted. Currently, the only avenue of reconsideration is by way of a new application or, in certain circumstances, by an appeal to the District Court from the original determination.

10 **Item (15)** inserts proposed section 24B. The new section will enable the Tribunal to reconsider its earlier determination of an application, provided the determination is less than 3 months old and provided no appeal against the determination is pending before the District Court.

Amendments: Victims Compensation Fund Corporation

15 (16) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“Corporation” means the Victims Compensation Fund Corporation constituted by section 65FA;

(17) Section 26 (**Corporation to be notified of determination**):

20 Omit “Secretary of the Attorney General’s Department”, insert instead “Corporation”.

(18) Section 27 (**Corporation to pay compensation**):

Omit “Secretary of the Attorney General’s Department” wherever occurring, insert instead “Corporation”.

25 (19) Section 29 (**Appeals to the District Court**):

After section 29 (2), insert:

(2A) The Corporation is the respondent to any appeal under this section.

Explanatory note

30 Management of the Victims Compensation Fund is in the hands of the Victims Compensation Fund Corporation. Functions of the Director-General of the Attorney General’s Department (referred to in the Act as the Secretary of that Department, the previous title of that office) are now more properly exercisable by the Corporation.

Item (16) inserts a definition of “Corporation” into section 3.

35 **Items (17) and (18)** amend sections 26 and 27 so as to replace references to “the Secretary of the Attorney General’s Department” with references to “the Corporation”.

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

Item (19) amends section 29 so as to make the Corporation the respondent to all appeals to the District Court from the Tribunal's determinations.

- Amendments: appeals to the District Court** 5
- (20) Section 29 (**Appeals to the District Court**):
- (a) Omit section 29 (2), insert instead:
- (2) Notice of appeal must be lodged with the District Court within 3 months after the day on which the relevant notice of determination was given to the person by whom the appeal is made. 10
- (b) Before section 29 (3), insert:
- (2B) For the purpose of hearing an appeal, the District Court:
- (a) is to rely on the Tribunal's record of proceedings with respect to the determination against which the appeal is made; and 15
- (b) is to consider the evidence that was available to the Tribunal when the determination was made without requiring the evidence to be given again. 20
- (2C) However, the District Court may grant leave to the giving of evidence in proceedings on an appeal, including:
- (a) evidence that was available to the Tribunal; and
- (b) evidence that was not available to the Tribunal; and
- (c) fresh evidence, 25
- but only if the special circumstances of the case so require.
- (c) From section 29 (3), omit "hear and".
- (d) After section 29 (5), insert:
- (6) An appeal under this section does not lie against the Tribunal's refusal: 30
- (a) to allow a longer period for lodgment of an application for compensation than the 2 years referred to in section 17 (2) (d); or
- (b) to reconsider a determination in respect of which a request has been made as referred to in section 24B. 35

Victims Compensation (Amendment) 1994

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

(21) Section 29A:

After section 29, insert:

5 **Costs of appeal**

29A. (1) An appellant is entitled to be paid his or her costs in respect of the appeal in accordance with the regulations.

10 (2) The District Court may award an appellant costs in excess of the amount to which the appellant would otherwise be entitled under this section if it is of the opinion that the special circumstances of the case justify such an award being made.

15 (3) Despite any Act or law to the contrary, but subject to any order of the District Court, a legal practitioner is not entitled to charge or recover, by way of costs in respect of an appeal, any amount in excess of the amount payable in accordance with the regulations.

20 (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 this section is excluded, modified or restricted; or

(b) which has the effect of excluding, modifying or restricting the operation of this section,

25 is void.

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

(a) to the appellant; or

(b) to any other person for the benefit of the appellant.

30 **Explanatory note**

The Act is currently silent as to the manner in which the District Court is to hear appeals from the Tribunal's determinations.

35 **Item (20) (a)** amends section 29 so as to require an appeal to be made within 3 months, rather than 1 month, and to remove the discretion of the District Court to allow appeals that are made after that time.

Item (20) (b) further amends section 29 so as to allow the District Court to rely on the record of proceedings prepared by the Tribunal, and to prohibit the admission of additional evidence except with the leave of the District Court.

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

Item (20) (c) is a consequential amendment.

Item (20) (d) further amends section 29 so as to make it clear that the Tribunal's refusal to extend the time for making an application for compensation (see section 17 (2)) or to reconsider its determination of an application for compensation (see proposed section 24B) is not an appellable decision. 5

Item (21) inserts proposed section 29A. The new section will regulate the costs allowable for appeals to the District Court in a similar way to that in which costs allowable for applications before the Tribunal are regulated. 10

Amendments: assessment of applications for compensation

(22) Section 3 (Definitions):

In section 3 (1), insert in alphabetical order:

“**assessor**” means an assessor appointed under section 9 (2); 15

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

At the end of section 9, insert:

(2) A member of staff of the Tribunal may be appointed as an assessor.

(24) Section 18 (Consideration of applications): 20

After section 18 (1), insert:

(1A) Before the Tribunal considers an application, the Registrar may refer the application to an assessor if satisfied of each of the following:

(a) that it is inappropriate to conduct a hearing under Part 4; 25

(b) that there is no dispute as to the occurrence of any act of violence to which the application relates;

(c) that there are no grounds under section 20 for refusing to make an award of compensation or for reducing the amount of compensation to be awarded; 30

(d) that the maximum compensation that the Tribunal is likely to award (in the event that it awards compensation) will not exceed \$7,000;

(e) that the applicant does not object to the application being referred to an assessor. 35

Victims Compensation (Amendment) 1994

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

(25) Section 19 (**Determination of applications**):

5 In section 19 (1), after “After considering an application”,
insert “and any assessment of the application made by an
assessor”.

(26) Section 75 (**Rules**):

(a) In section 75 (a), after “Tribunal;”, insert “and”.

(b) After section 75 (c), insert:

10 ; and

(d) the functions of assessors.

Explanatory note

It is proposed that the Tribunal be given formal power to refer applications for compensation to assessors for the purposes of assessment.

15 **Item (22)** inserts a definition of “assessor” into section 3.

Item (23) amends section 9 so as to provide for the appointment of assessors.

Item (24) amends section 18 so as to enable the Registrar of the Tribunal to refer applications for compensation for assessment if the applications satisfy specified criteria.

20 **Item (25)** amends section 19 so as to require the Tribunal, before determining an application for compensation, to consider any assessment of the application that has been made by an assessor.

Item (26) amends section 75 so as to enable rules to be made with respect to the functions of assessors.

25 **Amendments: definition of “dependant”**

(27) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**dependant**” of a deceased victim means:

30 (a) a person who was wholly or mainly dependent on
the deceased victim’s income at the time the
victim died, or who would have been but for the
incapacity of the victim due to the injury from
which the victim died; or

Victims Compensation (Amendment) 1994

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

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- (b) a child of the deceased victim born after the death of the victim where, had the child been born in the victim's lifetime, the child would have been a dependant of the victim by virtue of paragraph (a);
- (28) Section 10 (**Definitions**):
- (a) From section 10 (1), omit the definition of "close relative".
- (b) From paragraph (c) of the definition of "compensation for expenses" in section 10 (1), omit "close relative", insert instead "dependant".
- (29) Section 13 (**Compensation to dependants of deceased victims**):
- Omit "close relative", insert instead "dependant".
- (30) Section 15 (**Certain persons not eligible to receive compensation**):
- Omit "close relative" and "close relatives" wherever occurring, insert instead "dependant" and "dependants", respectively.
- (31) Section 16 (**Maximum compensation payable**):
- Omit "close relatives" wherever occurring, insert instead "dependants".
- (32) Section 17 (**Applications**):
- From section 17 (1) (b), omit "close relative", insert instead "dependant".
- (33) Section 19 (**Determination of applications**):
- From section 19 (2) (a) (ii), omit "close relative", insert instead "dependant".
- (34) Section 52 (**Definitions**):
- (a) From paragraph (b) of the definition of "aggrieved person", omit "close relative", insert instead "dependant".
- (b) Omit the definition of "close relative".

Explanatory note

Close relatives of deceased victims are entitled to apply for compensation under the Act. The definition of "close relative" refers to the mere existence of a family relationship. It is proposed to replace the concept of "close relative" with that of "dependant", in which the relationship is one of financial dependence.

Victims Compensation (Amendment) 1994

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

Item (27) inserts a proposed definition of “dependant” into section 3.

5 Items (28)–(34) make consequential amendments to sections 10, 13, 15, 16, 17, 19
and 52.

Amendments: injury suffered by secondary victims

(35) Section 10 (**Definitions**):

10 (a) From paragraph (b) of the definition of “compensation for
expenses” in section 10 (1), omit “witnessing, or otherwise
becoming aware of, injury sustained by a primary victim, or
injury or death sustained by a deceased victim, of that act”,
insert instead “witnessing the act of violence giving rise to
the injury or death sustained by a primary victim or deceased
15 victim of that act or witnessing the actual physical harm or
death sustained by the victim as a result of that act”.

(b) From section 10 (1), omit the definition of “compensation
for injury”, insert instead:

“**compensation for injury**” means:

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

(i) compensation for pain and suffering; and

(ii) compensation for loss of enjoyment of life,
arising from injury sustained by the victim as a
direct result of that act;

25 (b) in relation to a secondary victim of an act of
violence:

(i) compensation for pain and suffering; and

30 (ii) compensation for loss of enjoyment of life,
arising from injury sustained by the victim as a
direct result of witnessing the act of violence
giving rise to the injury or death sustained by a
primary victim or deceased victim of that act or
witnessing the actual physical harm or death
sustained by the victim as a result of that act;

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

- (c) in relation to a dependant of a deceased victim of an act of violence:
- (i) compensation for pain and suffering; and 5
 - (ii) compensation for loss of enjoyment of life; and
 - (iii) compensation for grief,
arising from the death of, or from injury sustained
by, the deceased victim; 10
- (d) in relation to a law enforcement victim:
- (i) compensation for pain and suffering; and
 - (ii) compensation for loss of enjoyment of life,
arising from injury sustained by the victim in the
course of law enforcement; 15
- (c) After section 10 (1), insert:
- (2) For the purposes of this Act, a reference to a secondary victim witnessing an act of violence, or witnessing actual physical harm or death resulting from an act of violence, includes a reference to the secondary victim otherwise becoming aware of the act, or the actual physical harm or death, but only if:
- (a) the primary victim or deceased victim of that act is under the age of 18 years; and
 - (b) the secondary victim is a parent or guardian of the primary victim or deceased victim; and 25
 - (c) the secondary victim is not a person by whom the act of violence was committed.

Explanatory note

Applications for compensation can be made by persons whose injury has been caused as a result not of witnessing an act of violence but of merely becoming aware of an injury suffered by the primary victim or deceased victim through whom they claim. It is proposed that, with the exception of parents and guardians of young children, the right to compensation of secondary victims be limited to those persons who actually witness the act of violence (or the ensuing injury or death) sustained by the primary victim or deceased victim concerned. 30

Item (35) (a) and (b) amend section 10 so as to ensure that secondary victims are entitled to compensation only for losses arising from injuries sustained as a direct result of witnessing an act of violence or the injury or death caused by an act of violence. 35

Victims Compensation (Amendment) 1994

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

5 Item (35) (c) amends section 10 so as to provide that a parent or guardian of a child who becomes aware of an act of violence giving rise to injury to the child is entitled to compensation as a secondary victim as if the parent or guardian had directly witnessed the act of violence.

Amendments: recovery actions against persons found guilty of certain offences

(36) Section 42 (Definitions):

10 From section 42 (1), omit the definitions of “notice to show cause” and “recovery action”, insert instead:

 “notice to show cause” means a notice referred to in section 42A or 42B;

15 “recovery action” means proceedings on a notice to show cause;

(37) Sections 42A, 42B:

 After section 42, insert:

Tribunal may make determination for restitution

20 42A. (1) If the Tribunal 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 it has made an award of compensation, it may make a determination for restitution against the person so convicted.

25 (2) In that event, the Registrar must cause a notice to be served on the person so convicted (in accordance with the rules of the Tribunal), being a notice requiring that person to show cause as to why the determination should not be confirmed.

30 (3) Action may not be taken under this section 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.

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Victims Compensation (Amendment) 1994

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

(4) A determination under this section takes effect 3 months after it is made unless, before that time, the convicted person files a notice of intention to show cause in the offices of the Tribunal. 5

Registrar may commence recovery action

42B. (1) If the Registrar is of the opinion that, since an award of compensation has been made, 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 the award was made, the Registrar may commence a recovery action against the person so convicted. 10

(2) A recovery action is commenced by the Registrar causing a notice to be served on the person so convicted (in accordance with the rules of the Tribunal), being a notice requiring the person to show cause as to why a determination for restitution should not be made against that person. 15

(3) Action may not be taken under this section if 2 years or more have elapsed since the date on which the relevant award of compensation was made, or the date on which the person was convicted of the relevant offence, whichever is the later. 20

(4) Action may not be taken under this section 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. 25

(38) Section 43 (**Notice to show cause**): 30
Omit section 43 (1), (2) and (3).

(39) Section 45 (**Proceedings on a recovery action**):
From section 45 (1), omit "2 months", insert instead "28 days".

(40) Sections 46A, 46B: 35
After section 46, insert:

Determination of recovery actions

46A. The Tribunal may determine a recovery action:

(a) by confirming the determination for restitution that it has made against the defendant, in the case of an action 40

Victims Compensation (Amendment) 1994

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

5 on a notice to show cause under section 42A in respect
 of which a notice of intention to show cause has been
 duly filed; or

- (b) by making a determination for restitution against the
 defendant, in the case of an action on a notice to show
 cause under section 42B,

10 if it is satisfied that notice to show cause has been duly
 served on the defendant and that the defendant has been
 convicted of an offence arising from substantially the same
 facts as those constituting the act of violence in respect of
 which an award of compensation has been made.

15 **Determinations for restitution to be subject to appeals
 against relevant awards of compensation**

46B. (1) A determination for restitution does not have any
 effect:

- 20 (a) until the period within which an appeal may be made
 against the award of compensation from which it arises
 has expired; or
- (b) if such an appeal is pending at the beginning of that
 period or is subsequently made, until the appeal is
 finally disposed of.

25 (2) If the award of compensation to which such an appeal
 relates is set aside or varied as a result of the appeal, the
 determination for restitution ceases to have effect.

30 (3) In the event that the award is varied, a new
 determination for restitution may be made in accordance with
 this Division as if the original determination had not been
 made.

(41) Section 47 (**Determinations for restitution generally**):

- (a) Omit section 47 (1).
- (b) In section 47 (4), after “restitution”, insert “(whether made
 against one or more defendants)”.

Victims Compensation (Amendment) 1994

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

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

(5) If a determination for restitution is made against two 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. 5

Explanatory note

It is proposed to streamline the procedure for taking recovery action against persons who have been found guilty of offences giving rise to awards of compensation. 10

Item (36) makes certain consequential amendments to the definitions in section 42.

Item (37) inserts new sections 42A and 42B. Proposed section 42A will enable the Tribunal to make a determination for restitution when it is considering an application for compensation if it is satisfied that a person appears to have been convicted of an offence connected with the act of violence out of which the application for compensation has arisen. Proposed section 42B will enable the Registrar of the Tribunal to commence a recovery action against a person who is convicted of such an offence after an award of compensation is made. 15

Item (38) makes consequential amendments to section 43. 20

Item (39) amends section 45 so as to reduce (from 2 months after the date of service of the relevant notice to show cause to 28 days after the date on which the notice was issued) the time within which proceedings on a recovery action can be heard.

Item (40) inserts new sections 46A and 46B. Proposed section 46A specifies the grounds on which a determination for restitution may be made or confirmed. Proposed section 46B provides that a determination for restitution does not have effect while an appeal may be made against the relevant award of compensation, and further provides that an appeal that results in the setting aside or variation of the award has the effect of nullifying the determination. 25

Item (41) (a) is a consequential amendment. 30

Item (41) (b) and (c) amend section 47 so as to ensure that if a determination for restitution is made against two or more defendants, the defendants are each jointly and severally liable under the determination.

Miscellaneous amendments

(42) Section 2A: 35

After section 2, insert:

Objects of Act

2A. The objects of this Act are as follows:

Victims Compensation (Amendment) 1994

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

- 5 (a) to give effect to a scheme under which victims of violent crime, and persons who are injured in the course of law enforcement, are compensated (on a consolation basis) for injury or loss sustained by them;
- (b) to enable compensation paid under the scheme to be recovered from persons found guilty of crimes that have given rise to the awarding of such compensation;
- 10 (c) to give effect to an alternative scheme under which a court may award compensation to a victim of a violent crime for injury or loss sustained by the victim where the court has found a person guilty of the crime;
- 15 (d) to impose a levy on persons found guilty of certain crimes for the purpose of funding the scheme referred to in paragraph (a).
- (43) Section 24A (Costs):
- 20 (a) From section 24A (1), omit “such scale of costs as may be prescribed by the rules of the Tribunal”, insert instead “the regulations”.
- (b) From section 24A (3), omit “the scale of costs referred to in subsection (1)”, insert instead “the regulations”.
- (44) Section 24C:
- 25 Before section 25, insert:
- Effect of applicant’s death on application for compensation or award of compensation**
- 24C. (1) An application for compensation does not survive the death of the person by or on whose behalf it is made.
- 30 (2) The rights conferred by an award of compensation may be disposed of by the person for whose benefit the award is made, whether by conveyance, testamentary disposition or otherwise.
- (45) Section 52 (Definitions):
- 35 (a) From paragraph (a) (ii) of the definition of “aggrieved person”, omit “section 447B of the Crimes Act 1900 or”.
- (b) Before “does not include” in the definition of “compensation for loss”, insert “includes compensation for loss of or damage to property, but”.

Victims Compensation (Amendment) 1994

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

- (46) Section 53 (**Directions for compensation**):
- (a) From section 53 (1), omit “convicted”, insert instead “found guilty”. 5
 - (b) From section 53 (1), omit “conviction”, insert instead “finding of guilt”.
 - (c) From section 53 (1), omit “section 447B of the Crimes Act 1900 or”.
- (47) Section 60 (**Definitions**): 10
- Before “does not include” in the definition of “compensation for loss”, insert “includes compensation for loss of or damage to property, but”.
- (48) Section 61 (**Directions for compensation**):
- (a) From section 61 (1), omit “convicted”, insert instead “found guilty”. 15
 - (b) From section 61 (1), omit “conviction”, insert instead “finding of guilt”.
 - (c) From section 61 (1), omit “\$1,000”, insert instead “\$1,500”.
- (49) Section 62 (**Restrictions on court’s power to give directions for compensation**): 20
- From section 62 (1), omit “\$1,000”, insert instead “\$1,500”.
- (50) Section 65B (**Application of Part**):
- From section 65B (2), omit “section 447B of the Crimes Act 1900 or”. 25
- (51) Section 65C (**Imposition of compensation levy**):
- (a) Omit section 65C (1) (a) and (b), insert instead:
 - (a) \$70, if the person is convicted on indictment or pursuant to a committal under section 51A of the Justices Act 1902; or 30
 - (b) \$30, if the person is convicted otherwise than as referred to in paragraph (a).
 - (b) After section 65C (2), insert:
 - (2A) A person who is under the age of 18 years is not liable to pay such a levy if the court by which the person is convicted directs, whether when it convicts the person or at 35

Victims Compensation (Amendment) 1994

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

any time afterwards, that the person is exempt from liability to pay the levy.

5 (52) Section 65E (**Effect of appeal proceedings**):

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

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

After Part 2 of Schedule 2, insert:

10 **Part 3—Provisions consequent on the enactment of
the Victims Compensation (Amendment) Act 1994**

Definitions

9. In this Part:

“**amendment**” means an amendment made by the amending Act;

15 “**the amending Act**” means the Victims Compensation (Amendment) Act 1994.

Definition of “act of violence”

20 10. Section 3A, and the amendment to the definition of “act of violence” in section 3 (1), do not apply to proceedings on an application for compensation made before the commencement of that section and amendment.

Nature of compensation payable

25 11. Section 3B applies to compensation awarded in respect of applications for compensation made before the commencement of that section in the same way as it applies to compensation awarded in respect of applications made after that commencement.

Injury suffered by secondary victims

30 12. The amendments to section 10 made by Schedule 1 (35) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement.

Injuries arising out of motor accidents

35 13. The amendment to section 15 (6) does not apply to proceedings on an application for compensation made before the commencement of that amendment.

Victims Compensation (Amendment) 1994

**SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
ACT 1987—continued**
Definition of “injury”

14. Section 15 (7), and the amendment to the definition of “injury” in section 3 (1), apply to proceedings on an application for compensation made before the commencement of that subsection and amendment. 5

Compensation for loss of earnings

15. Section 16 (6) applies to compensation awarded in respect of applications for compensation made before the commencement of that subsection in the same way as it applies to compensation awarded in respect of applications made after that commencement. 10

Out of time applications for compensation

16. Section 17 (2A) applies to applications for compensation made before the commencement of that subsection in the same way as it applies to applications made after that commencement. 15

Multiple applications made by the same person

17. The provisions of sections 18 (4) and 3A (3) apply to applications for compensation made before the commencement of those provisions in the same way as they apply to applications made after that commencement. 20

Assessment of applications

18. The amendments to sections 18 and 19 made by Schedule 1 (24) and (25) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement. 25

Delays in reporting matters to the police

19. Section 20 (4) applies to applications for compensation made before the commencement of that subsection in the same way as it applies to applications made after that commencement. 30

Determinations for restitution that reduce awards of compensation

20. Section 21A applies to compensation awarded in respect of applications for compensation made before the 35

Victims Compensation (Amendment) 1994

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

5 commencement of that section in the same way as it applies
to compensation awarded in respect of applications made
after that commencement.

Professional fees

10 21. Section 24A (6) applies to proceedings on an
application for compensation made before the
commencement of that subsection in the same way as it
applies to proceedings on an application made after that
commencement.

Reconsideration of certain determinations

15 22. Section 24B applies to determinations under Part 3
made before the commencement of that section in the same
way as it applies to determinations made after that
commencement.

Effect of death on awards and determinations

20 23. Section 24C applies to applications for compensation
and awards of compensation made before the commencement
of that section in the same way as it applies to applications
and awards made after that commencement.

Victims Compensation Fund Corporation

25 24. Section 29 (2A) applies to an appeal made before the
commencement of that subsection in the same way as it
applies to an appeal made after that commencement.

Appeals

30 25. The amendments to section 29 made by Schedule 1
(20) to the amending Act apply to appeals that were pending
at the commencement of those amendments in the same way
as they apply to appeals that are made after that
commencement, but do not apply to appeals that were part
heard at that commencement.

Costs of appeal

35 26. Section 29A applies to the costs of an appeal made
before the commencement of that section in the same way as
it applies to the costs of an appeal made after that
commencement.

Victims Compensation (Amendment) 1994

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

27. The amendments to Division 1 of Part 5 made by Schedule 1 (36)–(41) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement, but do not apply if a recovery action had commenced in respect of the application before that commencement. 5
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Joint and several liability

28. Section 47 (5) applies to awards of compensation in respect of which the prescribed documents were filed under section 48 before the commencement of that subsection in the same way as it applies to awards in respect of which documents are so filed after that commencement. 15

Compensation for loss

29. The amendments to sections 52 and 60 made by Schedule 1 (45) (b) and (47) to the amending Act apply to proceedings commenced before the commencement of those amendments in the same way as they apply to proceedings commenced after that commencement. 20

References to findings of guilt

30. The amendments to sections 53 and 61 made by Schedule 1 (46) (a) and (b) and (48) (a) and (b) to the amending Act do not apply to proceedings commenced before the commencement of those amendments. 25

Increase in compensation awarded by courts

31. The amendments made to sections 61 and 62 by Schedule 1 (48) (c) and (49) to the amending Act apply to compensation awarded in respect of proceedings that commenced before the commencement of those amendments in the same way as they apply to compensation awarded in respect of proceedings that commence after that commencement. 30
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Compensation levies

32. (1) The amendment to section 65C made by Schedule 1 (51) (a) to the amending Act does not apply to proceedings commenced before the commencement of that amendment.

Victims Compensation (Amendment) 1994

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

5 (2) The amendment to section 65C made by Schedule 1 (51) (b) to the amending Act applies to proceedings commenced before the commencement of that amendment in the same way as it applies to proceedings commenced after that commencement.

Effect of certain appeals on liability to pay compensation levies

10 33. The amendment to section 65E made by Schedule 1 (52) to the amending Act applies to convictions occurring before the commencement of that amendment in the same way as it applies to convictions occurring after that commencement.

15 **Scales of costs**

34. The scales of costs that, immediately before the commencement of the amendments to section 24A made by Schedule 1 (43) to the amending Act, were prescribed by the rules of the Tribunal are taken to be costs prescribed by the regulations.

Definitions of “close relative” and “dependant”

20 35. The amendments made by Schedule 1 (27)–(34) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement.

Explanatory note

Item (42) inserts a new section 2A which sets out the objects of the proposed Act.

30 **Item (43)** amends section 24A so that references in that section to scales of costs prescribed by the rules of the Tribunal become references to costs prescribed by the regulations.

Item (44) inserts a new section 24C. The proposed section confirms that an application for compensation under Part 3 does not survive the death of the applicant, while an award of compensation does survive the death of the person for whose benefit it is made.

35 **Items (45) (a), (46) (c) and (50)** amend sections 52, 53 and 65B so as to remove obsolete references to (the now repealed) section 447B of the Crimes Act 1900.

Victims Compensation (Amendment) 1994

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

- Items (45) (b) and (47)** amend the definitions of “compensation for loss” in sections 52 and 60 so as to make it clear that those definitions extend to both loss of and damage to property. 5
- Items (46) (a) and (b) and (48) (a) and (b)** amend sections 53 and 61 so as to provide that a finding of guilt, rather than a conviction, is sufficient to enable a direction for compensation to be made under those sections.
- Items (48) (c) and (49)** amend sections 61 and 62 so as to increase, from \$1,000 to \$1,500, the maximum amount that can be awarded by a court in relation to an offence dealt with summarily. 10
- Item (51) (a)** amends section 65C so as to increase the levies payable by persons convicted of offences from \$50 to \$70 (for cases disposed of on indictment) and from \$20 to \$30 (for cases dealt with summarily).
- Item (51) (b)** amends section 65C so as to enable courts to exempt young persons from the liability to pay compensation levies. 15
- Item (52)** amends section 65E so as to ensure that liability to pay a compensation levy is stayed by an appeal against the sentence imposed in respect of the conviction from which the appeal is made.
- Item (53)** amends Schedule 2 so as to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act. 20

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

FINES AND PENALTIES ACT 1901 No. 16

Amendment 25

Section 8 (Governor may remit penalties):

After section 8 (2), insert:

(3) In this section, a reference to a penalty includes a reference to a compensation levy under the Victims Compensation Act 1987. 30

Explanatory note

The proposed amendment to the Fines and Penalties Act 1901 will enable compensation levies imposed by the Victims Compensation Act 1987 to be remitted under section 8 in the same way as penalties may be remitted.

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued***PRISONS ACT 1952 No. 9****Amendment**

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

5 Omit section 44 (3), insert instead:

(3) In this section:

10 “**appropriate officer**” means a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court, a Registrar of the Supreme Court or the Registrar of the Victims Compensation Tribunal;

“**court of record**” includes the Victims Compensation Tribunal.

Explanatory note

15 The amendments to section 44 of the Prisons Act 1952 extend the expression “court of record” to include the Victims Compensation Tribunal and the expression “appropriate officer” to include the Registrar of the Tribunal. The effect of the amendments will be to enable prisoners to be brought to attend the Tribunal’s hearings under the Victims Compensation Act 1987.

SECOND PRINT

VICTIMS COMPENSATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



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SCHEDULE 2—AMENDMENT OF OTHER ACTS

- Fines and Penalties Act 1901 No. 16
 - Prisons Act 1952 No. 9
-

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments

Legislative Council

NEW SOUTH WALES



Act No. , 1994

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; and to make consequential amendments to other Acts.

Victims Compensation (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Victims Compensation (Amendment) Act 1994.

5 Commencement

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

Amendment of Victims Compensation Act 1987 No. 237

10 3. The Victims Compensation Act 1987 is amended as set out in Schedule 1.

Amendment of other Acts

4. Each Act referred to in Schedule 2 is amended as set out in that Schedule.

Explanatory notes

15 5. The matter appearing under the heading "Explanatory Note" in either of the Schedules does not form part of this Act.

SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION ACT 1987

(Sec. 3)

20 Amendments: definition of "act of violence"

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

Omit the definition of "act of violence" from section 3 (1), insert instead:

"act of violence" has the meaning given by section 3A;

25 (2) Section 3A:

After section 3, insert:

Act of violence

30 3A. (1) In this Act, a reference to an act of violence is a reference to an act or series of related acts, whether committed by one or more persons:

Victims Compensation (Amendment) 1994

SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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- (a) that has apparently occurred in the course of the commission of an offence; and
- (b) that has involved violent or offensive conduct against one or more persons; and 5
- (c) that has resulted in injury or death to one or more of those persons.
- (2) For the purposes of this section, conduct is offensive only if it involves: 10
- (a) the commission of an act of indecency against a person; or
- (b) sexual intercourse (within the meaning of section 61H of the Crimes Act 1900) with a person without his or her consent (within the meaning of section 61R of the Crimes Act 1900) or with consent obtained by means of a non-violent threat (within the meaning of section 65A of the Crimes Act 1900); or 15
- (c) sexual intercourse (within the meaning of section 61H of the Crimes Act 1900) with a child under the age of 16 years or with a person having an intellectual disability (within the meaning of section 66F of the Crimes Act 1900); or 20
- (d) participation with a child under the age of 18 years in an act of child prostitution (within the meaning of section 91C of the Crimes Act 1900) or the employment of a child under the age of 18 years for pornographic purposes (within the meaning of section 91G of the Crimes Act 1900); or 25
- (e) the intimidation or stalking of a person (within the meaning of section 562A of the Crimes Act 1900) in apparent contravention of an apprehended violence order in force under Part 15A of that Act; or 30
- (f) conduct against a person apparently constituting an offence under section 90A (Kidnapping) or 91 (Taking child with intent to steal etc.) of the Crimes Act 1900. 35

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- (3) An act is related to another act:
- 5 (a) if both of the acts were committed against the same person; and
- (b) if, in the opinion of the Tribunal, both of the acts were related to each other because they happened at the same time, because they happened over a period of time during the course of a continuing relationship or because they share some other common factor.
- 10

Explanatory note

“Act of violence” is currently defined as involving the commission of an offence coupled with consequent injury or death. Applications for compensation have been made in situations where the offence has been completely non-violent.

- 15 **Item (1)** substitutes the definition of “act of violence” in section 3 (1) as a consequence of proposed section 3A.

- 20 **Item (2)** inserts proposed section 3A. The new section redefines “act of violence” so as to restrict the definition to those acts that are violent in nature, that arise from sexual assault or that arise in the context of apprehended violence orders under Part 15A of the Crimes Act 1900. It also clarifies the concept of a related act (an expression used in the definition of “act of violence”).

Amendment: principles of compensation

- (3) Section 3B:

At the end of Part 1, insert:

25 **Nature of compensation for injury**

3B. Compensation for injury awarded to a person under this Act:

- (a) is intended to be by way of consolation only; and
- 30 (b) in particular, is not intended to reflect the compensation to which the person may be entitled, whether at common law or otherwise,
- and this Act is to be construed accordingly.

Explanatory note

- 35 The Act is currently silent as to the basis on which compensation is to be awarded under the Act.

Item (3) inserts proposed section 3B. The new section states that compensation for injury that is awarded under the Act is intended to be by way of consolation only, and not as a reflection of other entitlements.

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ACT 1987—*continued*

Amendments: definition of “injury”

(4) Section 3 (**Definitions**):

In section 3 (1), after paragraph (b) of the definition of “injury”, insert: 5

(b1) psychological trauma;

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

After section 15 (6), insert: 10

(7) Compensation for injury, to the extent to which it comprises compensation for psychological trauma, is payable only to a primary victim of a sexual assault.

Explanatory note

The Act currently defines injury in terms of actual physical injury, nervous shock, mental illness and pregnancy. The psychological trauma suffered by victims of sexual assault does not fall easily within the definition. 15

Item (4) extends the definition of “injury” in section 3 (1) to include psychological trauma.

Item (5) provides that compensation for psychological trauma is payable only to a primary victim of a sexual assault. 20

Amendment: injuries arising out of motor accidents

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

From section 15 (6), omit “if the person is entitled to receive damages in accordance with the Motor Accidents Act 1988 in respect of the same act or injury”, insert instead “if the act of violence took the form of, or the injury arose as a direct consequence of, a motor accident within the meaning of the Motor Accidents Act 1988”. 25
30

Explanatory note

Section 15 (6) currently provides that compensation is not payable with respect to an act of violence if compensation is payable under the Motor Accidents Act 1988 with respect to the same act of violence. The existence of minimum thresholds under that Act gives rise to the argument that compensation remains payable under the Victims Compensation Act 1987 for losses below those thresholds. 35

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**SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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5 **Item (6)** amends section 15 (6) so as to ensure that no compensation is payable under the Victims Compensation Act 1987 in the case of an act of violence comprising a motor accident within the meaning of the Motor Accidents Act 1988, even if compensation is not payable under that Act in a particular case.

Amendment: compensation for loss of earnings

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

After section 16 (5), insert:

10 (6) The maximum rate at which compensation for actual loss of earnings and compensation for loss of future earnings or capacity to earn may be calculated is the maximum rate at which compensation is payable to a totally incapacitated worker after the first 26 weeks of the worker's incapacity, as
15 determined in accordance with section 37 of the Workers Compensation Act 1987.

Explanatory note

There is currently no maximum rate at which compensation for loss of earnings may be calculated.

20 **Item (7)** amends section 16 so as to provide such a maximum, being the maximum rate at which compensation for loss of earnings is payable to a totally incapacitated worker after the first 26 weeks of the worker's incapacity, as determined in accordance with section 37 of the Workers Compensation Act 1987.

Amendment: out of time applications for compensation

25 (8) Section 17 (**Applications**):

After section 17 (2), insert:

30 (2A) In deciding whether or not to allow a longer period for the lodgment of an application for compensation in respect of a victim of an act of violence, the Tribunal may have regard to such matters as it considers relevant, including the following:

- 35 (a) the age of the victim when the act of violence is alleged to have occurred;
- (b) any intellectual or psychiatric disability to which the victim is subject;

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- (c) the nature of the relationship between the victim and the person or persons by whom the act of violence is alleged to have been committed; 5
- (d) the nature of any injury alleged to have been sustained by the victim;
- (e) in the case of an application relating to a sexual assault, any policy of the Director of Public Prosecutions with respect to the prosecution of an offence arising out of the assault. 10

Explanatory note

The Tribunal has a discretion to accept applications for compensation that are lodged after the 2 year closing date provided by section 17 (2).

Item (8) amends section 17 so as to give examples of the matters to which the Tribunal may have regard when deciding whether or not to accept such an application. 15

Amendments: multiple awards of compensation with respect to related acts

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

After section 18 (3), insert: 20

(4) Separate applications for compensation may only be made with respect to acts that are related within the meaning of section 3A (3) if the acts in respect of which the second or subsequent application is made occurred after any earlier application or applications were made. 25

(10) Section 19 (**Determination of applications**):

After section 19 (4), insert:

(5) No more than one award of compensation may be made with respect to any one application.

Explanatory note 30

Multiple awards of compensation have been made with respect to a single application that has been made in connection with a series of related acts, even where the same kinds of act of violence and the same offender have been involved.

Item (9) amends section 18 so as to require the Tribunal to refuse to consider successive applications for compensation in respect of the same act of violence unless the particular acts to which a later application relates have occurred since all earlier applications were made. 35

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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Item (10) amends section 19 so as to ensure that no more than one award of compensation may be made with respect to any one application.

5 Amendment: minimum thresholds for compensation

(11) Section 19 (**Determination of applications**):

From section 19 (2) (b), omit “\$200 or such other amount as may be prescribed”, insert instead “\$4,000 or such other amount as may from time to time be fixed by proclamation”.

10 Explanatory note

The minimum compensation payable under the Act is \$200 or such other amount as may be prescribed by regulation. No such other amount is currently prescribed.

15 Item (11) amends section 19 so as to increase the minimum threshold to \$4,000 and to allow future variations of the threshold to be fixed by proclamation rather than by regulation.

Amendments: delays in reporting matters to the police

(12) Section 20 (**Factors to be taken into consideration**):

- (a) From section 20 (1) (b), omit “member of the police force”, insert instead “police officer”.
- 20** (b) From section 20 (3) (a1), omit “member of the Police Force”, insert instead “police officer”.
- (c) After section 20 (3), insert:
 - 25** (4) In determining whether a matter relating to a victim of an act of violence was reported to a police officer within a reasonable time, the Tribunal may have regard to such matters as it considers relevant, including the following:
 - (a) the age of the victim when the act of violence is alleged to have occurred;
 - 30** (b) any physical, intellectual or psychiatric disability to which the victim is subject;
 - (c) the nature of the relationship between the victim and the person or persons by whom the act of violence is alleged to have been committed;
 - 35** (d) any fear of retaliation by any such person or persons to which the victim is subject;
 - (e) the nature of any injury alleged to have been sustained by the victim;

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- (f) any representation made by or on behalf of a police officer to a victim as to whether he or she should withdraw his or her complaint in relation to the act of violence concerned or consent to no further action being taken in relation to the act of violence. 5

Explanatory note

One factor that the Tribunal is required to take into consideration when deciding on a person's eligibility for compensation is whether the person has reported the relevant act of violence to the police within a reasonable time. 10

Item (12) amends section 20 so as to give examples of the matters to which the Tribunal may have regard when deciding whether or not a particular act of violence has been reported to the police within a reasonable time. It also amends the section so as to update references to police officers. 15

Amendment: reduction of awards of compensation by determinations for restitution

(13) Section 21A:

After section 21, insert:

Determination for restitution may be set off against award of compensation 20

21A. (1) For the purpose of giving effect to a determination for restitution under Part 5 that it proposes to make against a person to whom it proposes to award compensation, the Tribunal may reduce the amount of the proposed award by the amount of the proposed determination. 25

(2) On the making of a determination for restitution that has given rise to the reduction of an award of compensation under this section, the person against whom the determination is made is taken to have paid the amount of the determination. 30

Explanatory note

Awards of compensation are sometimes made in favour of persons who are themselves the persons by whom other acts of violence have been committed. Such persons may be the subject of determinations for restitution, requiring them to contribute to the costs of paying awards of compensation arising from the acts of violence they have committed. 35

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**SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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Item (13) inserts proposed section 21A. The new section will enable the Tribunal to reduce the amount of a proposed award by the amount of any determination for restitution that is proposed to be made with respect to the person to whom the award is to be made, and will provide that the determination will be taken to have been satisfied by the reduction so made.

Amendments: professional fees**(14) Section 24A (Costs):**

10 (a) After section 24A (2), insert:

(2A) The Tribunal may award an applicant costs in excess of the amount to which the applicant would otherwise be entitled under this section if it is of the opinion that the special circumstances of the case justify such an award being made.

15 (b) After section 24A (5), insert:

(6) The Tribunal may cause a complaint to be made to:
 (a) the Health Care Complaints Commission; or
 (b) any other relevant body concerned with the practice of medicine,

20 if it is of the opinion that the fees charged by a registered medical practitioner, in connection with an application for compensation heard by the Tribunal, are grossly excessive for the services to which they relate.

25 Explanatory note

The costs that may be recovered by a lawyer for acting for a person in relation to an application for compensation are strictly regulated. A major component of the costs incurred by the applicant is frequently the cost of medical services (such as the provision of a medical report to support the application) provided by medical practitioners.

Item (14) (a) amends section 24A so as to make the amount of the costs allowable with respect to an application for compensation to be subject to the order of the Tribunal.

Item (14) (b) amends section 24A so as to enable complaints to be made to the Health Care Complaints Commission or other relevant body about excessive fees charged by medical practitioners with respect to matters that are heard before the Tribunal.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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Amendment: reconsideration of determinations by the Tribunal

(15) Section 24B:

After section 24A, insert:

5

Tribunal may reconsider certain determinations

24B. (1) The Tribunal may reconsider an application for compensation that it has previously determined, and may do so on the request of the applicant or otherwise.

(2) The Tribunal may reconsider an application for compensation only if it is of the opinion that: 10

(a) evidence (including fresh evidence) that was not previously available to the Tribunal has become available; and

(b) the evidence warrants reconsideration of the application. 15

(3) However, the Tribunal may not reconsider an application for compensation:

(a) if an appeal has been made from its previous determination of the application, and has not been withdrawn; or 20

(b) if more than 3 months have elapsed since notice of its previous determination was given to the applicant.

(4) The applicant is not entitled to commence an appeal under section 29 while the application is being reconsidered. 25

(5) The application is to be reconsidered and determined in accordance with this Division as if the original determination had not been made, and the determination of the application has effect as if it were an original determination.

(6) An award of compensation made by a determination under this section may not be for a lesser amount than the award of compensation (if any) made by the original determination. 30

(7) An application for compensation may be reconsidered more than once. 35

(8) Section 24A applies to an application that is reconsidered under this section in the same way as it applies to any other application for compensation.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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Explanatory note

- 5 It sometimes occurs that new information comes to light that justifies the granting of compensation (where compensation has previously been denied) or the increasing of an award of compensation. This is particularly the case with estimates of costs and expenses that are likely to be incurred by the person to whom compensation is granted. Currently, the only avenue of reconsideration is by way of a new application or, in certain circumstances, by an appeal to the District Court from the original determination.
- 10 **Item (15)** inserts proposed section 24B. The new section will enable the Tribunal to reconsider its earlier determination of an application, provided the determination is less than 3 months old and provided no appeal against the determination is pending before the District Court.

Amendments: Victims Compensation Fund Corporation

- 15 (16) Section 3 (**Definitions**):
In section 3 (1), insert in alphabetical order:
“**Corporation**” means the Victims Compensation Fund Corporation constituted by section 65FA;
- 20 (17) Section 26 (**Corporation to be notified of determination**):
Omit “Secretary of the Attorney General’s Department”, insert instead “Corporation”.
- (18) Section 27 (**Corporation to pay compensation**):
Omit “Secretary of the Attorney General’s Department” wherever occurring, insert instead “Corporation”.
- 25 (19) Section 29 (**Appeals to the District Court**):
After section 29 (2), insert:
(2A) The Corporation is the respondent to any appeal under this section.

Explanatory note

- 30 Management of the Victims Compensation Fund is in the hands of the Victims Compensation Fund Corporation. Functions of the Director-General of the Attorney General’s Department (referred to in the Act as the Secretary of that Department, the previous title of that office) are now more properly exercisable by the Corporation.
- Item (16)** inserts a definition of “Corporation” into section 3.
- 35 **Items (17) and (18)** amend sections 26 and 27 so as to replace references to “the Secretary of the Attorney General’s Department” with references to “the Corporation”.

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

Item (19) amends section 29 so as to make the Corporation the respondent to all appeals to the District Court from the Tribunal's determinations.

Amendments: appeals to the District Court 5

(20) Section 29 (Appeals to the District Court):

(a) Omit section 29 (2), insert instead:

(2) Notice of appeal must be lodged with the District Court within 3 months after the day on which the relevant notice of determination was given to the person by whom the appeal is made. 10

(b) Before section 29 (3), insert:

(2B) For the purpose of hearing an appeal, the District Court:

(a) is to rely on the Tribunal's record of proceedings with respect to the determination against which the appeal is made; and 15

(b) is to consider the evidence that was available to the Tribunal when the determination was made without requiring the evidence to be given again. 20

(2C) However, the District Court may grant leave to the giving of evidence in proceedings on an appeal, including:

- (a) evidence that was available to the Tribunal; and
- (b) evidence that was not available to the Tribunal; and
- (c) fresh evidence, 25

but only if the special circumstances of the case so require.

(c) From section 29 (3), omit "hear and".

(d) After section 29 (5), insert:

(6) An appeal under this section does not lie against the Tribunal's refusal: 30

(a) to allow a longer period for lodgment of an application for compensation than the 2 years referred to in section 17 (2) (d); or

(b) to reconsider a determination in respect of which a request has been made as referred to in section 24B. 35

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

(21) Section 29A:

After section 29, insert:

5 **Costs of appeal**

29A. (1) An appellant is entitled to be paid his or her costs in respect of the appeal in accordance with the regulations.

10 (2) The District Court may award an appellant costs in excess of the amount to which the appellant would otherwise be entitled under this section if it is of the opinion that the special circumstances of the case justify such an award being made.

15 (3) Despite any Act or law to the contrary, but subject to any order of the District Court, a legal practitioner is not entitled to charge or recover, by way of costs in respect of an appeal, any amount in excess of the amount payable in accordance with the regulations.

20 (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 this section is excluded, modified or restricted; or

(b) which has the effect of excluding, modifying or restricting the operation of this section,

25 is void.

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

(a) to the appellant; or

(b) to any other person for the benefit of the appellant.

30 **Explanatory note**

The Act is currently silent as to the manner in which the District Court is to hear appeals from the Tribunal's determinations.

35 **Item (20) (a)** amends section 29 so as to require an appeal to be made within 3 months, rather than 1 month, and to remove the discretion of the District Court to allow appeals that are made after that time.

Item (20) (b) further amends section 29 so as to allow the District Court to rely on the record of proceedings prepared by the Tribunal, and to prohibit the admission of additional evidence except with the leave of the District Court.

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Item (20) (c) is a consequential amendment.

Item (20) (d) further amends section 29 so as to make it clear that the Tribunal's refusal to extend the time for making an application for compensation (see section 17 (2)) or to reconsider its determination of an application for compensation (see proposed section 24B) is not an appellable decision. 5

Item (21) inserts proposed section 29A. The new section will regulate the costs allowable for appeals to the District Court in a similar way to that in which costs allowable for applications before the Tribunal are regulated. 10

Amendments: assessment of applications for compensation

(22) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**assessor**” means an assessor appointed under section 9 (2); 15

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

At the end of section 9, insert:

(2) A member of staff of the Tribunal may be appointed as an assessor.

(24) Section 18 (**Consideration of applications**): 20

After section 18 (1), insert:

(1A) Before the Tribunal considers an application, the Registrar may refer the application to an assessor if satisfied of each of the following:

(a) that it is inappropriate to conduct a hearing under Part 4; 25

(b) that there is no dispute as to the occurrence of any act of violence to which the application relates;

(c) that there are no grounds under section 20 for refusing to make an award of compensation or for reducing the amount of compensation to be awarded; 30

(d) that the maximum compensation that the Tribunal is likely to award (in the event that it awards compensation) will not exceed \$7,000;

(e) that the applicant does not object to the application being referred to an assessor. 35

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(25) Section 19 (**Determination of applications**):

5 In section 19 (1), after “After considering an application”,
insert “and any assessment of the application made by an
assessor”.

(26) Section 75 (**Rules**):

(a) In section 75 (a), after “Tribunal;”, insert “and”.

(b) After section 75 (c), insert:

10

; and

(d) the functions of assessors.

Explanatory note

It is proposed that the Tribunal be given formal power to refer applications for compensation to assessors for the purposes of assessment.

15 **Item (22)** inserts a definition of “assessor” into section 3.

Item (23) amends section 9 so as to provide for the appointment of assessors.

Item (24) amends section 18 so as to enable the Registrar of the Tribunal to refer applications for compensation for assessment if the applications satisfy specified criteria.

20 **Item (25)** amends section 19 so as to require the Tribunal, before determining an application for compensation, to consider any assessment of the application that has been made by an assessor.

Item (26) amends section 75 so as to enable rules to be made with respect to the functions of assessors.

25 **Amendments: definition of “dependant”**

(27) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**dependant**” of a deceased victim means:

30

(a) a person who was wholly or partly dependent on the deceased victim’s income at the time the victim died, or who would have been but for the incapacity of the victim due to the injury from which the victim died; or

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

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- (b) a child of the deceased victim born after the death of the victim where, had the child been born in the victim's lifetime, the child would have been a dependant of the victim by virtue of paragraph (a);
- (28) Section 10 (**Definitions**):
- (a) From section 10 (1), omit the definition of "close relative".
- (b) From paragraph (c) of the definition of "compensation for expenses" in section 10 (1), omit "close relative", insert instead "dependant".
- (29) Section 13 (**Compensation to dependants of deceased victims**):
- Omit "close relative", insert instead "dependant".
- (30) Section 15 (**Certain persons not eligible to receive compensation**):
- Omit "close relative" and "close relatives" wherever occurring, insert instead "dependant" and "dependants", respectively.
- (31) Section 16 (**Maximum compensation payable**):
- Omit "close relatives" wherever occurring, insert instead "dependants".
- (32) Section 17 (**Applications**):
- From section 17 (1) (b), omit "close relative", insert instead "dependant".
- (33) Section 19 (**Determination of applications**):
- From section 19 (2) (a) (ii), omit "close relative", insert instead "dependant".
- (34) Section 52 (**Definitions**):
- (a) From paragraph (b) of the definition of "aggrieved person", omit "close relative", insert instead "dependant".
- (b) Omit the definition of "close relative".

Explanatory note

Close relatives of deceased victims are entitled to apply for compensation under the Act. The definition of "close relative" refers to the mere existence of a family relationship. It is proposed to replace the concept of "close relative" with that of "dependant", in which the relationship is one of financial dependence.

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Item (27) inserts a proposed definition of “dependant” into section 3.

Items (28)–(34) make consequential amendments to sections 10, 13, 15, 16, 17, 19
5 and 52.

Amendments: injury suffered by secondary victims

(35) Section 10 (**Definitions**):

10 (a) From paragraph (b) of the definition of “compensation for
expenses” in section 10 (1), omit “witnessing, or otherwise
becoming aware of, injury sustained by a primary victim, or
injury or death sustained by a deceased victim, of that act”,
insert instead “witnessing the act of violence giving rise to
15 the injury or death sustained by a primary victim or deceased
victim of that act or witnessing the actual physical harm or
death sustained by the victim as a result of that act”.

(b) From section 10 (1), omit the definition of “compensation
for injury”, insert instead:

“compensation for injury” means:

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

(i) compensation for pain and suffering; and

(ii) compensation for loss of enjoyment of life,
arising from injury sustained by the victim as a
direct result of that act;

25 (b) in relation to a secondary victim of an act of
violence:

(i) compensation for pain and suffering; and

30 (ii) compensation for loss of enjoyment of life,
arising from injury sustained by the victim as a
direct result of witnessing the act of violence
giving rise to the injury or death sustained by a
primary victim or deceased victim of that act or
witnessing the actual physical harm or death
sustained by the victim as a result of that act;

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- (c) in relation to a dependant of a deceased victim of an act of violence:
- (i) compensation for pain and suffering; and 5
 - (ii) compensation for loss of enjoyment of life; and
 - (iii) compensation for grief, arising from the death of, or from injury sustained by, the deceased victim; 10
- (d) in relation to a law enforcement victim:
- (i) compensation for pain and suffering; and
 - (ii) compensation for loss of enjoyment of life, arising from injury sustained by the victim in the course of law enforcement; 15
- (c) After section 10 (1), insert:
- (2) For the purposes of this Act, a reference to a secondary victim witnessing an act of violence, or witnessing actual physical harm or death resulting from an act of violence, includes a reference to the secondary victim otherwise becoming aware of the act, or the actual physical harm or death, but only if: 20
- (a) the primary victim or deceased victim of that act is under the age of 18 years; and
 - (b) the secondary victim is a parent or guardian of the primary victim or deceased victim; and 25
 - (c) the secondary victim is not a person by whom the act of violence was committed.

Explanatory note

Applications for compensation can be made by persons whose injury has been caused as a result not of witnessing an act of violence but of merely becoming aware of an injury suffered by the primary victim or deceased victim through whom they claim. It is proposed that, with the exception of parents and guardians of young children, the right to compensation of secondary victims be limited to those persons who actually witness the act of violence (or the ensuing injury or death) sustained by the primary victim or deceased victim concerned. 30 35

Item (35) (a) and (b) amend section 10 so as to ensure that secondary victims are entitled to compensation only for losses arising from injuries sustained as a direct result of witnessing an act of violence or the injury or death caused by an act of violence.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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5 **Item (35) (c)** amends section 10 so as to provide that a parent or guardian of a child who becomes aware of an act of violence giving rise to injury to the child is entitled to compensation as a secondary victim as if the parent or guardian had directly witnessed the act of violence.

Amendments: recovery actions against persons found guilty of certain offences

10 (36) Section 42 (**Definitions**):
From section 42 (1), omit the definitions of “notice to show cause” and “recovery action”, insert instead:

“**notice to show cause**” means a notice referred to in section 42A or 42B;

15 “**recovery action**” means proceedings on a notice to show cause;

(37) Sections 42A, 42B:

After section 42, insert:

Tribunal may make determination for restitution

20 42A. (1) If the Tribunal 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 it has made an award of compensation, it may make a determination for restitution against the person so convicted.

25 (2) In that event, the Registrar must cause a notice to be served on the person so convicted (in accordance with the rules of the Tribunal), being a notice requiring that person to show cause as to why the determination should not be confirmed.

30 (3) Action may not be taken under this section 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.

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(4) A determination under this section takes effect 3 months after it is made unless, before that time, the convicted person files a notice of intention to show cause in the offices of the Tribunal. 5

Registrar may commence recovery action

42B. (1) If the Registrar is of the opinion that, since an award of compensation has been made, 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 the award was made, the Registrar may commence a recovery action against the person so convicted. 10

(2) A recovery action is commenced by the Registrar causing a notice to be served on the person so convicted (in accordance with the rules of the Tribunal), being a notice requiring the person to show cause as to why a determination for restitution should not be made against that person. 15

(3) Action may not be taken under this section if 2 years or more have elapsed since the date on which the relevant award of compensation was made, or the date on which the person was convicted of the relevant offence, whichever is the later. 20

(4) Action may not be taken under this section 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. 25

(38) Section 43 (**Notice to show cause**): 30

Omit section 43 (1), (2) and (3).

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

From section 45 (1), omit "2 months", insert instead "28 days".

(40) Sections 46A, 46B: 35

After section 46, insert:

Determination of recovery actions

46A. The Tribunal may determine a recovery action:

(a) by confirming the determination for restitution that it has made against the defendant, in the case of an action 40

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5 on a notice to show cause under section 42A in respect
 of which a notice of intention to show cause has been
 duly filed; or

(b) by making a determination for restitution against the
 defendant, in the case of an action on a notice to show
 cause under section 42B,

10 if it is satisfied that notice to show cause has been duly
 served on the defendant and that the defendant has been
 convicted of an offence arising from substantially the same
 facts as those constituting the act of violence in respect of
 which an award of compensation has been made.

15 **Determinations for restitution to be subject to appeals
 against relevant awards of compensation**

46B. (1) A determination for restitution does not have any
 effect:

20 (a) until the period within which an appeal may be made
 against the award of compensation from which it arises
 has expired; or

(b) if such an appeal is pending at the beginning of that
 period or is subsequently made, until the appeal is
 finally disposed of.

25 (2) If the award of compensation to which such an appeal
 relates is set aside or varied as a result of the appeal, the
 determination for restitution ceases to have effect.

30 (3) In the event that the award is varied, a new
 determination for restitution may be made in accordance with
 this Division as if the original determination had not been
 made.

(41) Section 47 (**Determinations for restitution generally**):

(a) Omit section 47 (1).

(b) In section 47 (4), after “restitution”, insert “(whether made
 against one or more defendants)”.

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

(5) If a determination for restitution is made against two 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.

5

Explanatory note

It is proposed to streamline the procedure for taking recovery action against persons who have been found guilty of offences giving rise to awards of compensation.

10

Item (36) makes certain consequential amendments to the definitions in section 42.

Item (37) inserts new sections 42A and 42B. Proposed section 42A will enable the Tribunal to make a determination for restitution when it is considering an application for compensation if it is satisfied that a person appears to have been convicted of an offence connected with the act of violence out of which the application for compensation has arisen. Proposed section 42B will enable the Registrar of the Tribunal to commence a recovery action against a person who is convicted of such an offence after an award of compensation is made.

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Item (38) makes consequential amendments to section 43.

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Item (39) amends section 45 so as to reduce (from 2 months after the date of service of the relevant notice to show cause to 28 days after the date on which the notice was issued) the time within which proceedings on a recovery action can be heard.

Item (40) inserts new sections 46A and 46B. Proposed section 46A specifies the grounds on which a determination for restitution may be made or confirmed. Proposed section 46B provides that a determination for restitution does not have effect while an appeal may be made against the relevant award of compensation, and further provides that an appeal that results in the setting aside or variation of the award has the effect of nullifying the determination.

25

Item (41) (a) is a consequential amendment.

30

Item (41) (b) and (c) amend section 47 so as to ensure that if a determination for restitution is made against two or more defendants, the defendants are each jointly and severally liable under the determination.

Miscellaneous amendments

(42) Section 2A:

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After section 2, insert:

Objects of Act

2A. The objects of this Act are as follows:

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- 5 (a) to give effect to a scheme under which victims of violent crime, and persons who are injured in the course of law enforcement, are compensated (on a consolation basis) for injury or loss sustained by them;
- (b) to enable compensation paid under the scheme to be recovered from persons found guilty of crimes that have given rise to the awarding of such compensation;
- 10 (c) to give effect to an alternative scheme under which a court may award compensation to a victim of a violent crime for injury or loss sustained by the victim where the court has found a person guilty of the crime;
- 15 (d) to impose a levy on persons found guilty of certain crimes for the purpose of funding the scheme referred to in paragraph (a).

(43) Section 24A (Costs):

- 20 (a) From section 24A (1), omit “such scale of costs as may be prescribed by the rules of the Tribunal”, insert instead “the regulations”.
- (b) From section 24A (3), omit “the scale of costs referred to in subsection (1)”, insert instead “the regulations”.

(44) Section 24C:

Before section 25, insert:

25 **Effect of applicant’s death on application for compensation or award of compensation**

24C. (1) An application for compensation does not survive the death of the person by or on whose behalf it is made.

- 30 (2) The rights conferred by an award of compensation may be disposed of by the person for whose benefit the award is made, whether by conveyance, testamentary disposition or otherwise.

(45) Section 52 (Definitions):

- 35 (a) From paragraph (a) (ii) of the definition of “aggrieved person”, omit “section 447B of the Crimes Act 1900 or”.
- (b) Before “does not include” in the definition of “compensation for loss”, insert “includes compensation for loss of or damage to property, but”.

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- (46) Section 53 (**Directions for compensation**):
- (a) From section 53 (1), omit “convicted”, insert instead “found guilty”. 5
 - (b) From section 53 (1), omit “conviction”, insert instead “finding of guilt”.
 - (c) From section 53 (1), omit “section 447B of the Crimes Act 1900 or”.
- (47) Section 60 (**Definitions**): 10
- Before “does not include” in the definition of “compensation for loss”, insert “includes compensation for loss of or damage to property, but”.
- (48) Section 61 (**Directions for compensation**):
- (a) From section 61 (1), omit “convicted”, insert instead “found guilty”. 15
 - (b) From section 61 (1), omit “conviction”, insert instead “finding of guilt”.
 - (c) From section 61 (1), omit “\$1,000”, insert instead “\$1,500”.
- (49) Section 62 (**Restrictions on court’s power to give directions for compensation**): 20
- From section 62 (1), omit “\$1,000”, insert instead “\$1,500”.
- (50) Section 65B (**Application of Part**):
- From section 65B (2), omit “section 447B of the Crimes Act 1900 or”. 25
- (51) Section 65C (**Imposition of compensation levy**):
- (a) Omit section 65C (1) (a) and (b), insert instead:
 - (a) \$70, if the person is convicted on indictment or pursuant to a committal under section 51A of the Justices Act 1902; or 30
 - (b) \$30, if the person is convicted otherwise than as referred to in paragraph (a).
 - (b) After section 65C (2), insert:
 - (2A) A person who is under the age of 18 years is not liable to pay such a levy if the court by which the person is convicted directs, whether when it convicts the person or at 35

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any time afterwards, that the person is exempt from liability to pay the levy.

5 (52) Section 65E (**Effect of appeal proceedings**):

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

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

After Part 2 of Schedule 2, insert:

10 **Part 3—Provisions consequent on the enactment of
the Victims Compensation (Amendment) Act 1994**

Definitions

9. In this Part:

“**amendment**” means an amendment made by the amending Act;

15 “**the amending Act**” means the Victims Compensation (Amendment) Act 1994.

Definition of “act of violence”

20 10. Section 3A, and the amendment to the definition of “act of violence” in section 3 (1), do not apply to proceedings on an application for compensation made before the commencement of that section and amendment.

Nature of compensation payable

25 11. Section 3B applies to compensation awarded in respect of applications for compensation made before the commencement of that section in the same way as it applies to compensation awarded in respect of applications made after that commencement.

Injury suffered by secondary victims

30 12. The amendments to section 10 made by Schedule 1 (35) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement.

Injuries arising out of motor accidents

35 13. The amendment to section 15 (6) does not apply to proceedings on an application for compensation made before the commencement of that amendment.

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 SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
 ACT 1987—*continued*
Definition of “injury”

14. Section 15 (7), and the amendment to the definition of “injury” in section 3 (1), apply to proceedings on an application for compensation made before the commencement of that subsection and amendment. 5

Compensation for loss of earnings

15. Section 16 (6) applies to compensation awarded in respect of applications for compensation made before the commencement of that subsection in the same way as it applies to compensation awarded in respect of applications made after that commencement. 10

Out of time applications for compensation

16. Section 17 (2A) applies to applications for compensation made before the commencement of that subsection in the same way as it applies to applications made after that commencement. 15

Multiple applications made by the same person

17. The provisions of sections 18 (4) and 3A (3) apply to applications for compensation made before the commencement of those provisions in the same way as they apply to applications made after that commencement. 20

Assessment of applications

18. The amendments to sections 18 and 19 made by Schedule 1 (24) and (25) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement. 25

Delays in reporting matters to the police

19. Section 20 (4) applies to applications for compensation made before the commencement of that subsection in the same way as it applies to applications made after that commencement. 30

Determinations for restitution that reduce awards of compensation

20. Section 21A applies to compensation awarded in respect of applications for compensation made before the

Victims Compensation (Amendment) 1994

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

5 commencement of that section in the same way as it applies
to compensation awarded in respect of applications made
after that commencement.

Professional fees

10 21. Section 24A (6) applies to proceedings on an
application for compensation made before the
commencement of that subsection in the same way as it
applies to proceedings on an application made after that
commencement.

Reconsideration of certain determinations

15 22. Section 24B applies to determinations under Part 3
made before the commencement of that section in the same
way as it applies to determinations made after that
commencement.

Effect of death on awards and determinations

20 23. Section 24C applies to applications for compensation
and awards of compensation made before the commencement
of that section in the same way as it applies to applications
and awards made after that commencement.

Victims Compensation Fund Corporation

25 24. Section 29 (2A) applies to an appeal made before the
commencement of that subsection in the same way as it
applies to an appeal made after that commencement.

Appeals

30 25. The amendments to section 29 made by Schedule 1
(20) to the amending Act apply to appeals that were pending
at the commencement of those amendments in the same way
as they apply to appeals that are made after that
commencement, but do not apply to appeals that were part
heard at that commencement.

Costs of appeal

35 26. Section 29A applies to the costs of an appeal made
before the commencement of that section in the same way as
it applies to the costs of an appeal made after that
commencement.

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

27. The amendments to Division 1 of Part 5 made by Schedule 1 (36)–(41) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement, but do not apply if a recovery action had commenced in respect of the application before that commencement. 5
10

Joint and several liability

28. Section 47 (5) applies to awards of compensation in respect of which the prescribed documents were filed under section 48 before the commencement of that subsection in the same way as it applies to awards in respect of which documents are so filed after that commencement. 15

Compensation for loss

29. The amendments to sections 52 and 60 made by Schedule 1 (45) (b) and (47) to the amending Act apply to proceedings commenced before the commencement of those amendments in the same way as they apply to proceedings commenced after that commencement. 20

References to findings of guilt

30. The amendments to sections 53 and 61 made by Schedule 1 (46) (a) and (b) and (48) (a) and (b) to the amending Act do not apply to proceedings commenced before the commencement of those amendments. 25

Increase in compensation awarded by courts

31. The amendments made to sections 61 and 62 by Schedule 1 (48) (c) and (49) to the amending Act apply to compensation awarded in respect of proceedings that commenced before the commencement of those amendments in the same way as they apply to compensation awarded in respect of proceedings that commence after that commencement. 30
35

Compensation levies

32. (1) The amendment to section 65C made by Schedule 1 (51) (a) to the amending Act does not apply to proceedings commenced before the commencement of that amendment.

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SCHEDULE 1—AMENDMENT OF VICTIMS COMPENSATION
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5 (2) The amendment to section 65C made by Schedule 1 (51) (b) to the amending Act applies to proceedings commenced before the commencement of that amendment in the same way as it applies to proceedings commenced after that commencement.

Effect of certain appeals on liability to pay compensation levies

10 33. The amendment to section 65E made by Schedule 1 (52) to the amending Act applies to convictions occurring before the commencement of that amendment in the same way as it applies to convictions occurring after that commencement.

15 **Scales of costs**

 34. The scales of costs that, immediately before the commencement of the amendments to section 24A made by Schedule 1 (43) to the amending Act, were prescribed by the rules of the Tribunal are taken to be costs prescribed by the regulations.

20

Definitions of “close relative” and “dependant”

 35. The amendments made by Schedule 1 (27)–(34) to the amending Act apply to applications for compensation made before the commencement of those amendments in the same way as they apply to applications made after that commencement.

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Explanatory note

Item (42) inserts a new section 2A which sets out the objects of the proposed Act.

30 **Item (43)** amends section 24A so that references in that section to scales of costs prescribed by the rules of the Tribunal become references to costs prescribed by the regulations.

Item (44) inserts a new section 24C. The proposed section confirms that an application for compensation under Part 3 does not survive the death of the applicant, while an award of compensation does survive the death of the person for whose benefit it is made.

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Items (45) (a), (46) (c) and (50) amend sections 52, 53 and 65B so as to remove obsolete references to (the now repealed) section 447B of the Crimes Act 1900.

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

Items (45) (b) and (47) amend the definitions of “compensation for loss” in sections 52 and 60 so as to make it clear that those definitions extend to both loss of and damage to property. 5

Items (46) (a) and (b) and (48) (a) and (b) amend sections 53 and 61 so as to provide that a finding of guilt, rather than a conviction, is sufficient to enable a direction for compensation to be made under those sections.

Items (48) (c) and (49) amend sections 61 and 62 so as to increase, from \$1,000 to \$1,500, the maximum amount that can be awarded by a court in relation to an offence dealt with summarily. 10

Item (51) (a) amends section 65C so as to increase the levies payable by persons convicted of offences from \$50 to \$70 (for cases disposed of on indictment) and from \$20 to \$30 (for cases dealt with summarily).

Item (51) (b) amends section 65C so as to enable courts to exempt young persons from the liability to pay compensation levies. 15

Item (52) amends section 65E so as to ensure that liability to pay a compensation levy is stayed by an appeal against the sentence imposed in respect of the conviction from which the appeal is made.

Item (53) amends Schedule 2 so as to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act. 20

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

FINES AND PENALTIES ACT 1901 No. 16

Amendment 25

Section 8 (Governor may remit penalties):

After section 8 (2), insert:

(3) In this section, a reference to a penalty includes a reference to a compensation levy under the Victims Compensation Act 1987. 30

Explanatory note

The proposed amendment to the Fines and Penalties Act 1901 will enable compensation levies imposed by the Victims Compensation Act 1987 to be remitted under section 8 in the same way as penalties may be remitted.

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued***PRISONS ACT 1952 No. 9****Amendment**

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

5 Omit section 44 (3), insert instead:

(3) In this section:

10 “**appropriate officer**” means a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court, a Registrar of the Supreme Court or the Registrar of the Victims Compensation Tribunal;

“**court of record**” includes the Victims Compensation Tribunal.

Explanatory note

15 The amendments to section 44 of the Prisons Act 1952 extend the expression “court of record” to include the Victims Compensation Tribunal and the expression “appropriate officer” to include the Registrar of the Tribunal. The effect of the amendments will be to enable prisoners to be brought to attend the Tribunal’s hearings under the Victims Compensation Act 1987.
