

First print



New South Wales

Victims Compensation Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Victims Rights Bill 1996*.

Overview of Bill

The Bill repeals the *Victims Compensation Act 1987* and enacts a revised scheme for compensation to victims of violence.

The objects of the Bill are as follows:

- (a) to give effect to a statutory scheme of compensation for victims of crimes of violence,
 - (b) to enable compensation paid under the statutory scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation,
 - (c) to impose a levy on persons found guilty of crimes punishable by imprisonment for the purpose of funding the statutory scheme,
 - (d) to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.
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The principal changes made under the revised scheme are as follows:

- (a) to confine the expression "act of violence" (which gives rise to a right to statutory compensation) to acts that are of a violent nature, that comprise sexual assault or that involve certain apprehended domestic violence relating to intimidation or stalking,
- (b) to prescribe the personal injuries for which compensation is payable and the standard amount to be paid for each injury (the "schedule of compensable injuries"),
- (c) to provide for the initial determination of applications for statutory compensation to be made by compensation assessors, subject to guidelines issued by the Victims Compensation Tribunal and a full appeal to the Tribunal by any person aggrieved by a decision of a compensation assessor (with a further right of appeal to the District Court on a question of law),
- (d) to confer a right to payment for counselling of victims of crime,
- (e) to give family members of deceased victims an entitlement to the maximum amount of compensation of \$50,000 and to give family members who are financially dependent on the deceased victim priority over other family members,
- (f) to restrict the grounds on which a person may claim compensation as a secondary victim of an act of violence to those who actually witness the act of violence, but to enable the parents of children to claim for injuries suffered as a result of subsequently becoming aware of the act of violence,
- (g) to clarify the circumstances in which multiple awards of compensation are not available to the same person in relation to an act of violence that comprises a series of related acts,
- (h) to provide that convicted prisoners will not be eligible to receive statutory compensation,
- (i) to increase, from \$200 to \$2,400, the threshold below which statutory compensation is not payable,
- (j) to streamline the procedures for the recovery of compensation from persons found guilty of offences that have given rise to an award of compensation,
- (k) to increase the amount that a court can, on conviction, direct an offender to pay to a victim by way of compensation for injury or loss to the maximum amount under the compensation scheme administered by the Tribunal, namely, \$50,000 (instead of \$20,000 in the case of a major offence and \$1,000 in the case of a minor offence),

- (1) to increase the compensation levy payable by certain offenders convicted of an offence from \$50 to \$70 in the case of a conviction on indictment and from \$20 to \$30 in the case of a summary conviction.

Outline of provisions

Part 1 Preliminary

Clause 1 specifies the name (also called 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. Certain transitional arrangements are to commence on the date of assent.

Clause 3 sets out the objects of the proposed Act.

Clause 4 provides that expressions used in the proposed Act have the meanings given to them in the Dictionary at the end of the proposed Act.

Clause 5 defines *act of violence* for the purposes of the proposed Act and deals with the circumstances in which a series of related Acts is to be treated as a single act of violence for which only one award of compensation is available.

Part 2 Statutory compensation scheme

Division 1 Victims eligible for statutory compensation

Clause 6 gives primary victims, secondary victims and family victims of acts of violence an entitlement to statutory compensation.

Clause 7 defines a primary victim as a person who receives a compensable injury (as set out in the schedule of compensable injuries) or who dies as a direct result of an act of violence. The category includes certain law enforcement victims.

Clause 8 defines a secondary victim as a person who receives a compensable injury as a result of witnessing an act of violence (including, in the case of a child victim, a parent suffering such an injury after becoming aware of the act of violence).

Clause 9 defines a family victim as a member of the immediate family of a primary victim who dies as a direct result of the act of violence. The category of family members includes spouses, partners, parents, children and siblings.

Division 2 Schedule of compensable injuries

Clause 10 gives effect to the schedule of compensable injuries in Schedule 1, containing descriptions of injuries and the standard amount of compensation payable for each such injury.

Clause 11 enables the prescription of a standard amount or range of amounts of compensation for all injuries received from a particular act of violence (for example, sexual assault).

Clause 12 authorises the regulations to substitute or amend the schedule.

Clause 13 contains general provisions relating to the schedule, including discounting for multiple injuries and compensation for injuries not specifically described.

Division 3 Statutory compensation payable

Clause 14 entitles primary victims to compensation for compensable injuries and compensation for financial loss.

Clause 15 entitles secondary victims to compensation for compensable injuries and compensation for financial loss.

Clause 16 entitles family victims (without the need to establish injury) to \$50,000. If there are a number of family victims, the amount is to be shared equally among them, except that dependent family members are to have priority.

Clause 17 provides that compensation for compensable injuries is to be the standard amount set out in the schedule of compensable injuries, unless the amount is authorised to be reduced because of the conduct of the primary victim or on certain other grounds.

Clause 18 provides that compensation for financial loss is for actual expenses, actual loss of earnings and loss of personal effects. A limit of \$10,000 applies to all financial loss and a limit of \$1,000 applies to any loss of personal effects. The rate for loss of earnings is limited to the rate prescribed for workers compensation after the first 26 weeks of incapacity.

Clause 19 limits the maximum amount of compensation payable to victims arising from a single act of violence to \$50,000. The limit applies to the primary victim and all other victims claiming through that victim.

Clause 20 imposes a threshold of \$2,400 on compensation payable to any victim (other than a family victim).

Clause 21 provides for special payments for counselling of victims.

Division 4 Persons not eligible for statutory compensation

Clause 22 provides that secondary or family victims are not eligible for compensation if the primary victim through whom they claim is not eligible to receive compensation.

Clause 23 provides for only one award of compensation for a single act of violence (including for a series of related acts).

Clause 24 excludes from statutory compensation persons who claim court awarded compensation under Part 4 of the proposed Act, persons injured or killed in motor accidents, persons engaging in criminal behaviour and convicted prisoners (other than fine defaulters or persons on remand).

Division 5 Applications for statutory compensation

Clause 25 enables an eligible victim (or a person on his or her behalf) to lodge an application for statutory compensation with the Director of Victims Compensation.

Clause 26 requires applications for compensation to be lodged within 2 years after the act of violence or, in the case of a family victim, the death of the victim. The Director may in exceptional circumstances accept a late application.

Clause 27 provides that applications for compensation are to be determined by a compensation assessor without the conduct of a hearing into the matter.

Clause 28 enables the compensation assessor to require an applicant to undergo a reasonable medical examination for the purposes of establishing the claim for compensation.

Clause 29 provides for the determination of applications by a compensation assessor in accordance with the proposed Act and the guidelines issued by the Tribunal. Notice of the determination and the reasons for it is required to be given to the applicant.

Clause 30 sets out reasons for reducing the amount of an award of compensation or for a refusal to make an award. The reasons include behaviour of the primary victim that contributed to the injury or death, a failure to report the act of violence to the police within a reasonable time having regard to the circumstances and participation by the applicant in the act of violence. The clause also provides for regard to be had to the payment of damages to the victim in civil proceedings, under workers compensation legislation or under an insurance policy.

Clause 31 provides that, where the applicant is also involved in the act of violence concerned, a proposed award can be reduced by the amount of a proposed determination under Division 8 for restitution by the applicant.

Clause 32 provides for the payment an award of compensation to the applicant or to the person on whose behalf the application was made.

Clause 33 authorises the making of interim awards of compensation in the case of financial hardship, for the purposes of funeral expenses and in other circumstances.

Clause 34 enables conditions to be imposed on the award of compensation.

Clause 35 deals with the award of costs to applicants in connection with applications for compensation. Costs in accordance with the scale prescribed by the compensation rules are payable whether or not proceedings are taken before the Tribunal and even if an application is dismissed. The clause enables complaints to be made against medical practitioners who charge excessive fees for services they provide in connection with victims compensation proceedings.

Division 6 Appeals and references to Tribunal and District Court

Clause 36 gives an applicant for statutory compensation a right to appeal to the Tribunal against any determination of a compensation assessor in respect of the application.

Clause 37 enables a compensation assessor to have an application for compensation referred to the Tribunal for determination if the assessor considers that the matter requires a hearing. The clause also enables the Chairperson of the Tribunal to refer a determination of an assessor to the Tribunal for re-determination.

Clause 38 provides for the hearing of appeals and references by the Tribunal. The Tribunal has all the powers and obligations imposed on the assessor under the proposed Act when dealing with an application.

Clause 39 provides an appeal to the District Court from a decision of the Tribunal on a question of law. The clause makes it clear that determinations relating to the application of the schedule of compensable injuries, to whether acts of violence are related or to the grant of leave for late applications are not questions of law.

Clause 40 suspends payment of statutory compensation pending the determination of any appeal.

Clause 41 makes the Compensation Fund Corporation the respondent to any appeal.

Division 7 Payment of compensation

Clause 42 provides for the payment of awards of statutory compensation, costs and victims' counselling from the Victims Compensation Fund (or the Consolidated Fund if that fund does not have sufficient money available).

Clause 43 provides that an award of statutory compensation does not prevent civil proceedings in connection with the same matter but subrogates any such right to damages to the State to the extent of the amount of statutory compensation paid.

Clause 44 enables the recovery of statutory compensation from a fraudulent applicant.

Division 8 Recovery of compensation from offenders

Clause 45 defines relevant expressions used in the Division.

Clause 46 provides that, where a person is convicted of an offence in respect of the act of violence giving rise to an award of statutory compensation, the Director may make a provisional order for restitution (of the amount of compensation) against the person so convicted.

Clause 47 enables a convicted person to object to a provisional order for restitution.

Clause 48 provides that the Tribunal may confirm a provisional order if the convicted person does not object to it.

Clause 49 provides that the Tribunal is to conduct a hearing to determine whether to confirm a provisional order if the convicted person objects to it.

Clause 50 enables the Director and the convicted person to make an arrangement for the payment of the amount of restitution under a provisional order.

Clause 51 makes provision for the matters to be taken into account when the Tribunal confirms a provisional order (including the financial means and the culpability of the convicted person).

Clause 52 contains evidentiary and procedural provisions concerning proceedings for the confirmation of a provisional order.

Clause 53 makes provision with respect to restitution orders consequent on appeals made against the relevant order for compensation.

Clause 54 makes an order for restitution enforceable as a judgment debt against the convicted person.

Clause 55 gives the convicted person the same right of appeal against a restitution order as other persons in civil proceedings before Local Courts.

Clause 56 enables orders for restitution to be set aside by the Tribunal.

Clause 57 deals with civil proceedings in connection with the act of violence to which the order for restitution relates.

Clause 58 provides the Director with access to information about the whereabouts of an offender held by the police, the RTA and other government agencies for the purposes of taking action against a convicted person for restitution under this Division.

Part 3 Administration of statutory scheme

Division 1 Victims Compensation Tribunal

Clause 59 constitutes the Victims Compensation Tribunal (which is a continuation of the existing Tribunal). The Tribunal consists of a Magistrate appointed as Chairperson and such other Magistrates as may be appointed from time to time.

Clause 60 provides that the Tribunal has the jurisdiction and functions conferred by the proposed Act and is to act as quickly as possible.

Clause 61 enables the Chairperson of the Tribunal to authorise other Magistrates to exercise the jurisdiction and functions of the Tribunal.

Clause 62 provides that the jurisdiction and functions of the Tribunal are exercisable by a single member or authorised Magistrate.

Division 2 Director, assessors and other staff

Clause 63 provides for the appointment of a Director of Victims Compensation, a Registrar of the Tribunal and other public service staff for the purposes of the proposed Act.

Clause 64 provides for appointment of members of that staff as compensation assessors. The clause declares that the Director is a compensation assessor.

Clause 65 authorises the Tribunal to issue guidelines to compensation assessors with respect to the exercise of their functions under the proposed Act and enables the Director to allocate the work of the assessors (but without any right to interfere with the determinations of assessors on applications for statutory compensation).

Division 3 Victims Compensation Fund Corporation

Clause 66 continues the Victims Compensation Fund Corporation. The Corporation is controlled by the Director-General of the Attorney General's Department and is responsible for the management of the Victims Compensation Fund and the payment of statutory compensation under the proposed Act from that Fund.

Division 4 Victims Compensation Fund

Clause 67 continues the Victims Compensation Fund.

Clause 68 requires the payment into the Fund of the proceeds of drug trafficking and other crimes that are confiscated under relevant legislation, of money recovered from offenders in respect of whom awards of statutory compensation have been made, of levies imposed on the conviction of offenders and of money appropriated by Parliament for the purpose.

Clause 69 requires payment from the Fund of awards of statutory compensation, of the costs of administration of the Tribunal and staff under the proposed Act and of the costs of administration of the proposed Victims of Crime Bureau and Victims Advisory Board under the proposed *Victims Rights Act 1996*.

Part 4 Compensation awarded by court

Clause 70 defines an aggrieved person as a person who has suffered an injury or loss as a result of an offence committed by a convicted person or who is a member of the family of a person who has been killed as a result of such an offence.

Clause 71 authorises the court that convicts a person to direct the payment of compensation to an aggrieved person from the property of the convicted person. The maximum amount of compensation is \$50,000.

Clause 72 deals with the application of the maximum amount of compensation and other restrictions on the court's power to direct payment of compensation.

Clause 73 specifies the factors to be taken into account by the court.

Clause 74 provides for the payment of the amount directed to be paid.

Clause 75 enables the sum directed to be paid to be enforced as a judgment debt.

Clause 76 deals with the effect of a direction in subsequent civil proceedings.

Clause 77 limits rights of appeal against directions.

Part 5 Compensation levies

Clause 78 applies the Part to offences punishable by imprisonment.

Clause 79 imposes on convicted persons a levy of \$70 for indictable offences and a levy of \$30 for summary offences. The levy is payable into the Compensation Fund that is used to fund the statutory scheme of compensation.

Clause 80 provides for the enforcement of the levy.

Clause 81 deals with the effect, on the payment of the levy, of appeal proceedings in respect of the conviction.

Part 6 Miscellaneous

Clause 82 declares that the proposed Act binds the Crown.

Clause 83 requires the Chairperson of the Tribunal to provide annual reports to Parliament and any special reports required by the Minister.

Clause 84 makes material relating to applications for statutory compensation inadmissible in criminal proceedings.

Clause 85 limits the liability of the Tribunal and others engaged in the administration of the proposed Act for acts done in good faith and with reasonable care.

Clause 86 provides for offences against the proposed Act to be disposed of summarily.

Clause 87 empowers the making of compensation rules dealing with the practice and procedure of the Tribunal and other matters.

Clause 88 empowers the making of regulations for the purposes of the proposed Act.

Clause 89 gives effect to the Schedule of savings and transitional provisions.

Clause 90 repeals the *Victims Compensation Act 1987*.

Clause 91 gives effect to the Schedule of amendments of other Acts.

Clause 92 provides for the review of the proposed Act after 5 years.

Schedules

Schedule 1 contains the schedule of compensable injuries.

Schedule 2 contains provisions relating to the members and procedure of the Tribunal.

Victims Compensation Bill 1996

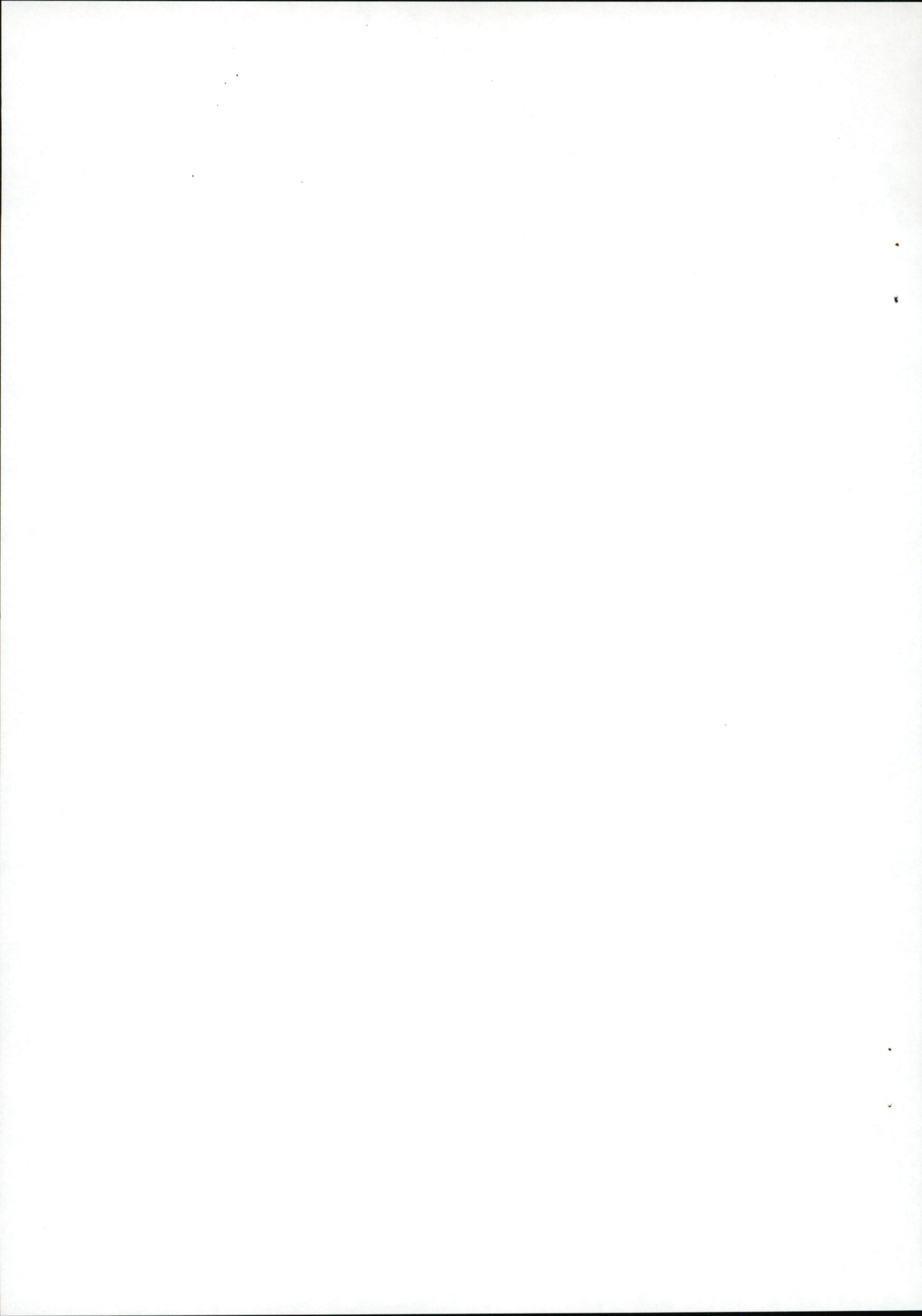
Explanatory note

Schedule 3 contains savings and transitional provisions.

Schedule 4 contains amendments to other Acts. The proposed amendment to the *Fines and Penalties Act 1901* will enable compensation levies imposed by the proposed Act to be remitted under that Act in the same way as penalties may be remitted. The proposed amendment to section 44 of the *Prisons Act 1952* will enable prisoners to be brought to attend the Tribunal's hearings under the proposed Act.

Dictionary

The dictionary defines various words and expressions used in the proposed Act.





New South Wales

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The dictionary defines the following words and expressions

act of violence	imprisonment
authorised Magistrate	injury
compensable injury	member of the immediate family
compensation assessor	offence
Compensation Fund	primary victim
Compensation Fund Corporation	schedule of compensable injuries
compensation levy	secondary victim
compensation rules	sexual assault and apprehended domestic violence
conviction	State
costs	statutory compensation
Director	Tribunal
exercise	
family victim	
function	



New South Wales

Victims Compensation Bill 1996

No. , 1996

A Bill for

An Act to provide compensation to victims of violence; and to repeal the *Victims Compensation Act 1987*.

Clause 1 Victims Compensation Bill 1996

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Victims Compensation Act 1996*.

2 Commencement

5

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Clauses 1, 2 and 3 of Schedule 3 commence on the date of assent to this Act.

3 Objects of Act

10

The objects of this Act are as follows:

- (a) to give effect to a statutory scheme of compensation for victims of crimes of violence,
- (b) to enable compensation paid under the statutory scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation, 15
- (c) to impose a levy on persons found guilty of crimes punishable by imprisonment for the purpose of funding the statutory scheme,
- (d) to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime. 20

4 Dictionary and notes

- (1) Expressions used in this Act (or in a particular provision of this Act) that are defined in the Dictionary at the end of this Act have the meanings given to them in the Dictionary. 25
- (2) Notes in the text of this Act do not form part of this Act.

5 Act of violence

- (1) In this Act, *act of violence* means an act or series of related acts, whether committed by one or more persons:
- (a) that has apparently occurred in the course of the commission of an offence, and 5
 - (b) that has involved violent conduct against one or more persons, and
 - (c) that has resulted in injury or death to one or more of those persons.
- (2) For the purposes of this section, violent conduct extends to sexual assault and apprehended domestic violence (as defined in the Dictionary). 10
- (3) An act is related to another act if both of the acts were committed against the same person and:
- (a) they happened at approximately the same time, or 15
 - (b) they happened over a period of time and were committed by the same person or group of persons, or
 - (c) they share some other common factor.
- However, an act is not related to any earlier act in respect of which an award of statutory compensation has been made if it occurs after the award was made. 20
- (4) For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of violence.

Part 2 Statutory compensation scheme

Division 1 Victims eligible for statutory compensation

6 Persons eligible for statutory compensation

The following persons are eligible for statutory compensation:

- (a) a primary victim of an act of violence, 5
- (b) a secondary victim of an act of violence,
- (c) a family victim of an act of violence.

7 Who is a primary victim?

- (1) A *primary victim* of an act of violence is a person who receives a compensable injury, or dies, as a direct result of that act. 10
- (2) A primary victim of an act of violence extends to a person who receives a compensable injury, or dies, as a direct result of:
 - (a) trying to prevent another person from committing that act, or
 - (b) trying to help or rescue another person against whom that act is being committed or has just been committed, or 15
 - (c) trying to arrest another person who is committing, or who has just committed, that act.

8 Who is a secondary victim?

- (1) A *secondary victim* of an act of violence is a person who receives a compensable injury as a direct result of witnessing the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act. 20
- (2) A secondary victim of an act of violence extends to a person who receives a compensable injury as a direct result of subsequently becoming aware of the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act, but only if: 25
 - (a) the person is the parent or guardian of the primary victim of that act, and 30

(b) the primary victim was under the age of 18 years at the time of that act, and

(c) the person did not commit that act.

The person is taken, for the purposes of this Act, to have witnessed the act of violence. 5

(3) For the purposes of this section, a primary victim does not include a person who is a primary victim only because of the operation of section 7 (2).

9 Who is a family victim?

(1) A *family victim* of an act of violence is a person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act. 10

(2) It is immaterial whether or not the person suffers a compensable injury in connection with the act of violence or death. 15

(3) A *member of the immediate family* of a primary victim is:

(a) the victim's spouse, or

(b) the victim's de facto spouse, or partner of the same sex, who has cohabited with the victim for at least 2 years, or

(c) a parent, guardian or step-parent of the victim, or 20

(d) a child or step-child of the victim or some other child of whom the victim is the guardian, or

(e) a brother, sister, step-brother or step-sister of the victim.

Division 2 Schedule of compensable injuries

10 Prescription of schedule of compensable injuries 25

(1) The schedule of compensable injuries is set out in Schedule 1.

(2) The schedule specifies those injuries that are *compensable injuries* for the purposes of this Act.

- (3) The schedule specifies, as the standard amount of compensation for a compensable injury, a specified amount or an amount within a range of specified amounts.

11 Compensable injuries described by reference to act of violence

- (1) This section applies when the schedule of compensable injuries specifies, as a compensable injury, all injuries received as a direct result of a specified act of violence and specifies a single standard amount or range of compensation for all of those injuries. 5
- (2) An applicant for statutory compensation may elect whether to claim compensation of that single standard amount or range or to claim compensation of the total standard amounts for each of the injuries received by the applicant (subject to any discount rates or other provisions in the schedule of compensable injuries). 10
- (3) In the absence of an election, the person determining the application is to make the election. 15

Note. See injury described in Schedule 1 as sexual assault.

12 Substitution or amendment of schedule

The regulations may amend Schedule 1 by substituting or amending the schedule of compensable injuries. 20

13 Provisions relating to schedule

- (1) If more than one compensable injury is received by an eligible victim, the schedule of compensable injuries may exclude the payment of compensation, or discount the rates of compensation payable, for some of those injuries. 25
- Note.** See paragraph 3 of Schedule 1.
- (2) The schedule of compensable injuries may make provision for compensable injuries of a kind not specifically described in the schedule and for the standard amount of compensation payable for such an injury. 30

Note. See paragraph 8 of Schedule 1.

- (3) The schedule may contain provisions relating to the application of the schedule (including provisions relating to the interpretation of the schedule, provisions relating to establishing whether an injury is a compensable injury and provisions of a transitional nature consequent on the amendment of Schedule 1).

5

Division 3 Statutory compensation payable

14 Compensation payable to primary victims

- (1) The statutory compensation for which a primary victim of an act of violence is eligible comprises:

- (a) compensation for compensable injuries received by the victim as a direct result of the act of violence, and 10
- (b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury.

- (2) A primary victim who dies ceases to be eligible for statutory compensation, but a family victim may then become eligible for statutory compensation under this Act. Any pending application for compensation made by or on behalf of the primary victim does not survive the death of the primary victim. 15

15 Compensation payable to secondary victims

The statutory compensation for which a secondary victim of an act of violence is eligible comprises: 20

- (a) compensation for compensable injuries received by the victim as a direct result of witnessing the act of violence, and
- (b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury. 25

16 Compensation payable to family victims

- (1) The statutory compensation for which all family victims of an act of violence are together eligible is, subject to this Act, \$50,000.

- (2) If there are 2 or more family victims of an act of violence:
 - (a) the victims are eligible to an equal share of the amount of \$50,000, subject to paragraph (b), and
 - (b) victims who were not dependent family members at the time of the act of violence are not eligible for any amount of compensation if there are also dependent family members at that time. 5
- (3) A family victim is a *dependent family member* if:
 - (a) the person was wholly or mainly dependent on the primary victim's income at the relevant time, or 10
 - (b) the person is a child of the primary 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 dependent family member of the victim by virtue of paragraph (a).

17 Compensation for compensable injuries 15

- (1) Compensation for compensable injuries is payable in accordance with the schedule of compensable injuries.
- (2) Unless the amount of compensation is required or authorised to be reduced by this Act, the amount of compensation payable is the standard amount calculated in accordance with the schedule. 20

18 Compensation for financial loss

- (1) Compensation for financial loss is compensation for the following:
 - (a) actual expenses,
 - (b) actual loss of earnings, 25
 - (c) loss of personal effects (in the case of a primary victim only).
- (2) Compensation for loss of personal effects is compensation payable to a primary victim who has received a compensable injury for the loss of, or for damage to, any personal effects that were worn or carried by the primary victim at the time of the act of violence and that were lost or damaged as a direct result of that act. The maximum amount payable in respect of an act of violence is \$1,000. 30

- (3) Compensation for actual loss of earnings is to be calculated at the rate of weekly payment of compensation payable under the *Workers Compensation Act 1987* after the first 26 weeks of incapacity within the meaning of that Act.
- (4) The maximum amount of compensation for financial loss to which a person is entitled in respect of an act of violence is \$10,000. 5
- (5) Compensation for financial loss is not payable to a person to the extent that the person has received, or is entitled to receive, payment for that loss under any insurance or agreement or under any other Act or law. 10

19 Maximum amount of compensation

- (1) The maximum amount of statutory compensation payable to a single person in respect of an act of violence is \$50,000.
- (2) The maximum amount of statutory compensation that all of the following victims are together eligible to receive is \$50,000: 15
- (a) a primary victim of an act of violence,
 - (b) all secondary victims claiming through that primary victim,
 - (c) all family victims claiming through that primary victim. 20
- (3) If entitlements to statutory compensation are required to be reduced because of the maximum amount provided by this section:
- (a) the amounts payable to secondary victims are to be reduced rather than the amounts payable to primary victims or family victims, and 25
 - (b) the amount of \$50,000 payable to family members is to be reduced by any amount paid to a primary victim (or to any secondary victim claiming through the primary victim) before the primary victim's death. 30
- (4) If the amount of statutory compensation otherwise payable to 2 or more secondary victims is to be reduced because of this section, the amount available to be paid is to be apportioned

among those victims in the same proportions as the amount otherwise payable to each such victim bears to the total of those amounts.

- (5) This section applies despite any other provision of this Act (except section 20). 5

20 Threshold amount of compensation

- (1) Statutory compensation is not payable to a single person unless the total amount of compensation payable to that person, as compensation for compensable injuries, is at least \$2,400 or such other amount as is prescribed by the regulations. 10
- (2) This section does not apply to statutory compensation payable to family victims.
- (3) This section applies despite any other provision of this Act.

21 Special payments for counselling of victims

- (1) A victim who is eligible for statutory compensation may apply for payment for approved counselling services for the victim as a consequence of the act of violence. 15
- (2) A victim is entitled to an initial period of 2 hours of counselling (including counselling for the purposes of an application for continued counselling or for statutory compensation). 20
- (3) The victim is entitled to payment for such further periods of counselling (not exceeding 20 hours) as a compensation assessor considers appropriate. Payment for any further period of counselling exceeding 20 hours may be made only with the approval of the Director. 25
- (4) The victim is entitled to payment for approved counselling services even though the victim is entitled to workers compensation in respect of the matter or is awarded compensation by a court under Part 4.
- (5) The victim is entitled to payment for approved counselling services even though the maximum amount of statutory compensation is payable in respect of the act of violence. 30

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- (6) The victim is not entitled to payment for approved counselling services if it is unlikely that the victim would qualify for statutory compensation because of the application of the minimum amount of statutory compensation payable under this Act. A determination under this subsection is to be made on the assumption that the victim is the only victim of the act of violence. 5
- (7) Payments for approved counselling services are to be made from the Compensation Fund directly to the service provider, except that payments for the initial period of 2 hours may be made from that Fund by way of re-imbusement of the victim if it was not reasonably practicable for the victim to obtain approval for the payment before undertaking the counselling. 10
- (8) An appeal does not lie to the Tribunal against a decision of a compensation assessor or the Director under this section. However, a decision of a compensation assessor may be reviewed by the Director and, if the period of counselling exceeds 20 hours, by a member of the Tribunal. 15
- (9) Compensation rules may be made for or with respect to payments for counselling services, including the application (with or without modification) of the provisions of this Act relating to statutory compensation. 20
- (10) For the purposes of this section, *approved counselling services* are services provided by a professional counsellor chosen by the victim from a list of counsellors designated by the Director. 25

Division 4 Persons not eligible for statutory compensation

22 Secondary or family victims

- (1) A secondary victim or family victim is not eligible to receive statutory compensation if the primary victim through whom he or she is claiming is not eligible, or if the primary victim had not died would not have been eligible, to receive statutory compensation. 30

- (2) A secondary victim is not entitled to claim statutory compensation before 1 year has elapsed since the act of violence concerned occurred, unless:
- (a) a notice of the secondary victim's intention to claim statutory compensation has been served (in accordance with the compensation rules) on:
 - (i) the primary victim through whom he or she is claiming, or
 - (ii) if that primary victim has died—at least one of the immediate family of that primary victim, and
 - (b) no application has been made by or on behalf of that primary victim, or a relevant family victim, within 3 months after the service of the notice.
- (3) Despite subsection (2), such a secondary victim is entitled to claim statutory compensation within that period of 1 year if an application for statutory compensation made by or on behalf of that primary victim or a relevant family victim has been finally disposed of.
- (4) An award of statutory compensation is not to be made to a family victim within 3 months after the application was made unless it appears that no other family victim exists or is likely to make an application for statutory compensation.

23 Eligibility to receive compensation in respect of same act of violence

- (1) A person is not eligible to receive more than one award of statutory compensation in respect of the same act of violence.
- (2) No more than one award of compensation may be made with respect to any one application for statutory compensation.
- (3) A person is eligible to receive statutory compensation in respect of the same act of violence in only one of the capacities of primary victim, secondary victim or family victim.

24 Other persons not eligible to receive compensation**(1) Claimants for court compensation awards**

A person is not eligible to receive statutory compensation in respect of an act of violence if the person has been paid, or is entitled to be paid, compensation awarded by a court in respect of that act under Part 4 or if the person's application for such compensation is pending. 5

(2) Motor vehicle accidents

A person is not eligible to receive statutory compensation in respect of an act of violence if that act took the form of, or the injury arose as a consequence of, a motor accident within the meaning of the *Motor Accidents Act 1988*. 10

(3) Offenders

A person is not eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was engaged in behaviour constituting an offence. 15

(4) Convicted prisoners

A person is not eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was imprisoned as a convicted prisoner within the meaning of the *Prisons Act 1952*. A convicted prisoner does not include a person imprisoned only because of the person's failure to pay a pecuniary penalty. 20

Division 5 Applications for statutory compensation**25 Lodging of applications** 25

- (1) An application for statutory compensation may be made:
- (a) by a primary victim, secondary victim or family victim of an act of violence, or
 - (b) by any other person, on behalf of such a victim, who has a genuine interest in the welfare of that victim. 30

- (2) An application:
- (a) must be in the form required by the compensation rules, and
 - (b) must be accompanied by such documentary evidence (such as medical certificates) as may be required by that form, and 5
 - (c) must be lodged with the Director.
- (3) An application may also be lodged with the Clerk of a Local Court. In that case, the Clerk is to forward the application to the Director as soon as practicable after it is so lodged. 10

26 Time for lodging applications

- (1) An application for statutory compensation must be duly lodged within 2 years after the relevant act of violence occurred or, in the case of a family victim, within 2 years after the death of the primary victim. 15
- (2) An application that is lodged out of time may be accepted with the leave of the Director. The Director may give such leave in exceptional circumstances, but may not give such leave merely because the applicant was unaware of the time within which applications must be lodged. 20

27 Consideration of applications by compensation assessors

- (1) Each duly lodged application for statutory compensation is to be considered by a compensation assessor.
- (2) The application is to be dealt with by a compensation assessor without conducting a hearing into the matter. 25

28 Medical examinations

- (1) A compensation assessor may require an applicant for statutory compensation to undergo an examination (not being an examination that is unreasonable, unnecessarily repetitious or dangerous): 30
- (a) by a duly qualified medical practitioner, or duly qualified psychologist, specified by the assessor, or

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- (b) by a duly qualified medical practitioner or duly qualified psychologist belonging to a class of medical practitioners, or class of psychologists, specified by the assessor.
- (2) The costs of any such examination are to be paid for out of the Compensation Fund. 5

29 Determination of applications

- (1) After considering an application for statutory compensation, the compensation assessor must determine the application:
- (a) by making an award of statutory compensation, or
- (b) by dismissing the application. 10
- (2) An award of statutory compensation must not be made unless the compensation assessor is satisfied, on the balance of probabilities, that the person to whom the application for that compensation relates:
- (a) is a primary victim, secondary victim or family victim of an act of violence, and 15
- (b) is eligible to receive the amount of compensation provided by the award.
- (3) The compensation assessor must, in determining the application, have regard to the guidelines issued by the Tribunal under section 65. 20
- (4) Written notice is to be given to the applicant of the determination of the application.
- (5) If an award of compensation is made, the notice must include:
- (a) a statement of the amount (if any) payable by way of compensation for compensable injuries and a statement of the amount (if any) payable by way of compensation for financial loss, together with a statement of the reasons for awarding those amounts, and 25
- (b) a statement of the amount (if any) payable by way of costs. 30
- (6) If the application is dismissed, the notice must include a statement of the reasons for the dismissal.

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

- (1) In determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard to the following: 5
- (a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary or secondary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim, 10
 - (b) whether the act of violence was reported to a police officer within a reasonable time,
 - (c) whether that victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed, 15
 - (d) whether that victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed, 20
 - (e) such other matters as the compensation assessor considers relevant.
- (2) In determining whether a matter relating to a victim was reported to a police officer within a reasonable time, the compensation assessor may have regard to such matters as the assessor considers relevant, including the following: 25
- (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, 30
 - (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,
 - (d) any fear of retaliation by any such person or persons to which the victim is subject, 35
 - (e) the nature of any injury alleged to have been sustained by the victim.

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- (3) In determining the amount of statutory compensation to award to a person, the compensation assessor must have regard to:
- (a) any amount that has been paid to the person or that the person is entitled to be paid:
 - (i) by way of damages awarded in civil proceedings, or 5
 - (ii) under any other Act or law (including workers compensation), or
 - (iii) under any insurance or other agreement, and
 - (b) any other amount that has been received by the person or that (in the opinion of the assessor) is likely to be received by the person, 10
- in respect of the act of violence to which the application for statutory compensation relates.
- (4) If the compensation assessor is satisfied that the applicant may be entitled to workers compensation (or payment in the nature of workers compensation) in respect of the act of violence to which the application for statutory compensation relates, the assessor is to postpone the determination of the application until any entitlements to workers compensation have been determined. 15
- (5) This section applies to an application for statutory compensation by a family victim and to the primary victim through whom the claim is made. Accordingly, despite anything to the contrary in section 16, the amount of \$50,000 payable to family victims may be reduced or no award may be made. 20
- 31 Determination for restitution may be set off against award of compensation 25**
- (1) For the purpose of giving effect to a determination for restitution under Division 8 that is to be made against a person to whom an award of statutory compensation is to be made, the compensation assessor may reduce the amount of the proposed award by the amount of the proposed determination for restitution. 30
 - (2) On the making of a determination for restitution that has given rise to the reduction of an award of statutory compensation under this section, the person against whom the determination is made is taken to have paid the amount of the determination. 35

32 Persons to whom compensation may be made payable

- (1) An award of statutory compensation may be made payable:
- (a) to the person to whom the application for statutory compensation relates, or
 - (b) to any other person for the benefit of that person. 5
- (2) In making a decision as to whom an award of statutory compensation should be made payable, the compensation assessor must have regard to the likelihood that a person by whom an act of violence was allegedly committed may receive the benefit of the award or any part of the award. 10

33 Interim awards of compensation

- (1) Pending the determination of an application for statutory compensation, the compensation assessor may:
- (a) if it appears that the person to whom the application relates is in severe financial hardship, or 15
 - (b) in the case of a family victim, if payment is due for funeral expenses relating to the primary victim, or
 - (c) in such other circumstances as the compensation assessor considers appropriate,
- make an interim award of statutory compensation to that person. 20
- (2) An interim award is not to be made unless the compensation assessor is satisfied that the applicant will be entitled to receive statutory compensation when the application is determined.
- (3) If an interim award is made but the application for statutory compensation is then dismissed, the amount of the interim award becomes a debt due to the Compensation Fund Corporation by the applicant. 25
- (4) If, on determining the application, the compensation assessor decides to award statutory compensation to the person to whom the application relates, the assessor must deduct the amount of any interim award of statutory compensation from the amount of statutory compensation that the assessor would otherwise have awarded. 30

34 Compensation may be awarded subject to conditions

- (1) An award of statutory compensation (including an interim award) may be made subject to such conditions as the compensation assessor thinks fit:
- (a) as to the notification to the Director of such matters (including matters relating to the financial circumstances of the person to or for whose benefit the award is made) as may be specified in the notice of determination relating to the award, or 5
 - (b) as to the assignment by the person to or for whose benefit the award is made of that person's right to any entitlement that the person has by way of damages awarded in civil proceedings, or 10
 - (c) as to the repayment of the whole or any part of the amount of the award under such circumstances as may be specified in the notice of determination relating to the award, or 15
 - (d) in the case of an award that is payable to a person for the benefit of some other person:
 - (i) as to the payment of the statutory compensation to or for the benefit of that other person, or 20
 - (ii) as to the holding of the whole or any part of the statutory compensation on trust for that other person.
- (2) The compensation rules may prescribe conditions to which an award of statutory compensation is subject. 25

35 Costs of applications for compensation and proceedings before Tribunal

- (1) An applicant for statutory compensation is entitled to be paid his or her costs in respect of the application (whether or not proceedings are taken before the Tribunal on appeal or otherwise) in accordance with such scale of costs as may be prescribed by the compensation rules. 30

- (2) An applicant may, if the Tribunal or a compensation assessor so directs, be awarded costs under this section even if the application for compensation is dismissed.
- (3) The Tribunal or a compensation assessor may award an applicant costs in excess of the amount to which the person would otherwise be entitled under this section, if of the opinion that the special circumstances of the case justify such an award being made. The Tribunal or compensation assessor may also decline to make an award of costs or award costs of a lesser amount. 5
- (4) Despite any Act or law to the contrary, but subject to any order of the Tribunal or compensation assessor, a legal practitioner is not entitled to charge or recover, by way of costs in respect of an application for statutory compensation or of the proceedings of the Tribunal in respect of such an application, any amount in excess of the amount payable in accordance with the scale of costs referred to in subsection (1). 10 15
- (5) The Tribunal or a compensation assessor may disallow any costs incurred in connection with a medical report prepared for the purpose of an application for statutory compensation or proceedings before the Tribunal. In that case, the Tribunal or Director may cause a complaint to be made to: 20
- (a) the Health Care Complaints Commission, or
 - (b) any other relevant body concerned with the practice of medicine,
- if of the opinion that the fees charged by a medical practitioner in connection with the report are grossly excessive for the services to which they relate. 25
- (6) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section): 30
- (a) under which the operation of subsection (4) is excluded, modified or restricted, or
 - (b) which has the effect of excluding, modifying or restricting the operation of subsection (4),
- is void. 35

- (7) An award of costs under this section may be made payable:
- (a) to the applicant, or
 - (b) to any other person for the benefit of the applicant.

Division 6 Appeals and references to Tribunal and District Court

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36 Appeal to Tribunal by applicant

- (1) An applicant for statutory compensation who is aggrieved by the determination of a compensation assessor in respect of the application may appeal to the Tribunal against the determination.
- (2) A person who is aggrieved by a determination of the Director to refuse leave for a late application for statutory compensation may appeal to the Tribunal against the determination. 10
- (3) An appeal may be made:
 - (a) within the period of 3 months after the day on which the relevant notice of the determination made by the compensation assessor or Director was duly served on the person, or 15
 - (b) within such further time as the Tribunal may in exceptional circumstances allow.

37 Reference of application to Tribunal by assessor or by Chairperson of Tribunal

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- (1) If the compensation assessor dealing with an application for statutory compensation considers that the determination of the application requires a hearing, the Director may refer the application to the Tribunal for a hearing into and determination of the matter. 25
- (2) If the Chairperson of the Tribunal considers that an application for statutory compensation that has been determined by a compensation assessor should be reviewed by the Tribunal, the Director is to refer the application to the Tribunal for re-determination. 30

38 Hearing and determination by Tribunal

- (1) The Tribunal may conduct a hearing into a matter the subject of an appeal or reference to it under this Division for determination. The hearing is to be conducted in accordance with Schedule 2.
- (2) If the Tribunal is satisfied that the matter can be properly determined without a hearing, the Tribunal is to proceed to determine the matter accordingly. 5
- (3) An appeal from a determination of a compensation assessor is to be determined on the evidence and material provided to the compensation assessor. However, the Tribunal may, by leave, receive further evidence and material if it considers that special grounds exist or if the evidence or material concerns matters occurring after the determination appealed against. 10
- (4) The Tribunal is to determine the matter in accordance with the relevant provisions of Division 5 and, for that purpose a reference in that Division to a compensation assessor or the Director is taken to be a reference to the Tribunal. 15
- (5) The Tribunal may, without limiting the generality of subsection (4), do any of the following:
 - (a) affirm or set aside any determination of a compensation assessor, 20
 - (b) remit the application to be considered and determined again by a compensation assessor in accordance with the directions of the Tribunal.
- (6) The Tribunal is to so remit the application if further evidence and material received by the Tribunal could reasonably have been provided to the compensation assessor who dealt with the matter. 25

39 Appeals to the District Court on questions of law

- (1) An applicant for statutory compensation may, with the leave of the District Court, appeal to the District Court on a question of law arising in any determination of the application by the Tribunal. 30

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- (2) An appeal by a person under this section may be instituted:
- (a) within the period of 3 months after the day on which the relevant notice of the determination made by the Tribunal was duly served on the person, or
 - (b) within such further time as the District Court may in exceptional circumstances allow. 5
- (3) For the purposes of this section, the following matters are not questions of law:
- (a) a determination of whether an injury for which compensation has been claimed is an injury specified in the schedule of compensable injuries or whether it is a compensable injury of a particular description specified in that schedule, 10
 - (b) a determination of whether a series of acts are related and constitute a single act of violence. 15
- (4) An appeal does not lie to the District Court against a decision of the Tribunal to refuse leave for a late application for statutory compensation.
- (5) On an appeal, the District Court may only:
- (a) affirm the determination of the Tribunal, or 20
 - (b) set aside the determination and remit the matter to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the decision of the District Court on the question of law concerned. 25

40 Payment of compensation suspended pending appeal to Tribunal or District Court

Subject to any order of the Tribunal or District Court to the contrary, the institution of an appeal to the Tribunal or District Court (or the referral of an application for re-determination by the Tribunal) suspends the application of section 42, in relation to the payment of compensation, pending the determination of the appeal or the re-determination. 30

41 Compensation Fund Corporation respondent to appeals

The Compensation Fund Corporation is the respondent to any appeal or reference under this Division.

Division 7 Payment of compensation

42 Compensation Fund Corporation to pay compensation 5

- (1) An application for payment of the whole or any part of an award of statutory compensation or costs under this Part is to be made to the Director who is required to forward the application to the Compensation Fund Corporation.
- (2) On receiving such an application, the Compensation Fund Corporation must (subject to the conditions of the award and any deductions made in accordance with those conditions) pay the relevant amount to the person to whom the award is payable. 10
- (3) The amount is to be paid out of the Compensation Fund or, if sufficient money is not available in that Fund, out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly. 15

43 Effect of award on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom an award of statutory compensation has been made under this Part on the basis of the same facts as those on which the civil proceedings are based. 20
- (2) Subject to subsection (3), an award of statutory compensation does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings must be assessed without regard to the award. 25
- (3) On the payment to a person of an award of statutory compensation, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the award is based is, by operation of this section, subrogated to the State to the extent of the amount of compensation so paid. 30
- (4) This section does not limit the operation of section 57 or 76.

44 Recovery from fraudulent claimants

- (1) If a person is convicted of:
- (a) an offence of obtaining an award of statutory compensation by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement, or 5
 - (b) an offence, in relation to the obtaining of an award of statutory compensation, of a kind prescribed by the compensation rules,
- the Tribunal may, on application by the Director, make an order for restitution for such amount as has been paid to the person under the award. 10
- (2) An order for restitution may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence. 15
- (3) The provisions of Division 8 relating to the recovery of money under an order for restitution under that Division apply to an order for restitution under this section.

Division 8 Recovery of compensation from offenders**45 Definitions** 20

In this Division:

defendant means the person on whom a provisional order for restitution is served.

notice of objection means notice by the defendant under section 47 of objection to the confirmation of a provisional restitution order. 25

order for restitution means a provisional order for restitution that is confirmed by the Tribunal under section 48 or 49.

provisional order for restitution means a provisional order for restitution that is made by the Director under section 46. 30

recovery proceedings means proceedings of the Tribunal concerning the confirmation of a provisional order for restitution.

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

46 Director may make provisional order for restitution by offender

- (1) If the Director is of the opinion that, before or after an award of statutory compensation is made, a person has been convicted of a relevant offence, the Director may make a provisional order for restitution against the person so convicted. 5
- (2) A *relevant offence* is:
- (a) an offence arising from substantially the same facts as those constituting an act of violence in respect of which the award of statutory compensation was made, or
 - (b) any other offence if an offence referred to in paragraph (a) was taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that other offence. 10
- (3) The Director must cause notice of the provisional order to be served on the person so convicted in accordance with the compensation rules. 15
- (4) The notice of the provisional order must:
- (a) set out the terms of the order, and
 - (b) specify the date on which the award of statutory compensation was made and the facts on which the award was based, and 20
 - (c) specify the offence to which the order relates and the date on which it is alleged that the person was convicted of the offence, and
 - (d) state that the person has 28 days in which to object to the order by a notice filed in the office of the Director, and 25
 - (e) state that if the person does not object the order will be confirmed by the Tribunal and become a judgment debt payable by the person, and
 - (f) state that if the person files a notice of objection the Tribunal will conduct a hearing into whether the order should be confirmed, and 30
 - (g) contain such other particulars as the compensation rules may require.

- (5) A provisional order for restitution may not be made against a person if:
- (a) 2 years or more have elapsed since the date on which the relevant award of statutory compensation was paid, or
 - (b) civil proceedings have been commenced or are being maintained against the person, by or on behalf of the State, in respect of an action for damages arising from substantially the same facts as those on which the relevant award of statutory compensation was based.

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47 Notice of objection by defendant

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- (1) A defendant served with a provisional order for restitution may, within 28 days after service, file in the office of the Director a notice of objection to the confirmation of the order.
- (2) A notice of objection must comply with the compensation rules and must include the grounds of the objection on which the defendant intends to rely.

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48 Confirmation by Tribunal of provisional order for restitution if defendant does not object to order

The Tribunal may confirm a provisional order for restitution without conducting a hearing if it is satisfied that the defendant has not filed a notice of objection within 28 days after notice of the provisional order was duly served on the defendant.

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49 Hearing by Tribunal to confirm provisional order for restitution if defendant objects to order

- (1) If the defendant files a notice of objection to a provisional order for restitution within 28 days after notice of the provisional order was duly served on the defendant, the Tribunal must conduct a hearing to determine whether the provisional order should be confirmed (in this Division called *recovery proceedings*).
- (2) The Tribunal may confirm the provisional order if satisfied 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 statutory compensation was made. If the Tribunal is not so satisfied, it must discharge the provisional order.

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- (3) The Tribunal may vary a provisional order for restitution that it confirms.

50 Arrangement between Director and defendant as to payment under order for restitution

- (1) The Director and a defendant may enter into an arrangement with respect to payment under a provisional order for restitution or any such order that is confirmed. 5
- (2) Such an arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.
- (3) For the purpose of enabling the Director and the defendant to come to such an arrangement, the Tribunal may adjourn recovery proceedings for such period as it considers appropriate. 10
- (4) If the defendant does not comply with such an arrangement, recovery proceedings may be taken for the purposes of confirming the order for restitution for the total amount payable under the order. 15

51 Provisions relating to orders for restitution

- (1) The Tribunal may, when it confirms a provisional order, reduce the amount to be paid under the provisional order having regard to: 20
- (a) the financial means of the defendant, and
- (b) such other matters as are, in the opinion of the Tribunal, relevant to the determination.
- (2) The maximum amount that may be ordered to be paid under an order for restitution (whether made against one or more defendants) is the amount that has been paid to the victim under the award of statutory compensation to which the order relates. 25
- (3) If an order for restitution is made against two or more defendants in respect of the same award of statutory compensation, each of the defendants is jointly and severally liable under the order. 30
- (4) If the Tribunal decides under subsection (1) to reduce the amount payable by a defendant under an order made against two or more defendants, the Tribunal may confirm the order subject to the liability of the defendant concerned being limited under the order to an amount specified in the order. 35

52 Procedural and evidentiary provisions relating to recovery proceedings

- (1) Subject to this Division and the compensation rules, recovery proceedings must be determined:
- (a) in accordance with the rules of evidence, and 5
 - (b) in accordance with the practice and procedure of Local Courts exercising civil jurisdiction,
- in the same way as the determination by a Local Court of an action commenced by way of an ordinary statement of claim (within the meaning of the *Local Courts (Civil Claims) Act 1970*). 10
- (2) The victim to whom recovery proceedings relate is competent, but not compellable, to give evidence in the proceedings.
- (3) Despite any rule of law to the contrary, evidence given by the victim: 15
- (a) in any application for an award of statutory compensation, or
 - (b) in any hearing relating to that application, or
 - (c) in any other proceedings (whether civil or criminal) arising from substantially the same facts as those on which the award of statutory compensation was based, 20
- is admissible in recovery proceedings.
- (4) If evidence so given by the victim is admitted in recovery proceedings but the victim does not attend as a witness in the proceedings, that evidence must be given no greater weight than is appropriate as a consequence of there having been no opportunity for the victim to be cross-examined in relation to that evidence. 25
- (5) The Tribunal does not have jurisdiction to order payment of costs in relation to recovery proceedings. 30
- (6) A person (other than a public servant) who is required to attend or to give evidence at recovery proceedings is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules.

53 Orders for restitution to be subject to appeals against relevant awards of statutory compensation

- (1) An order for restitution does not have any effect:
 - (a) until the period within which an appeal may be made against the award of statutory compensation from which it arises has expired, or 5
 - (b) if such an appeal is duly made within that period, until the appeal is finally disposed of.
- (2) If the award of statutory compensation to which such an appeal relates is set aside or varied as a result of the appeal, the order for restitution ceases to have effect. 10
- (3) In the event that the award is varied, a new provisional order for restitution may be made in accordance with this Division as if the original order had not been made.

54 Order for restitution to be a judgment enforceable by Tribunal 15

- (1) An order for restitution is taken to be a judgment of a Local Court in proceedings on a statement of claim under the *Local Courts (Civil Claims) Act 1970* and may be enforced accordingly by the Tribunal in accordance with the provisions of that Act.
- (2) Interest is payable on the amount payable under an order for restitution in accordance with the provisions relating to interest on the amount payable under such a judgment. 20
- (3) Money payable under an order for restitution and not paid may be written off in accordance with a relevant policy on the matter determined by the Minister. 25
- (4) Compensation rules may be made for the purposes of this section, and for that purpose may apply the provisions of the *Local Courts (Civil Claims) Act 1970*, with or without modification.
- (5) In addition, the compensation rules may make provision for the attachment of the prison earnings of convicted persons for the purposes of enforcing orders for restitution. 30

55 Appeals against orders for restitution

- (1) An order for restitution that is confirmed after a hearing before the Tribunal may be appealed against in the same way as a judgment of a Local Court exercising civil jurisdiction may be appealed against. 5
- (2) An appeal may not be lodged under this section if 1 month or more has elapsed since the date on which the order for restitution was made.

56 Orders for restitution may be set aside

- (1) The Tribunal, on sufficient cause shown, may, by order, set aside an order for restitution. 10
- (2) The Tribunal may stay the execution of a judgment pending the determination of any proceedings to set aside the order for restitution.
- (3) If the Tribunal makes an order under this section, the defendant is entitled to be paid such amount, by way of costs in relation to the setting aside of the order for restitution, as may be prescribed by the compensation rules. 15

57 Effect of order for restitution on subsequent civil proceedings

- (1) This section applies to civil proceedings in respect of an injury or loss sustained by a person to whom an award of statutory compensation has been made (being an award in respect of which an order for restitution has been made) on the basis of the same facts as those on which the civil proceedings are based. 20
- (2) An order for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the order. 25
- (3) However, the right of the State, under section 43, to commence or maintain civil proceedings is extinguished by an order for restitution. 30
- (4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the State under section 43.
- (5) This section does not limit the operation of section 43 or 76. 35

Clause 58 Victims Compensation Bill 1996

Part 2 Statutory compensation scheme
Division 8

58 Access to information about whereabouts of defendant

Police officers, the Roads and Traffic Authority and other government agencies are authorised to provide the Director with information about the address of a defendant for the purpose of serving a provisional order for restitution on the defendant or taking any action against the defendant to enforce an order for restitution.

5

Part 3 Administration of statutory scheme

Division 1 Victims Compensation Tribunal

59 Constitution of Tribunal

- (1) There is constituted by this Act a Victims Compensation Tribunal. 5
- (2) The Tribunal is to consist of such members as the Governor may, on the recommendation of the Attorney General, appoint.
- (3) Only Magistrates are eligible to be appointed as members of the Tribunal.
- (4) Of the members of the Tribunal, one is (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) to be appointed as Chairperson of the Tribunal. 10
- (5) Schedule 2 has effect with respect to the Tribunal.

60 Jurisdiction and functions of the Tribunal 15

- (1) The Tribunal has the jurisdiction and functions conferred or imposed on it by or under this or any other Act.
- (2) In the exercise of its jurisdiction and functions, the Tribunal must do all such things as are necessary to ensure that proceedings before it are disposed of within as short a period as is reasonably practicable. 20

61 Authorised Magistrates

The Chairperson of the Tribunal may, by order made with the consent of the Chief Magistrate, declare that the jurisdiction and functions of the Tribunal may be exercised by such Magistrate or Magistrates as is or are specified in the order. 25

62 Single member to exercise the jurisdiction and functions of the Tribunal

The jurisdiction and functions of the Tribunal may be exercised:

- (a) by a member of the Tribunal, or
- (b) by an authorised Magistrate,
sitting alone.

5

Division 2 Director, assessors and other staff

63 Director of Victims Compensation, Registrar of Tribunal and other staff

- (1) A Director of Victims Compensation, Registrar of the Tribunal and such other staff as are necessary for the purposes of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Director may delegate to the Registrar of the Tribunal, a compensation assessor or to any such other staff any of the functions of the Director under this Act, other than this power of delegation.

10

15

64 Compensation assessors

- (1) Compensation assessors are to be employed for the purposes of this Act under Part 2 of the *Public Sector Management Act 1988*.
- (2) A person ceases to be a compensation assessor if the person ceases to be so employed.
- (3) The Director is a compensation assessor.

20

65 Guidelines and arrangements relating to compensation assessors

25

- (1) The Tribunal may issue guidelines to compensation assessors with respect to the determination of applications for statutory compensation. Compensation assessors must have regard to those guidelines in the exercise of their functions under this Act.
- (2) The Director is (subject to this Act) responsible for making arrangements for the work of compensation assessors (including the allocation of matters to particular assessors).

30

- (3) The Director, the appropriate Department Head or any other public servant may not direct, overrule or interfere with the determination of a compensation assessor on a matter allocated to the assessor. However, the Director may, at any time before its determination, re-allocate the matter to another compensation assessor. 5
- (4) This section does not affect the exercise of functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to compensation assessors.

Division 3 Victims Compensation Fund Corporation 10

66 Victims Compensation Fund Corporation

- (1) There is constituted by this section a corporation with the corporate name of the Victims Compensation Fund Corporation.
- (2) The affairs of the Compensation Fund Corporation are to be managed by the Director-General of the Attorney General's Department. 15
- (3) Any act, matter or thing done in the name of, or on behalf of, the Compensation Fund Corporation by the Director-General of the Attorney General's Department is taken to have been done by the Corporation. 20
- (4) The Compensation Fund Corporation may delegate to an officer of the Attorney General's Department any of the functions (other than this power of delegation) conferred or imposed on the Corporation by or under this Act.

Division 4 Victims Compensation Fund 25

67 Victims Compensation Fund

- (1) There is established a fund called the Victims Compensation Fund (*the Compensation Fund*).
- (2) The Compensation Fund Corporation has the control and management of the Compensation Fund and the assets of the Compensation Fund are vested in the Corporation. 30

- (3) The Compensation Fund Corporation may invest money in the Compensation Fund:
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
 - (b) if that Act does not confer power on the Corporation to invest money—in any manner authorised for the investment of trust funds. 5

68 Payments into the Compensation Fund

There are to be paid into the Compensation Fund:

- (a) all proceeds or profits confiscated under the *Confiscation of Proceeds of Crime Act 1989*, and 10
- (b) all money required by the *Drug Trafficking (Civil Proceedings) Act 1990* to be credited to the Fund, and
- (c) all money recovered under Division 8 of Part 2 or Part 5 of this Act, and 15
- (d) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act, and
- (e) all other money required by or under this or any other Act to be paid into the Fund. 20

69 Payments from the Compensation Fund

There are to be paid from the Compensation Fund:

- (a) all payments of statutory compensation, costs and victims' counselling under this Act, and
- (b) all expenses incurred by the Tribunal, Director, compensation assessors and other staff in the exercise of their functions under this Act, and 25
- (c) all expenses incurred by the Victims of Crime Bureau and the Victims Advisory Board under the *Victims Rights Act 1996* and any other expenses incurred in the provision of victim support services approved by the Minister, and 30
- (d) all expenses incurred in the administration of the Compensation Fund.

Part 4 Compensation awarded by court

70 Definitions

In this Part:

aggrieved person means:

- (a) in relation to an offence other than an offence in respect of the death of a person, a person who has sustained injury or loss through or by reason of:
 - (i) an offence for which the offender has been convicted, or
 - (ii) an offence taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that offence, or
- (b) in relation to an offence in respect of the death of a person, a member of the immediate family of the person.

direction for compensation means a direction for compensation under section 71. 15

71 Directions for compensation

- (1) If a person is convicted by a court of an offence, the court may (on the conviction or at any time afterwards) on notice given to the offender direct that a sum not exceeding \$50,000 be paid out of the property of the offender:
 - (a) to any aggrieved person, or
 - (b) to any aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any injury or loss sustained through, or by reason of, the offence or, if applicable, any other offence taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that offence. 25
- (2) A direction for compensation may be given by a court on its own initiative or on application made to it by or on behalf of the aggrieved person. 30

72 Restrictions on court's power to give directions for compensation

- (1) A direction for compensation must not be given in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Part: 5
- (a) on the conviction of any other person for that offence, or
 - (b) on the conviction of that or any other person for a related offence,
- exceeds \$50,000. 10
- (2) A direction for compensation for injury or loss for which statutory compensation is payable must not be given if an award of statutory compensation in respect of the injury or loss has been made under Part 2 to or for the benefit of the aggrieved person.
- (3) For the purposes of this section, an offence is related to another offence if both of the offences were committed against the same person and, in the opinion of the court: 15
- (a) they were committed at approximately the same time, or
 - (b) they were committed over a period of time and by the same person or group of persons, or 20
 - (c) they share some other common factor.
- However, an offence is not related to any earlier offence in respect of which a direction for compensation has been given if it is committed after the direction was given.
- (4) In this section, a reference to a direction for compensation previously given under this Part includes a reference to a direction for compensation previously given under Part 6 of the *Victims Compensation Act 1987*, or under section 437 or 554 (3) of the *Crimes Act 1900*. 25

73 Factors to be taken into consideration 30

In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court must have regard to:

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

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

74 Payment of sum directed

Subject to section 9 of the *Criminal Appeal Act 1912* and to the provisions of the *Justices Act 1902*, any sum directed to be paid by an offender to an aggrieved person, under a direction for compensation, must be paid immediately, or within such period (if any) as is specified in the direction, to the registrar or clerk of the court for payment to the aggrieved person. 10

75 Enforcement of directions for compensation

- (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar or clerk of the court must, on the application of the aggrieved person, issue to the aggrieved person a certificate: 15
- (a) that identifies the direction, and 20
- (b) that specifies the offender, and
- (c) that specifies the amount required by the direction to be paid which has not, as at the date of the certificate, been paid to the registrar or clerk.
- (2) If a certificate is issued under this section, the registrar or clerk must not subsequently accept any payment from the offender in respect of the direction for compensation identified in the certificate. 25
- (3) An aggrieved person may file such a certificate in the office or registry of a court having jurisdiction to order payment of the amount specified in the certificate, and the registrar or clerk of that court must immediately enter judgment in favour of the aggrieved person against the offender specified in the certificate for: 30

- (a) the amount specified in the certificate as having not been paid, and
 - (b) any fees payable to the registrar or clerk in respect of the filing of the certificate.
- (4) A direction for compensation may only be enforced in accordance with this section and any amount not paid is not payable from the Compensation Fund or any other public money. 5

76 Effect of directions for compensation on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based. 10
- (2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the direction. 15
- (3) The judgment of the court in which the civil proceedings are determined:
- (a) must not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid under the direction for compensation, and 20
 - (b) must not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid under the direction for compensation. 25
- (4) This section does not limit the operation of section 43 or 57.

77 Directions for compensation not appealable on certain grounds 30

An appeal does not lie against a direction for compensation merely because, in civil proceedings arising from substantially the same facts as those on which the offender was convicted, the aggrieved person is awarded a lesser amount in damages than the amount of compensation required to be paid by the direction. 35

Part 5 Compensation levies

78 Application of Part

- (1) This Part applies to all offences that are:
- (a) punishable by imprisonment, whether or not they are also punishable otherwise than by imprisonment, and 5
 - (b) dealt with by the Supreme Court, the District Court, a Local Court or the Children's Court.
- (2) This Part does not apply to an offence merely because it is taken into account (as referred to in section 21 of the *Criminal Procedure Act 1986*) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies. 10

79 Imposition of compensation levy

- (1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the State a levy of: 15
- (a) \$70, if the person is convicted on indictment or pursuant to a committal under section 51A of the *Justices Act 1902*, or
 - (b) \$30, if the person is convicted otherwise than as referred to in paragraph (a). 20
- (2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.
- (3) 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 any time afterwards, that the person is exempt from liability to pay the levy. 25
- (4) Any money paid to the State in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence. 30

80 Payment and enforcement of compensation levy

- (1) The regulations may make provision for the manner in which compensation levies are to be paid and enforced.
- (2) In particular, the regulations may make provision for:
 - (a) the attachment of the prison earnings of convicted persons, and 5
 - (b) the imposition of community service orders on persons who fail to pay compensation levies.

81 Effect of appeal proceedings

- (1) The commencement of any proceedings by way of appeal against, or review of, a conviction or sentence in respect of which a compensation levy has been imposed on a person stays the liability of the person to pay the levy. 10
- (2) The setting aside of any such conviction annuls that liability.
- (3) The dismissal of any such proceedings removes the stay of liability. 15

Part 6 Miscellaneous

82 Act binds Crown

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5

83 Reports by Tribunal

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Chairperson of the Tribunal must prepare and forward to the Minister a report on the work and activities of the Tribunal and the compensation assessors for the 12 months ending on 30 June in that year. 10
- (2) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) Without limiting the generality of subsection (1), the Chairperson of the Tribunal must submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal and the compensation assessors. 15
- (4) A report may deal with such matters as the Minister directs and with such other matters as the Chairperson of the Tribunal considers appropriate to include in the report. 20
- (5) An annual report under this section may be combined with the annual report of the Attorney General's Department.

84 Inadmissibility of certain evidence in subsequent criminal proceedings

25

Despite any rule of law to the contrary:

- (a) an application for statutory compensation, and
- (b) any documents supporting the application (whether or not furnished when the application is lodged), and 30
- (c) any transcript of evidence given to the Tribunal in a hearing of the application,

are not admissible in evidence against any person in criminal proceedings (other than criminal proceedings in which the applicant is the accused) arising from substantially the same facts as those on which the application is based. 35

85 Limitation of liability

- (1) No proceedings lie against the Tribunal, any authorised Magistrate, the Director, a compensation assessor or any other staff employed for the purposes of this Act for or on account of any act, matter or thing: 5
- (a) done or ordered to be done or omitted or suffered to be done by the Tribunal, authorised Magistrate, Director, compensation assessor or member of staff, and
- (b) purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, 10
- if the Tribunal, authorised Magistrate, Director, compensation assessor or member of staff has acted in good faith and with reasonable care.
- (2) A member of the Tribunal, or authorised Magistrate, in exercising the functions of the Tribunal, has the same protection and immunity as he or she has as a Magistrate. 15

86 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 20

87 Compensation rules

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by the compensation rules. 25
- (2) In particular, compensation rules may be made for or with respect to:
- (a) the practice and procedure of the Tribunal and compensation assessors, and
- (b) costs awarded by the Tribunal or compensation assessors, and 30
- (c) the forms to be used under this Act (including their verification by affidavit or statutory declaration and the authorisation of a person to approve of those forms), and

-
- (d) the service of documents under this Act, and
 - (e) the exercise of the functions of compensation assessors.
- (3) The compensation rules are, for the purposes of any Act, to be treated as rules of court.

88 Regulations

5

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

89 Savings, transitional and other provisions

10

Schedule 3 has effect.

90 Repeal of Victims Compensation Act 1987 No 237

- (1) The *Victims Compensation Act 1987* is repealed.
- (2) The *Victims Compensation Regulation 1988*, the *Victims Compensation Rule 1988* and any other regulation or rule under that Act are repealed.

15

91 Amendment of other Acts

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

92 Review of Act

20

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

25

Schedule 1 Compensable injuries

(Section 10)

1 Description of compensable injuries

The injuries specified in column 1 of the table to this Schedule are compensable injuries for the purposes of this Act. 5

2 Standard amount of compensation

The standard amount of compensation for any such compensable injury is the amount, or an amount within the range of amounts, specified in column 2 of the table to this Schedule opposite the injury. 10

3 Multiple injuries

If 2 or more compensable injuries are received by an eligible victim, the standard amount of compensation for all of those injuries is the total of the following amounts (subject to the other provisions of this Act): 15

- (a) The full standard amount for the most serious injury (that is, for the injury that has the largest standard amount payable). 15
- (b) 10% of the standard amount for the second most serious injury (that is, for the injury that has the same or the second largest standard amount payable). 20
- (c) 5% of the standard amount for the third most serious injury (that is, for the injury that has the same or the third largest standard amount payable).
- (d) No amount for any further injuries. 25

4 Reduction of standard amount because of existing condition

If the act of violence results in a compensable injury because of the aggravation, acceleration, exacerbation or deterioration of an existing condition of the eligible victim, the standard amount of compensation for the injury is to be reduced by the proportionate amount that the Tribunal or compensation assessor considers is attributable to the existing condition. 30

5 Shock

The following applies to the compensable injury of shock:

- (a) Compensation is payable only if the symptoms and disability persist for more than 6 weeks.
- (b) The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions. 5
- (c) The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of self-harm or guilt. 10
- (d) The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.
- (e) Relevant disabilities include impaired work or school performance, significant adverse effects on social relationships and sexual dysfunction. 15

6 Sexual assault

The following applies to the compensable injury of sexual assault:

- (a) Category 1 sexual assault consists of:
 - indecent assault, or 20
 - an assault with violence in the course of attempted unlawful sexual intercourse.
- (b) Category 2 sexual assault consists of:
 - a pattern of abuse involving category 1 sexual assault, or 25
 - unlawful sexual intercourse, or
 - the infliction of serious bodily injury in the course of attempted unlawful sexual intercourse.
- (c) Category 3 sexual assault consists of:
 - a pattern of abuse involving category 2 sexual assault, or 30
 - unlawful sexual intercourse in which serious bodily injury is inflicted, or

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Schedule 1 Compensable injuries

- unlawful sexual intercourse in which 2 or more offenders are involved, or
- unlawful sexual intercourse in which the offender uses an offensive weapon.

In this paragraph:

5

indecent assault means the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person.

unlawful sexual intercourse means sexual intercourse (within the meaning of section 61H of the *Crimes Act 1900*) with a person without his or her consent or with consent obtained by means of a non-violent threat, sexual intercourse with a child under the age of 16 years or with a person having an intellectual disability or self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat within the meaning of that section.

10

15

7 Burns and scarring

The following applies to the compensable injuries of burns and scarring:

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- (a) Compensation is not payable for scarring unless it is permanent.
- (b) Compensation is not payable for both burns to any part of the body and scarring of that part of the body caused by burns.
- (c) Payment for burns or scarring is subject to such reasonable inspection of the injury as the Tribunal or compensation assessor may require.

25

8 Injuries not specifically mentioned

An injury not specifically mentioned in Column 1 of the table to this Schedule is a compensable injury if, in the opinion of the Tribunal or compensation assessor dealing with the application for statutory compensation:

30

- (a) the injury is similar to an injury specifically mentioned in the table, and
- (b) the injury has caused symptoms or disability lasting for at least 6 weeks.

The standard amount of compensation for the injury is the standard amount for that similar injury. 5

9 Other interpretative provisions

- (a) For the purpose of determining the extent of an injury, the extent to which the injury, or the effect of the injury, may be reduced or limited by an external removable aid or appliance is to be disregarded. 10
- (b) If an eligible victim has only one leg, arm, eye or other body part, an injury to the remaining body part is to be regarded as an injury to both of those body parts.

Table 15

Column 1 Description of Injury	Column 2 Standard amount of compensation \$	
		20

Brain damage

moderate impairment of social/intellectual functions	36,000	
serious impairment of social/intellectual functions.....	50,000	
permanent—extremely serious (no effective control of functions).....	50,000	25

Burns

multiple first degree burns covering at least 25% of body.....	50,000	
[For other burns to a part of the body, see burn injuries listed in this table under that part of the body]		30

Victims Compensation Bill 1996

Schedule 1 Compensable injuries

Table—continued

Disease or other recognised medical illness causing disability (not being a disease or illness of the mind)		
disability lasting 6 to 13 weeks	2,400	5
disability lasting 14 to 28 weeks	9,600	
disability lasting over 28 weeks (but not permanent).....	18,000	
permanent disability	48,000	
Epilepsy		
fully controlled	18,000	10
partially controlled.....	30,000	
uncontrolled	50,000	
Head		
burns (other than face): minor.....	3,600	
burns (other than face): moderate	9,600	15
burns (other than face): severe	18,000	
burns (face): minor	4,800	
burns (face): moderate	12,000	
burns (face): severe	50,000	
ear: fractured mastoid.....	2,400	20
ear: loss of one ear	24,000	
ear: loss of both ears.....	42,000	
ear: partial deafness of one ear—remaining hearing socially useful with hearing aid if necessary	8,400	
ear: partial deafness of both ears—remaining hearing socially useful with hearing aid if necessary	18,000	25
ear: total deafness of one ear.....	36,000	
ear: total deafness of both ears	50,000	
ear: partial loss of ear(s).....	9,600	
ear: perforated ear drum	4,200	30
ear: temporary partial deafness—lasting 6 to 13 weeks	2,400	

Table—continued

ear: temporary partial deafness—lasting more than 13 weeks	3,600	
ear: tinnitus (ringing noise in ears)—lasting 6 to 13 weeks	2,400	5
ear: tinnitus—lasting more than 13 weeks	7,200	
ear: tinnitus—permanent (moderate)	18,000	
ear: tinnitus—permanent (very serious)	36,000	
eye: blow out fracture of orbit bone cavity containing eyeball	7,200	10
eye: blurred or double vision—lasting 6 to 13 weeks	2,400	
eye: blurred or double vision—lasting more than 13 weeks	4,200	
eye: blurred or double vision—permanent	18,000	
eye: cataracts one eye (requiring operation)	7,200	15
eye: cataracts both eyes (requiring operation)	18,000	
eye: cataracts one eye (permanent/inoperable)	18,000	
eye: cataracts both eyes (permanent/inoperable)	42,000	
eye: corneal abrasions	4,800	
eye: damage to iris resulting in hyphaema (bleeding in ocular chamber)	6,000	20
eye: damage to irises resulting in hyphaema (bleeding in ocular chamber)	14,400	
eye: degeneration of optic nerve	4,800	
eye: degeneration of optic nerves	12,000	25
eye: detached retina	12,000	
eye: detached retinas	30,000	
eye: dislocation of lens	12,000	
eye: dislocation of lenses	30,000	
eye: glaucoma	6,000	30
eye: loss of one eye	50,000	
eye: loss of both eyes	50,000	
eye: loss of sight of one eye	48,000	

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Schedule 1 Compensable injuries

Table—continued

eye: loss of sight of both eyes.....	50,000	
eye: partial loss of vision—6/9	18,000	
eye: partial loss of vision—6/12.....	24,000	
eye: partial loss of vision—6/24.....	30,000	5
eye: partial loss of vision—6/36.....	36,000	
eye: partial loss of vision—6/60.....	42,000	
eye: residual floaters	12,000	
eye: traumatic angle recession of eye.....	6,000	
facial: dislocated jaw	4,800	10
facial: fractured malar and/or zygomatic—cheek bones ..	4,800	
facial: fractured mandible and/or maxilla—jaw bones.....	7,200	
facial: permanently clicking jaw.....	12,000	
facial: temporary numbness/loss of feeling—lasting 6 to 13 weeks	2,400	15
facial: temporary numbness/loss of feeling—lasting more than 13 weeks (recovery expected).....	3,600	
facial: permanent numbness/loss of feeling	9,600	
nose: deviated nasal septum.....	2,400	
nose: deviated nasal septum requiring septoplastomy....	4,800	20
nose: undisplaced fracture of nasal bones	2,400	
nose: displaced fracture of nasal bones.....	3,600	
nose: partial loss (at least 10%).....	9,600	
nose: partial loss of smell and/or taste	12,000	
nose: loss of smell or taste.....	24,000	25
nose: loss of smell and taste	36,000	
scarring (face): minor disfigurement.....	3,600	
scarring (face): significant disfigurement	8,400	
scarring (face): serious disfigurement	18,000	
scarring (other than face): visible, minor disfigurement...	3,600	30
scarring (other than face): significant disfigurement.....	7,200	
scarring (other than face): serious disfigurement.....	12,000	

Table—continued

skull: balance impaired—permanent.....	18,000	
skull: brain haemorrhage (full recovery)	9,600	
skull: brain haemorrhage (residual minor impairment of social/intellectual functions).....	18,000	5
skull: concussion (lasting at least one week).....	3,600	
skull: simple fracture (no operation).....	6,000	
skull: depressed fracture (no operation).....	9,600	
skull: depressed fracture (requiring operation).....	14,400	
skull: stroke (full recovery)	12,000	10
skull: subdural haematoma—treated conservatively.....	9,600	
skull: subdural haematoma—requiring evacuation	18,000	
teeth: chipped front teeth requiring crown.....	2,400	
teeth: fractured tooth/teeth requiring crown.....	2,400	
teeth: loss of crowns	3,000	15
teeth: loss of one tooth other than front tooth.....	2,400	
teeth: loss of two or more teeth other than front tooth...	3,600	
teeth: loss of one front tooth	3,600	
teeth: loss of two or three front teeth.....	4,800	
teeth: loss of four or more front teeth	7,200	20
teeth: slacking of teeth requiring dental treatment.....	2,400	
tongue: impaired speech—slight.....	4,800	
tongue: impaired speech—moderate	12,000	
tongue: impaired speech—serious.....	24,000	
tongue: impaired speech—severe	42,000	25
tongue: loss of speech—permanent.....	50,000	
tongue: loss of tongue	50,000	
Lower limbs		
ankle: fracture of one ankle (full recovery)	7,200	
ankle: fracture of one ankle (with continuing disability)...	12,000	30
ankle: fracture of both ankles (full recovery).....	18,000	
ankle: fracture of both ankles (with continuing disability)	24,000	

Victims Compensation Bill 1996

Schedule 1 Compensable injuries

Table—continued

ankle: sprain of one ankle (disabling for at least 6 to 13 weeks)	2,400	
ankle: sprain of one ankle (disabling for more than 13 weeks)	6,000	5
ankle: sprain of both ankles (disabling for at least 6 to 13 weeks)	4,800	
ankle: sprain of both ankles (disabling for more than 13 weeks)	8,400	
burns: minor	3,600	10
burns: moderate	9,600	
burns: severe	24,000	
femur: fracture of both legs (full recovery)	18,000	
femur: fracture of both legs (with continuing disability) ...	24,000	
femur: fracture of thigh bone (full recovery)	7,200	15
femur: fracture of one leg (with continuing disability)	12,000	
fibula: fracture of both legs (full recovery)	18,000	
fibula: fracture of both legs (with continuing disability) ...	24,000	
fibula: fracture of one leg (with continuing disability)	12,000	
fibula: fracture of slender bone from knee to ankle (full recovery)	7,200	20
heel bone: fracture of one foot (full recovery)	6,000	
heel bone: fracture of one foot (with continuing disability)	12,000	
heel bone: fracture of both feet (full recovery)	12,000	25
heel bone: fracture of both feet (with continuing disability)	24,000	
knees: injury requiring arthroscopy (investigative surgery/repair)—no fracture	4,800	
leg: loss of leg below knee	50,000	30
leg: loss of leg above knee	50,000	
leg: loss of both legs	50,000	
metatarsal bones: fracture of one foot (full recovery)	6,000	

Table—continued

metatarsal bones: fracture of one foot (with continuing disability)	18,000	
metatarsal bones: fracture of both feet (full recovery).....	12,000	
metatarsal bones: fracture of both feet (with continuing disability)	36,000	5
patella: dislocation of one leg (full recovery).....	2,400	
patella: dislocation of one leg (with continuing disability)	18,000	
patella: dislocation of both legs (full recovery)	4,800	
patella: dislocation of both legs (with continuing disability)	42,000	10
patella: fracture of knee cap (full recovery)	18,000	
patella: fracture of one leg (with continuing disability).....	24,000	
patella: fracture of both legs (full recovery)	36,000	
patella: fracture of both legs (with continuing disability) ..	48,000	15
phalanges: fracture of toes	3,600	
scarring: minor disfigurement	3,000	
scarring: significant disfigurement.....	4,200	
scarring: serious disfigurement.....	12,000	
tarsal bones: fracture of one foot (full recovery).....	6,000	20
tarsal bones: fracture of one foot (with continuing disability)	18,000	
tarsal bones: fracture of both feet (full recovery).....	12,000	
tarsal bones: fracture of both feet (with continuing disability)	36,000	25
tendon(s)/ligament(s): minor damage (full recovery)	2,400	
tendon(s)/ligament(s): minor damage (with continuing disability)	7,200	
tendon(s)/ligament(s): moderate damage (full recovery) ..	4,800	
tendon(s)/ligament(s): moderate damage (with continuing disability)	12,000	30
tendon(s)/ligaments(s): severe damage (full recovery).....	7,200	

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Schedule 1 Compensable injuries

Table—continued

tendon(s)/ligaments(s): severe damage (with continuing disability).....	18,000	
tibia: fracture of shin bone (full recovery).....	7,200	
tibia: fracture of shin bone (with continuing disability)	12,000	5
tibia: fracture of both legs (full recovery).....	18,000	
tibia: fracture of both legs (with continuing disability)	24,000	
toe: fracture of one big toe	6,000	
toe: fracture of two big toes	12,000	
Neck		10
burns: minor	3,600	
burns: moderate	9,600	
burns: severe	24,000	
neck: strained (disabling for 6 to 13 weeks)	2,400	
neck: strained (disabling for more than 13 weeks).....	4,200	15
neck: strained—seriously disabling (not permanent)	12,000	
neck: strained—seriously disabling (permanent).....	24,000	
scarring: minor disfigurement.....	3,600	
scarring: significant disfigurement	7,200	
scarring: serious disfigurement	9,600	20
Paralysis		
Paralysis of all 4 limbs (quadriplegia/tetraplegia), paralysis of one side of body (hemiplegia), paralysis of the lower limbs (paraplegia), paralysis of one lower limb, paralysis of one or both upper limbs	50,000	25
Sexual assault		
Category 1	2,400–10,000	
Category 2	10,000–25,000	
Category 3	25,000–50,000	
Shock		30
Lasting 6 to 13 weeks.....	2,400	
Lasting 14 to 28 weeks.....	9,600	

Table—continued

Lasting over 28 weeks (but not permanent)	18,000	
Permanent symptoms and disability	48,000	
Torso		
back: fracture of vertebra (full recovery)	6,000	5
back: fracture of vertebra (continuing disability)	12,000	
back: fracture of more than one vertebra (full recovery)	9,600	
back: fracture of more than one vertebra (continuing disability)	18,000	
back: prolapsed intervertebral disc(s)—seriously disabling (not permanent).....	12,000	10
back: prolapsed intervertebral disc(s)—seriously disabling (permanent).....	18,000	
back: ruptured intervertebral disc(s) requiring surgical removal	24,000	15
back: strained back—disabling for 6 to 13 weeks.....	2,400	
back: strained back—disabling for more than 13 weeks	6,000	
back: strained back—seriously disabling (not permanent)	12,000	
back: strained back—seriously disabling (permanent)	18,000	20
burns: minor.....	3,600	
burns: moderate.....	9,600	
burns: severe.....	24,000	
clavicle: fracture of collar bone	4,800	
clavicle: fracture of both clavicles	12,000	25
coccyx: fracture of tail bone.....	6,000	
fertility: loss of fertility	50,000	
genitalia: injury requiring medical treatment (no permanent damage)	4,200	
genitalia: injury requiring medical treatment (permanent damage).....	12,000	30
hernia	8,400	

Victims Compensation Bill 1996

Schedule 1 Compensable injuries

Table—continued

hip: dislocated (full recovery).....	4,200	
hip: dislocated (with continuing disability)	18,000	
hip: fractured	18,000	
injury requiring laparotomy.....	8,400	5
kidney: loss of kidney.....	48,000	
lung: collapse of lung.....	8,400	
lung: collapse of both lungs	18,000	
lung: puncture of lung	7,200	
lung: puncture of both lungs.....	14,400	10
lung: smoke inhalation in both lungs (permanent and disabling damage).....	12,000	
pelvis: fracture of pelvis.....	18,000	
rib: fracture of rib	2,400	
rib: fracture of two or more ribs	3,600	15
scapula: fracture of shoulder blade	6,000	
scapula: fracture of both scapula	14,400	
scarring: minor disfigurement.....	3,000	
scarring: significant disfigurement	6,000	
scarring: serious disfigurement	12,000	20
shoulder: dislocated (full recovery)	4,200	
shoulder: dislocated (with continuing disability).....	12,000	
shoulder: frozen.....	8,400	
spleen: loss of spleen	9,600	
sternum: fracture of breast bone	6,000	25
Upper limbs		
arm: loss of arm.....	50,000	
arm: loss of both arms.....	50,000	
arm: permanently and seriously impaired grip	18,000	

Table—continued

arm: permanently and seriously impaired grip in both arms.....	36,000	
burns: minor.....	3,600	
burns: moderate.....	9,600	5
burns: severe.....	24,000	
elbow: dislocation/fracture of one elbow (full recovery) ...	7,200	
elbow: dislocation/fracture of one elbow (with continuing disability)	18,000	
elbow: dislocation/fracture of both elbows (full recovery)	18,000	10
elbow: dislocation/fracture of both elbows (with continuing disability)	24,000	
finger: loss of one other than index.....	12,000	
finger: loss of index.....	18,000	
finger: loss of two or more	24,000	15
finger: partial loss of finger (one joint) other than thumb or index.....	6,000	
finger(s) or thumb: dislocated one hand (full recovery)...	3,000	
finger(s) or thumb: dislocated one hand (with continuing disability)	6,000	20
finger(s) or thumb(s): dislocated both hands (full recovery)	7,200	
finger(s) or thumb(s): dislocated both hands (with continuing disability)	18,000	
finger(s) or thumb: fractured one hand (full recovery).....	3,600	25
finger(s) or thumb: fractured one hand (with continuing disability)	8,400	
finger(s) or thumb(s): fractured both hands (full recovery)	9,600	
finger(s) or thumb(s): fractured both hands (with continuing disability)	18,000	30
hand: fracture of hand (full recovery).....	4,800	
hand: fracture of hand (with continuing disability)	12,000	
hand: fracture of both hands (full recovery).....	8,400	

Victims Compensation Bill 1996

Schedule 1 Compensable injuries

Table—continued

hand: fracture of both hands (with continuing disability)	18,000	
hand: loss of hand	50,000	
hand: loss of both hands	50,000	
humerus: fracture of upper arm bone (full recovery)	7,200	5
humerus: fracture (with continuing disability).....	12,000	
humerus: fracture of both arms (full recovery).....	18,000	
humerus: fracture of both arms (with continuing disability).....	24,000	
radius: fracture of smaller forearm bone (full recovery) ..	7,200	10
radius: fracture (with continuing disability)	12,000	
radius: fracture of both arms (full recovery).....	18,000	
radius: fracture of both arms (with continuing disability)	24,000	
scarring: minor disfigurement.....	3,000	
scarring: significant disfigurement	6,000	15
scarring: serious disfigurement	9,600	
tendon(s)/ligament(s): minor damage (full recovery).....	2,400	
tendon(s)/ligament(s): minor damage (with continuing disability).....	7,200	
tendon(s)/ligament(s): moderate damage (full recovery) ..	4,800	20
tendon(s)/ligament(s): moderate damage (with continuing disability).....	12,000	
tendon(s)/ligament(s): severely damaged (full recovery) ..	7,200	
tendon(s)/ligament(s): severely damaged (with continuing disability).....	18,000	25
thumb or index finger: partial loss (one joint).....	9,600	
thumb: loss of thumb	36,000	
ulna: fracture of inner forearm bone (full recovery)	7,200	
ulna: fractured ulna (with continuing disability)	12,000	
ulna: fracture of both arms (full recovery)	18,000	30
ulna: fracture of both arms (with continuing disability)....	24,000	
wrist: fracture—colles type (full recovery)	9,600	

Table—continued

wrist: fracture—colles type (with continuing disability)	18,000	
wrist: fracture—including scaphoid (full recovery)	7,200	
wrist: fracture—including scaphoid (with continuing disability)	14,400	5
wrist: fracture of both—colles type (full recovery)	18,000	
wrist: fracture of both—colles type (with continuing disability)	24,000	
wrist: fracture of both—including scaphoid fracture (full recovery)	14,400	10
wrist: fracture of both—including scaphoid fracture (with continuing disability)	24,000	
wrist: sprain—disabling for 6 to 13 weeks	2,400	
wrist: sprain—disabling for more than 13 weeks	3,600	
wrist: sprain of both—disabling for 6 to 13 weeks	4,800	15
wrist: sprain of both—disabling for more than 13 weeks	7,200	

Schedule 2 Provisions relating to Tribunal

(Section 59)

Part 1 Members of Tribunal

1 Magisterial status of members not affected

- (1) A member of the Tribunal does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Tribunal. 5
- (2) The service of a member of the Tribunal in his or her capacity as such a member is, for all purposes, taken to be service as a Magistrate. 10

2 Term of office of members

- (1) A member of the Tribunal holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 15
- (2) A member of the Tribunal holds office on a full-time or part-time basis, as may be specified in the member's instrument of appointment.

3 Public Sector Management Act 1988 not to apply to members 20

The *Public Sector Management Act 1988* (including Part 8) does not apply to or in respect of the appointment of a member of the Tribunal and a member of the Tribunal is not, as a member of the Tribunal, subject to that Act.

4 Casual vacancies in office of member 25

A person vacates office as a member of the Tribunal if the person:

- (a) ceases to be a Magistrate, or
- (b) resigns office by instrument in writing addressed to the Attorney General. 30

5 Appointment as Magistrate unaffected by resignation

A person does not cease to be a Magistrate merely because of:

- (a) his or her resignation from office as a member of the Tribunal, or
- (b) the expiration of his or her term of office as a member of the Tribunal. 5

Part 2 Proceedings of Tribunal generally

6 Sittings of Tribunal

More than one sitting of the Tribunal may be held at the same time. 10

7 Tribunal may be assisted by Crown Solicitor

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

8 Record of proceedings of Tribunal

The member constituting the Tribunal at any sitting must cause a record to be kept of the proceedings at the sitting. 15

9 Authentication of documents by Tribunal

- (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the Chairperson or the Registrar of the Tribunal. 20
- (2) Judicial notice is to be taken of the signature of the Chairperson or the Registrar when appearing on a document issued by the Tribunal.

10 Application of Defamation Act 1974

For the purposes of section 18 of the *Defamation Act 1974*, the proceedings of the Tribunal is taken to be an inquiry within the meaning of that section. 25

Part 3 Hearings before Tribunal

11 Application

This Part applies to hearings conducted by the Tribunal in connection with an application for statutory compensation.

12 Hearings generally

5

- (1) In hearings under this Part, the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (2) Hearings under this Part must be conducted with as little formality and legal technicality and form as the circumstances of the case permit. 10
- (3) An applicant for statutory compensation is entitled to be represented in any hearing under this Part by a legal practitioner or, by leave of the Tribunal, by an agent.

13 Hearings to be open to the public

15

Hearings under this Part must be conducted in the presence of the public unless:

- (a) criminal proceedings are pending against any person in respect of substantially the same facts as those alleged in the application for statutory compensation, or 20
- (b) the Tribunal, in a particular case, determines that the proceedings must be closed to the public.

14 Publication of names

- (1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person: 25
 - (a) who appears as a witness before the Tribunal in any hearing under this Part, or
 - (b) to whom any hearing under this Part relates, or
 - (c) who is mentioned or otherwise involved in any hearing under this Part, 30

whether before or after the hearing is completed.

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

-
- (2) This clause does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this clause.
- (3) For the purposes of this clause, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person. 5

15 Presentation of cases

In any hearing under this Part, the applicant for statutory compensation may, by leave of the Tribunal: 10

- (a) call and examine any witness, and
- (b) give evidence on oath, and
- (c) produce documents and exhibits to the Tribunal, and
- (d) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the hearing. 15

16 Tribunal may compel attendance of witnesses

- (1) For the purposes of any hearing under this Part, the Tribunal may: 20
- (a) by instrument in writing require any person on whom the instrument is served personally or by post:
 - (i) to appear at the hearing for the purpose of giving evidence, or
 - (ii) to produce to the Tribunal any document that is relevant to the hearing, 25

at a time, date and place specified in the instrument, and
 - (b) require a person who appears at the hearing to be sworn for the purpose of giving evidence on oath, and
 - (c) administer such an oath. 30

- (2) When a document is produced to the Tribunal in accordance with a requirement under this clause, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of completing the hearing.
- (3) The functions conferred on the Tribunal by subclause (1) (a) may be exercised on behalf of the Tribunal by the Registrar of the Tribunal. 5

17 Witnesses to answer questions

- (1) The Tribunal may require a person who appears at a hearing under this Part to answer any question that is reasonably related to the hearing. 10
- (2) A person may refuse to answer such a question on the ground that the answer might tend to incriminate the person.

18 Refusal to attend or to answer questions

- A person must not: 15
- (a) fail to comply with a requirement made of the person under clause 16 or 17 by the Tribunal to the extent to which the person is lawfully able to comply with the requirement, or
 - (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing at a hearing under this Part. 20

Maximum penalty: 5 penalty units.

19 Witnesses' expenses

A person (other than a public servant) who is required to appear or to give evidence at a hearing under this Part is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules. 25

20 Adjournments

- (1) The Tribunal may from time to time adjourn a hearing under this Part to such times, dates and places, and for such reasons, as it thinks fit. 30

-
- (2) Without limiting the generality of subclause (1), the Tribunal may adjourn a hearing under this Part pending the determination of criminal proceedings against a person in respect of substantially the same facts as those alleged in the application for statutory compensation. 5

21 Dismissal of frivolous proceedings

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

- (a) that the proceedings are frivolous or vexatious, or
(b) that, for any other reason, the proceedings should not be entertained. 10

22 Misconduct in proceedings before the Tribunal

(1) A person must not, in a hearing under this Part:

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

Maximum penalty: 10 penalty units. 20

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

(3) A person must not fail to comply with a direction under this clause. 25

Maximum penalty: 10 penalty units.

Schedule 3 Savings, transitional and other provisions

(Section 89)

Part 1 Preliminary

- 1 Regulations** 5
- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
Victims Compensation Act 1996
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication. 20

Part 2 Provisions consequent on enactment of Victims Compensation Act 1996

- 2 Definition**
- In this Part:
the repealed Act means the *Victims Compensation Act 1987*. 25
- 3 Proceedings for statutory compensation under repealed Act**
- (1) An application for compensation made under Part 3 of the repealed Act before the date of assent to this Act and not finally disposed before that date is to continue to be dealt with in accordance with the repealed Act. 30

-
- (2) An application for compensation may be made under Part 3 of the repealed Act after the date of assent to this Act and before the end of the period of 4 months after that date, but may not be made under that Part after the end of that period. Any such application is to be dealt with in accordance with the repealed Act. 5
- (3) Subclause (2) applies so as to authorise an application under Part 3 of the repealed Act only if the act of violence (and any related act of violence) to which the application relates occurred before the date of assent to this Act. 10
- (4) An application referred to in subclause (2) of a secondary victim of an act of violence may only be dealt with if:
- (a) such an application has also been made by a primary or other victim (other than a secondary victim) of that act of violence, or 15
 - (b) the Tribunal is satisfied that an application for statutory compensation by the primary or other victim will not be made under this Act or the repealed Act.

4 Previous acts of violence

This Act extends, subject to this Act, to an act of violence that occurred before the commencement of this Act (other than an act of violence in respect of which an application for compensation has been made and dealt with under the repealed Act). 20

5 The Tribunal and staff

- 25
- (1) The Victims Compensation Tribunal constituted by this Act is a continuation of the Victims Compensation Tribunal constituted under the repealed Act.
- (2) A person holding office as a member or Chairperson of the Tribunal, immediately before the repeal of the repealed Act, is taken to have been appointed as a member or Chairperson of the Tribunal under this Act. 30

Victims Compensation Bill 1996

Schedule 3 Savings, transitional and other provisions

- (3) A Magistrate who was an authorised Magistrate under the repealed Act, immediately before the repeal of the repealed Act, is taken to be an authorised Magistrate under this Act.
- (4) The staff of the Tribunal employed under the repealed Act is taken to be staff employed for the purposes of this Act. 5

6 Continuation of Corporation and Fund

- (1) The Victims Compensation Fund Corporation constituted by section 66 of this Act is a continuation of, and the same legal entity as, the corporation by that name constituted by the repealed Act. 10
- (2) The Victims Compensation Fund constituted by the repealed Act becomes, on the repeal of that Act, the fund by that name constituted by section 67 of this Act.

7 Recovery proceedings against offender for amount payable under award of compensation 15

- (1) Division 8 of Part 2 of this Act applies to awards of compensation made under Part 2 of this Act, and to awards of compensation made under Part 3 of the repealed Act that were not subject to recovery action under the repealed Act before its repeal. 20
- (2) Part 5 of the repealed Act continues to apply to any recovery action taken under the repealed Act before its repeal.
- (3) However, the provisions of Division 8 of Part 2 of this Act apply to any proceedings for recovery of an amount payable under a determination for restitution under Part 5 of the repealed Act. 25

8 Compensation awarded by a court

- (1) Part 4 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A direction for the payment of compensation given under Part 6 of the repealed Act may be recovered as if it had been given under Part 4 of this Act. 30

9 Compensation levies

- (1) Part 5 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A levy imposed by the operation of section 65C of the repealed Act may be recovered as if it had been imposed by Part 5 of this Act.

5

Schedule 4 Amendment of other Acts

(Section 91)

4.1 Fines and Penalties Act 1901 No 16

Section 8 Governor may remit penalties

Insert after section 8 (2): 5

- (3) In this section, a reference to a penalty includes a reference to a compensation levy under the *Victims Compensation Act 1996*.

4.2 Prisons Act 1952 No 9

Section 44 Attendance of prisoner before court etc 10

Omit section 44 (3). Insert instead:

- (3) In this section:

appropriate officer means a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court, a Registrar of the Supreme Court, the Registrar of the Court of Criminal Appeal or the Registrar of the Victims Compensation Tribunal. 15

court of record includes the Victims Compensation Tribunal.

Dictionary

- act of violence** has the meaning given to that expression by section 5.
- authorised Magistrate** means a Magistrate who is authorised to exercise the jurisdiction and functions of the Tribunal by virtue of an order in force under section 61. 5
- compensable injury** has the meaning given to that expression by section 10 and Schedule 1.
- compensation assessor** means a compensation assessor appointed by or under section 64.
- Compensation Fund** means the Victims Compensation Fund referred to in section 67. 10
- Compensation Fund Corporation** means the Victims Compensation Fund Corporation constituted by section 66.
- compensation levy** means a levy referred to in section 79.
- compensation rules** means rules made under section 87 and in force. 15
- conviction** includes:
- (a) an order made under section 556A of the *Crimes Act 1900*, and
 - (b) (except in Part 4) an order made under section 33 (1) (b)–(g) of the *Children (Criminal Proceedings) Act 1987*.
- costs** includes allowances and expenses. 20
- Director** means the person holding office as Director of Victims Compensation under Part 2 of the *Public Sector Management Act 1988*.
- exercise** a function includes perform a duty.
- family victim** has the meaning given to that expression by section 9.
- function** includes a power, authority or duty. 25
- imprisonment** includes penal servitude.
- injury** means:
- (a) actual physical bodily harm,
 - (b) nervous shock,
 - (c) mental illness, 30
- but does not include injury arising from loss or damage to property.

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Dictionary

member of the immediate family of a person has the meaning given to that expression by section 9.

offence means criminal offence.

primary victim has the meaning given to that expression by section 7.

schedule of compensable injuries means the schedule of compensable injuries set out in Schedule 1. 5

secondary victim has the meaning given to that expression by section 8.

sexual assault and apprehended domestic violence means any of the following:

- (a) 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 10
- (b) 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 15
- (c) self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat (within the meaning of that section), or 20
- (d) the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person, or 25
- (e) 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 30
- (f) 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. 2

State means the Crown in right of New South Wales.

statutory compensation means compensation payable under Part 2.

Tribunal means the Victims Compensation Tribunal constituted by this Act.



New South Wales

Victims Compensation Bill 1996

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The dictionary defines the following words and expressions

act of violence	imprisonment
authorised Magistrate	injury
compensable injury	member of the immediate family
compensation assessor	offence
Compensation Fund	primary victim
Compensation Fund Corporation	schedule of compensable injuries
compensation levy	secondary victim
compensation rules	sexual assault and apprehended domestic violence
conviction	State
costs	statutory compensation
Director	Tribunal
exercise	
family victim	
function	

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.

Legislative Council

Clerk of the Parliaments



New South Wales

Victims Compensation Bill 1996

Act No , 1996

An Act to provide compensation to victims of violence; and to repeal the *Victims Compensation Act 1987*.

Clause 1 Victims Compensation Bill 1996

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Victims Compensation Act 1996*.

2 Commencement

5

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Clauses 1, 2 and 3 of Schedule 3 commence on the date of assent to this Act.

3 Objects of Act

10

The objects of this Act are as follows:

- (a) to give effect to a statutory scheme of compensation for victims of crimes of violence,
- (b) to enable compensation paid under the statutory scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation, 15
- (c) to impose a levy on persons found guilty of crimes punishable by imprisonment for the purpose of funding the statutory scheme,
- (d) to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime. 20

4 Dictionary and notes

- (1) Expressions used in this Act (or in a particular provision of this Act) that are defined in the Dictionary at the end of this Act have the meanings given to them in the Dictionary. 25
- (2) Notes in the text of this Act do not form part of this Act.

5 Act of violence

- (1) In this Act, *act of violence* means an act or series of related acts, whether committed by one or more persons:
- (a) that has apparently occurred in the course of the commission of an offence, and 5
 - (b) that has involved violent conduct against one or more persons, and
 - (c) that has resulted in injury or death to one or more of those persons.
- (2) For the purposes of this section, violent conduct extends to sexual assault and apprehended domestic violence (as defined in the Dictionary). 10
- (3) An act is related to another act if:
- (a) both of the acts were committed against the same person, and 15
 - (b) in the opinion of the Tribunal or compensation assessor, both of the acts were committed at approximately the same time or were, for any other reason, related to each other.
- However, an act is not related to any earlier act in respect of which an award of statutory compensation has been made if it occurs after the award was made. 20
- (4) For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of violence.

Clause 6 Victims Compensation Bill 1996

Part 2 Statutory compensation scheme
Division 1

Part 2 Statutory compensation scheme

Division 1 Victims eligible for statutory compensation

6 Persons eligible for statutory compensation

The following persons are eligible for statutory compensation:

- (a) a primary victim of an act of violence, 5
- (b) a secondary victim of an act of violence,
- (c) a family victim of an act of violence.

7 Who is a primary victim?

- (1) A *primary victim* of an act of violence is a person who receives a compensable injury, or dies, as a direct result of that act. 10
- (2) A primary victim of an act of violence extends to a person who receives a compensable injury, or dies, as a direct result of:
 - (a) trying to prevent another person from committing that act, or
 - (b) trying to help or rescue another person against whom that act is being committed or has just been committed, or 15
 - (c) trying to arrest another person who is committing, or who has just committed, that act.

8 Who is a secondary victim?

- (1) A *secondary victim* of an act of violence is a person who receives a compensable injury as a direct result of witnessing the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act. 20
- (2) A secondary victim of an act of violence extends to a person who receives a compensable injury as a direct result of subsequently becoming aware of the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act, but only if:
 - (a) the person is the parent or guardian of the primary victim of that act, and 30

- (b) the primary victim was under the age of 18 years at the time of that act, and
- (c) the person did not commit that act.

The person is taken, for the purposes of this Act, to have witnessed the act of violence.

5

- (3) For the purposes of this section, a primary victim does not include a person who is a primary victim only because of the operation of section 7 (2).

9 Who is a family victim?

- (1) A *family victim* of an act of violence is a person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act. 10
- (2) It is immaterial whether or not the person suffers a compensable injury in connection with the act of violence or death. 15
- (3) A *member of the immediate family* of a primary victim is:
 - (a) the victim's spouse, or
 - (b) the victim's de facto spouse, or partner of the same sex, who has cohabited with the victim for at least 2 years, or
 - (c) a parent, guardian or step-parent of the victim, or 20
 - (d) a child or step-child of the victim or some other child of whom the victim is the guardian, or
 - (e) a brother, sister, step-brother or step-sister of the victim.

Division 2 Schedule of compensable injuries

10 Prescription of schedule of compensable injuries

25

- (1) The schedule of compensable injuries is set out in Schedule 1.
- (2) The schedule specifies those injuries that are *compensable injuries* for the purposes of this Act.

- (3) The schedule specifies, as the standard amount of compensation for a compensable injury, a specified amount or an amount within a range of specified amounts.

11 Compensable injuries described by reference to act of violence

- (1) This section applies when the schedule of compensable injuries specifies, as a compensable injury, all injuries received as a direct result of a specified act of violence and specifies a single standard amount or range of compensation for all of those injuries. 5
- (2) An applicant for statutory compensation may elect whether to claim compensation of that single standard amount or range or to claim compensation of the total standard amounts for each of the injuries received by the applicant (subject to any discount rates or other provisions in the schedule of compensable injuries). 10
- (3) In the absence of an election, the person determining the application is to make the election. 15

Note. See injury described in Schedule 1 as sexual assault.

12 Substitution or amendment of schedule

The regulations may amend Schedule 1 by substituting or amending the schedule of compensable injuries. 20

13 Provisions relating to schedule

- (1) If more than one compensable injury is received by an eligible victim, the schedule of compensable injuries may exclude the payment of compensation, or discount the rates of compensation payable, for some of those injuries. 25
- Note.** See paragraph 3 of Schedule 1.
- (2) The schedule of compensable injuries may make provision for compensable injuries of a kind not specifically described in the schedule and for the standard amount of compensation payable for such an injury. 30

Note. See paragraph 8 of Schedule 1.

- (3) The schedule may contain provisions relating to the application of the schedule (including provisions relating to the interpretation of the schedule, provisions relating to establishing whether an injury is a compensable injury and provisions of a transitional nature consequent on the amendment of Schedule 1).

5

Division 3 Statutory compensation payable

14 Compensation payable to primary victims

- (1) The statutory compensation for which a primary victim of an act of violence is eligible comprises:
- (a) compensation for compensable injuries received by the victim as a direct result of the act of violence, and
 - (b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury.
- (2) A primary victim who dies ceases to be eligible for statutory compensation, but a family victim may then become eligible for statutory compensation under this Act. Any pending application for compensation made by or on behalf of the primary victim does not survive the death of the primary victim.

10

15

15 Compensation payable to secondary victims

The statutory compensation for which a secondary victim of an act of violence is eligible comprises:

20

- (a) compensation for compensable injuries received by the victim as a direct result of witnessing the act of violence, and
- (b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury.

25

16 Compensation payable to family victims

- (1) The statutory compensation for which all family victims of an act of violence are together eligible is, subject to this Act, \$50,000.

- (2) If there are 2 or more family victims of an act of violence:
- (a) the victims are eligible to an equal share of the amount of \$50,000, subject to paragraph (b), and
 - (b) victims who were not dependent family members at the time of the act of violence are not eligible for any amount of compensation if there are also dependent family members at that time. 5
- (3) A family victim is a *dependent family member* if:
- (a) the person was wholly or mainly dependent on the primary victim's income at the relevant time, or 10
 - (b) the person is a child of the primary 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 dependent family member of the victim by virtue of paragraph (a).

17 Compensation for compensable injuries 15

- (1) Compensation for compensable injuries is payable in accordance with the schedule of compensable injuries.
- (2) Unless the amount of compensation is required or authorised to be reduced by this Act, the amount of compensation payable is the standard amount calculated in accordance with the schedule. 20

18 Compensation for financial loss

- (1) Compensation for financial loss is compensation for the following:
 - (a) actual expenses,
 - (b) actual loss of earnings, 25
 - (c) loss of personal effects (in the case of a primary victim only).
- (2) Compensation for loss of personal effects is compensation payable to a primary victim who has received a compensable injury for the loss of, or for damage to, any personal effects that were worn or carried by the primary victim at the time of the act of violence and that were lost or damaged as a direct result of that act. The maximum amount payable in respect of an act of violence is \$1,000. 30

-
- (3) Compensation for actual loss of earnings is to be calculated at the rate of weekly payment of compensation payable under the *Workers Compensation Act 1987* after the first 26 weeks of incapacity within the meaning of that Act.
- (4) The maximum amount of compensation for financial loss to which a person is entitled in respect of an act of violence is \$10,000. 5
- (5) Compensation for financial loss is not payable to a person to the extent that the person has received, or is entitled to receive, payment for that loss under any insurance or agreement or under any other Act or law. 10

19 Maximum amount of compensation

- (1) The maximum amount of statutory compensation payable to a single person in respect of an act of violence is \$50,000.
- (2) The maximum amount of statutory compensation that all of the following victims are together eligible to receive is \$50,000: 15
- (a) a primary victim of an act of violence,
 - (b) all secondary victims claiming through that primary victim,
 - (c) all family victims claiming through that primary victim. 20
- (3) If entitlements to statutory compensation are required to be reduced because of the maximum amount provided by this section:
- (a) the amounts payable to secondary victims are to be reduced rather than the amounts payable to primary victims or family victims, and 25
 - (b) the amount of \$50,000 payable to family members is to be reduced by any amount paid to a primary victim (or to any secondary victim claiming through the primary victim) before the primary victim's death. 30

- (4) If the amount of statutory compensation otherwise payable to 2
or more secondary victims is to be reduced because of this
section, the amount available to be paid is to be apportioned
among those victims in the same proportions as the amount
otherwise payable to each such victim bears to the total of those
amounts. 5
- (5) This section applies despite any other provision of this Act
(except section 20).

20 Threshold amount of compensation

- (1) Statutory compensation is not payable to a single person unless 10
the total amount of compensation payable to that person, as
compensation for compensable injuries, is at least:
(a) subject to paragraph (b)—\$2,400, or
(b) such other amount as is fixed by proclamation.
- (2) Any such proclamation: 15
(a) may fix a single amount or different amounts in different
cases, and
(b) may be revoked or varied from time to time by a further
proclamation.
- (3) This section does not apply to statutory compensation payable to 20
family victims.
- (4) This section applies despite any other provision of this Act.

21 Special payments for counselling of victims

- (1) A victim who is eligible for statutory compensation may apply 25
for payment for approved counselling services for the victim as a
consequence of the act of violence.
- (2) A victim is entitled to an initial period of 2 hours of counselling
(including counselling for the purposes of an application for
continued counselling or for statutory compensation).

-
- (3) The victim is entitled to payment for such further periods of counselling (not exceeding 20 hours) as a compensation assessor considers appropriate. Payment for any further period of counselling exceeding 20 hours may be made only with the approval of the Director. 5
- (4) The victim is entitled to payment for approved counselling services even though the victim is entitled to workers compensation in respect of the matter or is awarded compensation by a court under Part 4.
- (5) The victim is entitled to payment for approved counselling services even though the maximum amount of statutory compensation is payable in respect of the act of violence. 10
- (6) The victim is not entitled to payment for approved counselling services if it is unlikely that the victim would qualify for statutory compensation because of the application of the minimum amount of statutory compensation payable under this Act. A determination under this subsection is to be made on the assumption that the victim is the only victim of the act of violence. 15
- (7) Payments for approved counselling services are to be made from the Compensation Fund directly to the service provider, except that payments for the initial period of 2 hours may be made from that Fund by way of re-imbusement of the victim if it was not reasonably practicable for the victim to obtain approval for the payment before undertaking the counselling. 20
25
- (8) An appeal does not lie to the Tribunal against a decision of a compensation assessor or the Director under this section. However, a decision of a compensation assessor may be reviewed by the Director and, if the period of counselling exceeds 20 hours, by a member of the Tribunal. 30
- (9) Compensation rules may be made for or with respect to payments for counselling services, including the application (with or without modification) of the provisions of this Act relating to statutory compensation.

- (10) For the purposes of this section, *approved counselling services* are services provided by a professional counsellor chosen by the victim from a list of counsellors designated by the Director.

Division 4 Persons not eligible for statutory compensation

22 Secondary or family victims

5

- (1) A secondary victim or family victim is not eligible to receive statutory compensation if the primary victim through whom he or she is claiming is not eligible, or if the primary victim had not died would not have been eligible, to receive statutory compensation. 10
- (2) A secondary victim is not entitled to claim statutory compensation before 1 year has elapsed since the act of violence concerned occurred, unless:
- (a) a notice of the secondary victim's intention to claim statutory compensation has been served (in accordance with the compensation rules) on: 15
- (i) the primary victim through whom he or she is claiming, or
- (ii) if that primary victim has died—at least one of the immediate family of that primary victim, and 20
- (b) no application has been made by or on behalf of that primary victim, or a relevant family victim, within 3 months after the service of the notice.
- (3) Despite subsection (2), such a secondary victim is entitled to claim statutory compensation within that period of 1 year if an application for statutory compensation made by or on behalf of that primary victim or a relevant family victim has been finally disposed of. 25
- (4) An award of statutory compensation is not to be made to a family victim within 3 months after the application was made unless it appears that no other family victim exists or is likely to make an application for statutory compensation. 30

23 Eligibility to receive compensation in respect of same act of violence

- (1) A person is not eligible to receive more than one award of statutory compensation in respect of the same act of violence.
- (2) No more than one award of compensation may be made with respect to any one application for statutory compensation. 5
- (3) A person is eligible to receive statutory compensation in respect of the same act of violence in only one of the capacities of primary victim, secondary victim or family victim.

24 Other persons not eligible to receive compensation 10

- (1) **Claimants for court compensation awards**
A person is not eligible to receive statutory compensation in respect of an act of violence if the person has been paid, or is entitled to be paid, compensation awarded by a court in respect of that act under Part 4 or if the person's application for such compensation is pending. 15
- (2) **Motor vehicle accidents**
A person is not eligible to receive statutory compensation in respect of an act of violence if that act took the form of, or the injury arose as a consequence of, a motor accident within the meaning of the *Motor Accidents Act 1988*. 20
- (3) **Offenders**
A person is not eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was engaged in behaviour constituting an offence. 25
- (4) **Convicted inmates**
A person is not, except as provided by subsection (5), eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was imprisoned as a convicted inmate within the meaning of the *Correctional Centres Act 1952* (unless the person was imprisoned only because of the person's failure to pay a pecuniary penalty). 30

- (5) **Exception to ineligibility of convicted inmates**
However, any such convicted inmate may, in special circumstances, receive statutory compensation. Any such award must not be made unless:
- (a) the award of compensation is made by the Tribunal, and 5
 - (b) the Tribunal is satisfied that the special circumstances of the case justify an exception being made to the general ineligibility of convicted inmates.

Without limiting the foregoing, the Tribunal may determine that special circumstances exist if the convicted inmate is seriously and permanently injured as a result of the act of violence concerned. 10

Division 5 Applications for statutory compensation

25 Lodging of applications

- (1) An application for statutory compensation may be made: 15
- (a) by a primary victim, secondary victim or family victim of an act of violence, or
 - (b) by any other person, on behalf of such a victim, who has a genuine interest in the welfare of that victim.
- (2) An application: 20
- (a) must be in the form required by the compensation rules, and
 - (b) must be accompanied by such documentary evidence (such as medical certificates) as may be required by that form, and 25
 - (c) must be lodged with the Director.
- (3) An application may also be lodged with the Clerk of a Local Court. In that case, the Clerk is to forward the application to the Director as soon as practicable after it is so lodged.

26 Time for lodging applications

- (1) An application for statutory compensation must be duly lodged within 2 years after the relevant act of violence occurred or, in the case of a family victim, within 2 years after the death of the primary victim. 5
- (2) An application that is lodged out of time may be accepted with the leave of the Director.
- (3) The following policies apply to the giving of leave by the Director for the acceptance of an application lodged out of time:
 - (a) leave should not be given unless the applicant establishes that there is good reason to do so, 10
 - (b) however, leave should be given in cases of sexual assault, domestic violence or child abuse unless the Director is satisfied that there is no good reason to do so,
 - (c) leave should not be given merely because the applicant is unaware of the time within which applications should be lodged, 15
 - (d) the matters taken into account under section 30 (2) for the purpose of determining whether an act of violence was reported to a police officer within a reasonable time should also be taken into account for the purpose of determining whether there is a good reason for giving leave. 20

27 Consideration of applications by compensation assessors

- (1) Each duly lodged application for statutory compensation is to be considered by a compensation assessor. 25
- (2) The application is to be dealt with by a compensation assessor without conducting a hearing into the matter.

28 Medical examinations

- (1) A compensation assessor may require an applicant for statutory compensation to undergo an examination (not being an examination that is unreasonable, unnecessarily repetitious or dangerous):
 - (a) by a duly qualified medical practitioner, or duly qualified psychologist, specified by the assessor, or 30

(b) by a duly qualified medical practitioner or duly qualified psychologist belonging to a class of medical practitioners, or class of psychologists, specified by the assessor.

(2) The costs of any such examination are to be paid for out of the Compensation Fund. 5

29 Determination of applications

(1) After considering an application for statutory compensation, the compensation assessor must determine the application:

- (a) by making an award of statutory compensation, or
- (b) by dismissing the application. 10

(2) An award of statutory compensation must not be made unless the compensation assessor is satisfied, on the balance of probabilities, that the person to whom the application for that compensation relates:

- (a) is a primary victim, secondary victim or family victim of an act of violence, and 15
- (b) is eligible to receive the amount of compensation provided by the award.

(3) The compensation assessor must, in determining the application, have regard to the guidelines issued by the Tribunal under section 65. 20

(4) Written notice is to be given to the applicant of the determination of the application.

(5) If an award of compensation is made, the notice must include:
(a) a statement of the amount (if any) payable by way of compensation for compensable injuries and a statement of the amount (if any) payable by way of compensation for financial loss, together with a statement of the reasons for awarding those amounts, and 25

(b) a statement of the amount (if any) payable by way of costs. 30

(6) If the application is dismissed, the notice must include a statement of the reasons for the dismissal.

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

- (1) In determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard to the following: 5
- (a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary or secondary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim, 10
 - (b) whether the act of violence was reported to a police officer within a reasonable time,
 - (c) whether that victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed, 15
 - (d) whether that victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed, 20
 - (e) such other matters as the compensation assessor considers relevant.
- (2) In determining whether a matter relating to a victim was reported to a police officer within a reasonable time, the compensation assessor may have regard to such matters as the assessor considers relevant, including the following: 25
- (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, 30
 - (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,

- (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,
 - (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 or consent to no further action being taken in relation to the act of violence. 5
- (3) In determining the amount of statutory compensation to award to a person, the compensation assessor must have regard to: 10
- (a) any amount that has been paid to the person or that the person is entitled to be paid:
 - (i) by way of damages awarded in civil proceedings, or
 - (ii) under any other Act or law (including workers compensation), or 15
 - (iii) under any insurance or other agreement, and
 - (b) any other amount that has been received by the person or that (in the opinion of the assessor) is likely to be received by the person, 20
- in respect of the act of violence to which the application for statutory compensation relates.
- (4) If the compensation assessor is satisfied that the applicant may be entitled to workers compensation (or payment in the nature of workers compensation) in respect of the act of violence to which the application for statutory compensation relates, the assessor is to postpone the determination of the application until any entitlements to workers compensation have been determined. 25
- (5) This section applies to an application for statutory compensation by a family victim and to the primary victim through whom the claim is made. Accordingly, despite anything to the contrary in section 16, the amount of \$50,000 payable to family victims may be reduced or no award may be made. 30

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

- (1) For the purpose of giving effect to a determination for restitution under Division 8 that is to be made against a person to whom an award of statutory compensation is to be made, the compensation assessor may reduce the amount of the proposed award by the amount of the proposed determination for restitution. 5
- (2) On the making of a determination for restitution that has given rise to the reduction of an award of statutory compensation under this section, the person against whom the determination is made is taken to have paid the amount of the determination. 10

32 Persons to whom compensation may be made payable

- (1) An award of statutory compensation may be made payable:
- (a) to the person to whom the application for statutory compensation relates, or 15
- (b) to any other person for the benefit of that person.
- (2) In making a decision as to whom an award of statutory compensation should be made payable, the compensation assessor must have regard to the likelihood that a person by whom an act of violence was allegedly committed may receive the benefit of the award or any part of the award. 20

33 Interim awards of compensation

- (1) Pending the determination of an application for statutory compensation, the compensation assessor may:
- (a) if it appears that the person to whom the application relates is in severe financial hardship, or 25
- (b) in the case of a family victim, if payment is due for funeral expenses relating to the primary victim, or
- (c) in such other circumstances as the compensation assessor considers appropriate, 30
- make an interim award of statutory compensation to that person.

- (2) An interim award is not to be made unless the compensation assessor is satisfied that the applicant will be entitled to receive statutory compensation when the application is determined.
- (3) If an interim award is made but the application for statutory compensation is then dismissed, the amount of the interim award becomes a debt due to the Compensation Fund Corporation by the applicant. 5
- (4) If, on determining the application, the compensation assessor decides to award statutory compensation to the person to whom the application relates, the assessor must deduct the amount of any interim award of statutory compensation from the amount of statutory compensation that the assessor would otherwise have awarded. 10

34 Compensation may be awarded subject to conditions

- (1) An award of statutory compensation (including an interim award) may be made subject to such conditions as the compensation assessor thinks fit: 15
 - (a) as to the notification to the Director of such matters (including matters relating to the financial circumstances of the person to or for whose benefit the award is made) as may be specified in the notice of determination relating to the award, or 20
 - (b) as to the assignment by the person to or for whose benefit the award is made of that person's right to any entitlement that the person has by way of damages awarded in civil proceedings, or 25
 - (c) as to the repayment of the whole or any part of the amount of the award under such circumstances as may be specified in the notice of determination relating to the award, or
 - (d) in the case of an award that is payable to a person for the benefit of some other person: 30
 - (i) as to the payment of the statutory compensation to or for the benefit of that other person, or

(ii) as to the holding of the whole or any part of the statutory compensation on trust for that other person.

(2) The compensation rules may prescribe conditions to which an award of statutory compensation is subject. 5

35 Costs of applications for compensation and proceedings before Tribunal

(1) An applicant for statutory compensation is entitled to be paid his or her costs in respect of the application (whether or not proceedings are taken before the Tribunal on appeal or otherwise) in accordance with such scale of costs as may be prescribed by the compensation rules. 10

(2) An applicant may, if the Tribunal or a compensation assessor so directs, be awarded costs under this section even if the application for compensation is dismissed. 15

(3) The Tribunal or a compensation assessor may award an applicant costs in excess of the amount to which the person would otherwise be entitled under this section, if of the opinion that the special circumstances of the case justify such an award being made. The Tribunal or compensation assessor may also decline to make an award of costs or award costs of a lesser amount. 20

(4) Despite any Act or law to the contrary, but subject to any order of the Tribunal or compensation assessor, a legal practitioner is not entitled to charge or recover, by way of costs in respect of an application for statutory compensation or of the proceedings of the Tribunal in respect of such an application, any amount in excess of the amount payable in accordance with the scale of costs referred to in subsection (1). 25

(5) The Tribunal or a compensation assessor may disallow any costs incurred in connection with a medical report prepared for the purpose of an application for statutory compensation or proceedings before the Tribunal. In that case, the Tribunal or Director may cause a complaint to be made to: 30

- (a) the Health Care Complaints Commission, or
- (b) any other relevant body concerned with the practice of medicine, 35

Clause 35 Victims Compensation Bill 1996

Part 2 Statutory compensation scheme
Division 5

if of the opinion that the fees charged by a medical practitioner in connection with the report are grossly excessive for the services to which they relate.

- (6) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section):
 - (a) under which the operation of subsection (4) is excluded, modified or restricted, or
 - (b) which has the effect of excluding, modifying or restricting the operation of subsection (4),
- is void.
- (7) An award of costs under this section may be made payable:
 - (a) to the applicant, or
 - (b) to any other person for the benefit of the applicant.

Division 6 Appeals and references to Tribunal and District Court 15

36 Appeal to Tribunal by applicant

- (1) An applicant for statutory compensation who is aggrieved by the determination of a compensation assessor in respect of the application may appeal to the Tribunal against the determination. 20
- (2) A person who is aggrieved by a determination of the Director to refuse leave for a late application for statutory compensation may appeal to the Tribunal against the determination.
- (3) An appeal may be made:
 - (a) within the period of 3 months after the day on which the relevant notice of the determination made by the compensation assessor or Director was duly served on the person, or 25
 - (b) within such further time as the Tribunal may in exceptional circumstances allow. 30

37 Reference of application to Tribunal by assessor or by Chairperson of Tribunal

- (1) If the compensation assessor dealing with an application for statutory compensation considers that the determination of the application requires a hearing, the Director may refer the application to the Tribunal for a hearing into and determination of the matter. 5
- (2) If the Chairperson of the Tribunal considers that an application for statutory compensation that has been determined by a compensation assessor should be reviewed by the Tribunal, the Director is to refer the application to the Tribunal for re-determination. 10

38 Hearing and determination by Tribunal

- (1) The Tribunal may conduct a hearing into a matter the subject of an appeal or reference to it under this Division for determination. The hearing is to be conducted in accordance with Schedule 2. 15
- (2) If the Tribunal is satisfied that the matter can be properly determined without a hearing, the Tribunal is to proceed to determine the matter accordingly.
- (3) An appeal from a determination of a compensation assessor is to be determined on the evidence and material provided to the compensation assessor. However, the Tribunal may, by leave, receive further evidence and material if it considers that special grounds exist or if the evidence or material concerns matters occurring after the determination appealed against. 20 25
- (4) The Tribunal is to determine the matter in accordance with the relevant provisions of Division 5 and, for that purpose a reference in that Division to a compensation assessor or the Director is taken to be a reference to the Tribunal.
- (5) The Tribunal may, without limiting the generality of subsection (4), do any of the following: 30
- (a) affirm or set aside any determination of a compensation assessor,
- (b) remit the application to be considered and determined again by a compensation assessor in accordance with the directions of the Tribunal. 35

- (6) The Tribunal is to so remit the application if further evidence and material received by the Tribunal could reasonably have been provided to the compensation assessor who dealt with the matter.

39 Appeals to the District Court on questions of law

- (1) An applicant for statutory compensation may, with the leave of the District Court, appeal to the District Court on a question of law arising in any determination of the application by the Tribunal. 5
- (2) An appeal by a person under this section may be instituted:
- (a) within the period of 3 months after the day on which the relevant notice of the determination made by the Tribunal was duly served on the person, or 10
- (b) within such further time as the District Court may in exceptional circumstances allow.
- (3) For the purposes of this section, the following matters are not questions of law: 15
- (a) a determination of whether an injury for which compensation has been claimed is an injury specified in the schedule of compensable injuries or whether it is a compensable injury of a particular description specified in that schedule, 20
- (b) a determination of whether a series of acts are related and constitute a single act of violence.
- (4) An appeal does not lie to the District Court against a decision of the Tribunal to refuse leave for a late application for statutory compensation. 25
- (5) On an appeal, the District Court may only:
- (a) affirm the determination of the Tribunal, or
- (b) set aside the determination and remit the matter to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the decision of the District Court on the question of law concerned. 30

40 Payment of compensation suspended pending appeal to Tribunal or District Court

Subject to any order of the Tribunal or District Court to the contrary, the institution of an appeal to the Tribunal or District Court (or the referral of an application for re-determination by the Tribunal) suspends the application of section 42, in relation to the payment of compensation, pending the determination of the appeal or the re-determination. 5

41 Compensation Fund Corporation respondent to appeals

The Compensation Fund Corporation is the respondent to any appeal or reference under this Division. 10

Division 7 Payment of compensation**42 Compensation Fund Corporation to pay compensation**

- (1) An application for payment of the whole or any part of an award of statutory compensation or costs under this Part is to be made to the Director who is required to forward the application to the Compensation Fund Corporation. 15
- (2) On receiving such an application, the Compensation Fund Corporation must (subject to the conditions of the award and any deductions made in accordance with those conditions) pay the relevant amount to the person to whom the award is payable. 20
- (3) The amount is to be paid out of the Compensation Fund or, if sufficient money is not available in that Fund, out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly. 25

43 Effect of award on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person to whom an award of statutory compensation has been made under this Part on the basis of the same facts as those on which the civil proceedings are based. 30

- (2) Subject to subsection (3), an award of statutory compensation does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings must be assessed without regard to the award.
- (3) On the payment to a person of an award of statutory compensation, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the award is based is, by operation of this section, subrogated to the State to the extent of the amount of compensation so paid. 5
10
- (4) This section does not limit the operation of section 57 or 76.

44 Recovery from fraudulent claimants

- (1) If a person is convicted of:
 - (a) an offence of obtaining an award of statutory compensation by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement, or 15
 - (b) an offence, in relation to the obtaining of an award of statutory compensation, of a kind prescribed by the compensation rules, 20

the Tribunal may, on application by the Director, make an order for restitution for such amount as has been paid to the person under the award.
- (2) An order for restitution may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence. 25
- (3) The provisions of Division 8 relating to the recovery of money under an order for restitution under that Division apply to an order for restitution under this section.

Division 8 Recovery of compensation from offenders 30

45 Definitions

In this Division:

defendant means the person on whom a provisional order for restitution is served.

notice of objection means notice by the defendant under section 47 of objection to the confirmation of a provisional restitution order.

order for restitution means a provisional order for restitution that is confirmed by the Tribunal under section 48 or 49. 5

provisional order for restitution means a provisional order for restitution that is made by the Director under section 46.

recovery proceedings means proceedings of the Tribunal concerning the confirmation of a provisional order for restitution.

victim means a person to whom an amount has been paid under an award of statutory compensation. 10

46 Director may make provisional order for restitution by offender

- (1) If the Director is of the opinion that, before or after an award of statutory compensation is made, a person has been convicted of a relevant offence, the Director may make a provisional order for restitution against the person so convicted. 15
- (2) A ***relevant offence*** is:
 - (a) an offence arising from substantially the same facts as those constituting an act of violence in respect of which the award of statutory compensation was made, or 20
 - (b) any other offence if an offence referred to in paragraph (a) was taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that other offence.
- (3) The Director must cause notice of the provisional order to be served on the person so convicted in accordance with the compensation rules. 25
- (4) The notice of the provisional order must:
 - (a) set out the terms of the order, and
 - (b) specify the date on which the award of statutory compensation was made and the facts on which the award was based, and 30

- (c) specify the offence to which the order relates and the date on which it is alleged that the person was convicted of the offence, and
 - (d) state that the person has 28 days in which to object to the order by a notice filed in the office of the Director, and 5
 - (e) state that if the person does not object the order will be confirmed by the Tribunal and become a judgment debt payable by the person, and
 - (f) state that if the person files a notice of objection the Tribunal will conduct a hearing into whether the order should be confirmed, and 10
 - (g) contain such other particulars as the compensation rules may require.
- (5) A provisional order for restitution may not be made against a person if: 15
- (a) 2 years or more have elapsed since the date on which the relevant award of statutory compensation was paid, or
 - (b) civil proceedings have been commenced or are being maintained against the person, by or on behalf of the State, in respect of an action for damages arising from substantially the same facts as those on which the relevant award of statutory compensation was based. 20

47 Notice of objection by defendant

- (1) A defendant served with a provisional order for restitution may, within 28 days after service, file in the office of the Director a notice of objection to the confirmation of the order. 25
- (2) A notice of objection must comply with the compensation rules and must include the grounds of the objection on which the defendant intends to rely.

48 Confirmation by Tribunal of provisional order for restitution if defendant does not object to order 30

The Tribunal may confirm a provisional order for restitution without conducting a hearing if it is satisfied that the defendant has not filed a notice of objection within 28 days after notice of the provisional order was duly served on the defendant. 35

49 Hearing by Tribunal to confirm provisional order for restitution if defendant objects to order

- (1) If the defendant files a notice of objection to a provisional order for restitution within 28 days after notice of the provisional order was duly served on the defendant, the Tribunal must conduct a hearing to determine whether the provisional order should be confirmed (in this Division called *recovery proceedings*). 5
- (2) The Tribunal may confirm the provisional order if satisfied 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 statutory compensation was made. If the Tribunal is not so satisfied, it must discharge the provisional order. 10
- (3) The Tribunal may vary a provisional order for restitution that it confirms. 15

50 Arrangement between Director and defendant as to payment under order for restitution

- (1) The Director and a defendant may enter into an arrangement with respect to payment under a provisional order for restitution or any such order that is confirmed. 20
- (2) Such an arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.
- (3) For the purpose of enabling the Director and the defendant to come to such an arrangement, the Tribunal may adjourn recovery proceedings for such period as it considers appropriate. 25
- (4) If the defendant does not comply with such an arrangement, recovery proceedings may be taken for the purposes of confirming the order for restitution for the total amount payable under the order.

51 Provisions relating to orders for restitution

- (1) The Tribunal may, when it confirms a provisional order, reduce the amount to be paid under the provisional order having regard to: 30

- (a) the financial means of the defendant, and
 - (b) such other matters as are, in the opinion of the Tribunal, relevant to the determination.
- (2) The maximum amount that may be ordered to be paid under an order for restitution (whether made against one or more defendants) is the amount that has been paid to the victim under the award of statutory compensation to which the order relates. 5
- (3) If an order for restitution is made against two or more defendants in respect of the same award of statutory compensation, each of the defendants is jointly and severally liable under the order. 10
- (4) If the Tribunal decides under subsection (1) to reduce the amount payable by a defendant under an order made against two or more defendants, the Tribunal may confirm the order subject to the liability of the defendant concerned being limited under the order to an amount specified in the order. 15

52 Procedural and evidentiary provisions relating to recovery proceedings

- (1) Subject to this Division and the compensation rules, recovery proceedings must be determined:
- (a) in accordance with the rules of evidence, and 20
 - (b) in accordance with the practice and procedure of Local Courts exercising civil jurisdiction,
- in the same way as the determination by a Local Court of an action commenced by way of an ordinary statement of claim (within the meaning of the *Local Courts (Civil Claims) Act 1970*). 25
- (2) The victim to whom recovery proceedings relate is competent, but not compellable, to give evidence in the proceedings.
- (3) Despite any rule of law to the contrary, evidence given by the victim: 30
- (a) in any application for an award of statutory compensation, or
 - (b) in any hearing relating to that application, or

-
- (c) in any other proceedings (whether civil or criminal) arising from substantially the same facts as those on which the award of statutory compensation was based,
is admissible in recovery proceedings.
- (4) If evidence so given by the victim is admitted in recovery proceedings but the victim does not attend as a witness in the proceedings, that evidence must be given no greater weight than is appropriate as a consequence of there having been no opportunity for the victim to be cross-examined in relation to that evidence. 5
- (5) The Tribunal does not have jurisdiction to order payment of costs in relation to recovery proceedings. 10
- (6) A person (other than a public servant) who is required to attend or to give evidence at recovery proceedings is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules. 15
- 53 Orders for restitution to be subject to appeals against relevant awards of statutory compensation**
- (1) An order for restitution does not have any effect:
- (a) until the period within which an appeal may be made against the award of statutory compensation from which it arises has expired, or 20
- (b) if such an appeal is duly made within that period, until the appeal is finally disposed of.
- (2) If the award of statutory compensation to which such an appeal relates is set aside or varied as a result of the appeal, the order for restitution ceases to have effect. 25
- (3) In the event that the award is varied, a new provisional order for restitution may be made in accordance with this Division as if the original order had not been made. 30
- 54 Order for restitution to be a judgment enforceable by Tribunal**
- (1) An order for restitution is taken to be a judgment of a Local Court in proceedings on a statement of claim under the *Local Courts (Civil Claims) Act 1970* and may be enforced accordingly by the Tribunal in accordance with the provisions of that Act. 35

- (2) Interest is payable on the amount payable under an order for restitution in accordance with the provisions relating to interest on the amount payable under such a judgment.
- (3) Money payable under an order for restitution and not paid may be written off in accordance with a relevant policy on the matter determined by the Minister. 5
- (4) Compensation rules may be made for the purposes of this section, and for that purpose may apply the provisions of the *Local Courts (Civil Claims) Act 1970*, with or without modification. 10
- (5) In addition, the compensation rules may make provision for the attachment of the prison earnings of convicted persons for the purposes of enforcing orders for restitution.

55 Appeals against orders for restitution

- (1) An order for restitution that is confirmed after a hearing before the Tribunal may be appealed against in the same way as a judgment of a Local Court exercising civil jurisdiction may be appealed against. 15
- (2) An appeal may not be lodged under this section if 1 month or more has elapsed since the date on which the order for restitution was made. 20

56 Orders for restitution may be set aside

- (1) The Tribunal, on sufficient cause shown, may, by order, set aside an order for restitution.
- (2) The Tribunal may stay the execution of a judgment pending the determination of any proceedings to set aside the order for restitution. 25
- (3) If the Tribunal makes an order under this section, the defendant is entitled to be paid such amount, by way of costs in relation to the setting aside of the order for restitution, as may be prescribed by the compensation rules. 30

57 Effect of order for restitution on subsequent civil proceedings

- (1) This section applies to civil proceedings in respect of an injury or loss sustained by a person to whom an award of statutory compensation has been made (being an award in respect of which an order for restitution has been made) on the basis of the same facts as those on which the civil proceedings are based. 5
- (2) An order for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the order.
- (3) However, the right of the State, under section 43, to commence or maintain civil proceedings is extinguished by an order for restitution. 10
- (4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the State under section 43. 15
- (5) This section does not limit the operation of section 43 or 76.

58 Access to information about whereabouts of defendant

Police officers, the Roads and Traffic Authority and other government agencies are authorised to provide the Director with information about the address of a defendant for the purpose of serving a provisional order for restitution on the defendant or taking any action against the defendant to enforce an order for restitution. 20

Part 3 Administration of statutory scheme

Division 1 Victims Compensation Tribunal

59 Constitution of Tribunal

- (1) There is constituted by this Act a Victims Compensation Tribunal. 5
- (2) The Tribunal is to consist of such members as the Governor may, on the recommendation of the Attorney General, appoint.
- (3) Only Magistrates are eligible to be appointed as members of the Tribunal.
- (4) Of the members of the Tribunal, one is (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) to be appointed as Chairperson of the Tribunal. 10
- (5) Schedule 2 has effect with respect to the Tribunal.

60 Jurisdiction and functions of the Tribunal 15

- (1) The Tribunal has the jurisdiction and functions conferred or imposed on it by or under this or any other Act.
- (2) In the exercise of its jurisdiction and functions, the Tribunal must do all such things as are necessary to ensure that proceedings before it are disposed of within as short a period as is reasonably practicable. 20

61 Authorised Magistrates

The Chairperson of the Tribunal may, by order made with the consent of the Chief Magistrate, declare that the jurisdiction and functions of the Tribunal may be exercised by such Magistrate or Magistrates as is or are specified in the order. 25

62 Single member to exercise the jurisdiction and functions of the Tribunal

The jurisdiction and functions of the Tribunal may be exercised:

- (a) by a member of the Tribunal, or
- (b) by an authorised Magistrate,
sitting alone.

5

Division 2 Director, assessors and other staff**63 Director of Victims Compensation, Registrar of Tribunal and other staff**

- (1) A Director of Victims Compensation, Registrar of the Tribunal and such other staff as are necessary for the purposes of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*. 10
- (2) The Director may delegate to the Registrar of the Tribunal, a compensation assessor or to any such other staff any of the functions of the Director under this Act, other than this power of delegation. 15

64 Compensation assessors

- (1) Compensation assessors are to be employed for the purposes of this Act under Part 2 of the *Public Sector Management Act 1988*. 20
- (2) A person ceases to be a compensation assessor if the person ceases to be so employed.
- (3) The Director is a compensation assessor.

65 Guidelines and arrangements relating to compensation assessors

- (1) The Tribunal may issue guidelines, consistent with this Act and the compensation rules, to compensation assessors with respect to the determination of applications for statutory compensation. Compensation assessors must have regard to those guidelines in the exercise of their functions under this Act. 25
30

- (2) The Director is (subject to this Act) responsible for making arrangements for the work of compensation assessors (including the allocation of matters to particular assessors).
- (3) The Director, the appropriate Department Head or any other public servant may not direct, overrule or interfere with the determination of a compensation assessor on a matter allocated to the assessor. However, the Director may, at any time before its determination, re-allocate the matter to another compensation assessor. 5
- (4) This section does not affect the exercise of functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to compensation assessors. 10

Division 3 Victims Compensation Fund Corporation

66 Victims Compensation Fund Corporation

- (1) There is constituted by this section a corporation with the corporate name of the Victims Compensation Fund Corporation. 15
- (2) The affairs of the Compensation Fund Corporation are to be managed by the Director-General of the Attorney General's Department.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Compensation Fund Corporation by the Director-General of the Attorney General's Department is taken to have been done by the Corporation. 20
- (4) The Compensation Fund Corporation may delegate to an officer of the Attorney General's Department any of the functions (other than this power of delegation) conferred or imposed on the Corporation by or under this Act. 25

Division 4 Victims Compensation Fund

67 Victims Compensation Fund

- (1) There is established a fund called the Victims Compensation Fund (*the Compensation Fund*). 30

- (2) The Compensation Fund Corporation has the control and management of the Compensation Fund and the assets of the Compensation Fund are vested in the Corporation.
- (3) The Compensation Fund Corporation may invest money in the Compensation Fund: 5
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Corporation to invest money—in any manner authorised for the investment of trust funds. 10

68 Payments into the Compensation Fund

There are to be paid into the Compensation Fund:

- (a) all proceeds or profits confiscated under the *Confiscation of Proceeds of Crime Act 1989*, and
- (b) all money required by the *Drug Trafficking (Civil Proceedings) Act 1990* to be credited to the Fund, and 15
- (c) all money recovered under Division 8 of Part 2 or Part 5 of this Act, and
- (d) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act, and 20
- (e) all other money required by or under this or any other Act to be paid into the Fund.

69 Payments from the Compensation Fund

There are to be paid from the Compensation Fund: 25

- (a) all payments of statutory compensation, costs and victims' counselling under this Act, and
- (b) all expenses incurred by the Tribunal, Director, compensation assessors and other staff in the exercise of their functions under this Act, and 30
- (c) all expenses incurred by the Victims of Crime Bureau and the Victims Advisory Board under the *Victims Rights Act 1996* and any other expenses incurred in the provision of victim support services approved by the Minister, and
- (d) all expenses incurred in the administration of the Compensation Fund. 35

Part 4 Compensation awarded by court

70 Definitions

In this Part:

aggrieved person means:

- (a) in relation to an offence other than an offence in respect of the death of a person, a person who has sustained injury or loss through or by reason of:
 - (i) an offence for which the offender has been convicted, or
 - (ii) an offence taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that offence, or
- (b) in relation to an offence in respect of the death of a person, a member of the immediate family of the person.

direction for compensation means a direction for compensation under section 71. 15

71 Directions for compensation

- (1) If a person is convicted by a court of an offence, the court may (on the conviction or at any time afterwards) on notice given to the offender direct that a sum not exceeding \$50,000 be paid out of the property of the offender:
 - (a) to any aggrieved person, or
 - (b) to any aggrieved persons in such proportions as may be specified in the direction,by way of compensation for any injury or loss sustained through, or by reason of, the offence or, if applicable, any other offence taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that offence. 20
25
- (2) A direction for compensation may be given by a court on its own initiative or on application made to it by or on behalf of the aggrieved person. 30

72 Restrictions on court's power to give directions for compensation

- (1) A direction for compensation must not be given in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Part: 5
- (a) on the conviction of any other person for that offence, or
 - (b) on the conviction of that or any other person for a related offence,
- exceeds \$50,000. 10
- (2) A direction for compensation for injury or loss for which statutory compensation is payable must not be given if an award of statutory compensation in respect of the injury or loss has been made under Part 2 to or for the benefit of the aggrieved person.
- (3) For the purposes of this section, an offence is related to another offence if: 15
- (a) both of the offences were committed against the same person, and
 - (b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other. 20

However, an offence is not related to any earlier offence in respect of which a direction for compensation has been given if it is committed after the direction was given.

- (4) In this section, a reference to a direction for compensation previously given under this Part includes a reference to a direction for compensation previously given under Part 6 of the *Victims Compensation Act 1987*, or under section 437 or 554 (3) of the *Crimes Act 1900*. 25

73 Factors to be taken into consideration 30

In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court must have regard to:

- (a) any behaviour (including past criminal activity), condition, attitude or disposition of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person,
- (b) any amount which has been paid to the aggrieved person or which the aggrieved person is entitled to be paid by way of damages awarded in civil proceedings in respect of substantially the same facts as those on which the offender was convicted, and 5
- (c) such other matters as it considers relevant. 10

74 Payment of sum directed

Subject to section 9 of the *Criminal Appeal Act 1912* and to the provisions of the *Justices Act 1902*, any sum directed to be paid by an offender to an aggrieved person, under a direction for compensation, must be paid immediately, or within such period (if any) as is specified in the direction, to the registrar or clerk of the court for payment to the aggrieved person. 15

75 Enforcement of directions for compensation

- (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar or clerk of the court must, on the application of the aggrieved person, issue to the aggrieved person a certificate: 20
 - (a) that identifies the direction, and
 - (b) that specifies the offender, and 25
 - (c) that specifies the amount required by the direction to be paid which has not, as at the date of the certificate, been paid to the registrar or clerk.
- (2) If a certificate is issued under this section, the registrar or clerk must not subsequently accept any payment from the offender in respect of the direction for compensation identified in the certificate. 30
- (3) An aggrieved person may file such a certificate in the office or registry of a court having jurisdiction to order payment of the

amount specified in the certificate, and the registrar or clerk of that court must immediately enter judgment in favour of the aggrieved person against the offender specified in the certificate for:

- (a) the amount specified in the certificate as having not been paid, and 5
 - (b) any fees payable to the registrar or clerk in respect of the filing of the certificate.
- (4) A direction for compensation may only be enforced in accordance with this section and any amount not paid is not payable from the Compensation Fund or any other public money. 10

76 Effect of directions for compensation on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based. 15
- (2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the direction. 20
- (3) The judgment of the court in which the civil proceedings are determined:
 - (a) must not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid under the direction for compensation, and 25
 - (b) must not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid under the direction for compensation. 30
- (4) This section does not limit the operation of section 43 or 57.

Clause 77 Victims Compensation Bill 1996

Part 4 Compensation awarded by court

77 Directions for compensation not appealable on certain grounds

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

5

Part 5 Compensation levies

78 Application of Part

- (1) This Part applies to all offences that are:
 - (a) punishable by imprisonment, whether or not they are also punishable otherwise than by imprisonment, and 5
 - (b) dealt with by the Supreme Court, the District Court, a Local Court or the Children's Court.
- (2) This Part does not apply to an offence merely because it is taken into account (as referred to in section 21 of the *Criminal Procedure Act 1986*) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies. 10

79 Imposition of compensation levy

- (1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the State a levy of:
 - (a) \$70, if the person is convicted on indictment or pursuant to a committal under section 51A of the *Justices Act 1902*, or
 - (b) \$30, if the person is convicted otherwise than as referred to in paragraph (a). 20
- (2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.
- (3) 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 any time afterwards, that the person is exempt from liability to pay the levy. 25
- (4) Any money paid to the State in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence. 30

80 Payment and enforcement of compensation levy

- (1) The regulations may make provision for the manner in which compensation levies are to be paid and enforced.
- (2) In particular, the regulations may make provision for:
 - (a) the attachment of the prison earnings of convicted persons, 5
 and
 - (b) the imposition of community service orders on persons
 who fail to pay compensation levies.

81 Effect of appeal proceedings

- (1) The commencement of any proceedings by way of appeal 10
 against, or review of, a conviction or sentence in respect of which
 a compensation levy has been imposed on a person stays the
 liability of the person to pay the levy.
- (2) The setting aside of any such conviction annuls that liability.
- (3) The dismissal of any such proceedings removes the stay of 15
 liability.

Part 6 Miscellaneous

82 Act binds Crown

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5

83 Reports by Tribunal

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Chairperson of the Tribunal must prepare and forward to the Minister a report on the work and activities of the Tribunal and the compensation assessors for the 12 months ending on 30 June in that year. 10
- (2) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) Without limiting the generality of subsection (1), the Chairperson of the Tribunal must submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal and the compensation assessors. 15
- (4) A report may deal with such matters as the Minister directs and with such other matters as the Chairperson of the Tribunal considers appropriate to include in the report. 20

84 Inadmissibility of certain evidence in subsequent criminal proceedings

Despite any rule of law to the contrary:

25

- (a) an application for statutory compensation, and
- (b) any documents supporting the application (whether or not furnished when the application is lodged), and
- (c) any transcript of evidence given to the Tribunal in a hearing of the application, 30

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

85 Limitation of liability 5

- (1) No proceedings lie against the Tribunal, any authorised Magistrate, the Director, a compensation assessor or any other staff employed for the purposes of this Act for or on account of any act, matter or thing:
- (a) done or ordered to be done or omitted or suffered to be done by the Tribunal, authorised Magistrate, Director, compensation assessor or member of staff, and 10
 - (b) purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act, 15
- if the Tribunal, authorised Magistrate, Director, compensation assessor or member of staff has acted in good faith and with reasonable care.
- (2) A member of the Tribunal, or authorised Magistrate, in exercising the functions of the Tribunal, has the same protection and immunity as he or she has as a Magistrate. 20

86 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 25

87 Compensation rules

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by the compensation rules.
- (2) In particular, compensation rules may be made for or with respect to: 30
- (a) the practice and procedure of the Tribunal and compensation assessors, and

-
- (b) costs awarded by the Tribunal or compensation assessors, and
 - (c) the forms to be used under this Act (including their verification by affidavit or statutory declaration and the authorisation of a person to approve of those forms), and 5
 - (d) the service of documents under this Act, and
 - (e) the exercise of the functions of compensation assessors.
- (3) The compensation rules are, for the purposes of any Act, to be treated as rules of court.

88 Regulations 10

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

89 Savings, transitional and other provisions 15

Schedule 3 has effect.

90 Repeal of Victims Compensation Act 1987 No 237

- (1) The *Victims Compensation Act 1987* is repealed.
- (2) The *Victims Compensation Regulation 1988*, the *Victims Compensation Rule 1988* and any other regulation or rule under that Act are repealed. 20

91 Amendment of other Acts

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

92 Review of Act 25

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Clause 92 Victims Compensation Bill 1996

Part 6 Miscellaneous

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

5

Schedule 1 Compensable injuries

(Section 10)

1 Description of compensable injuries

The injuries specified in column 1 of the table to this Schedule are compensable injuries for the purposes of this Act.

5

2 Standard amount of compensation

The standard amount of compensation for any such compensable injury is the amount, or an amount within the range of amounts, specified in column 2 of the table to this Schedule opposite the injury.

10

3 Multiple injuries

If 2 or more compensable injuries are received by an eligible victim, the standard amount of compensation for all of those injuries is the total of the following amounts (subject to the other provisions of this Act):

15

- (a) The full standard amount for the most serious injury (that is, for the injury that has the largest standard amount payable).
- (b) 10% of the standard amount for the second most serious injury (that is, for the injury that has the same or the second largest standard amount payable).
- (c) 5% of the standard amount for the third most serious injury (that is, for the injury that has the same or the third largest standard amount payable).
- (d) No amount for any further injuries.

20

25

4 Reduction of standard amount because of existing condition

If the act of violence results in a compensable injury because of the aggravation, acceleration, exacerbation or deterioration of an existing condition of the eligible victim, the standard amount of compensation for the injury is to be reduced by the proportionate amount that the Tribunal or compensation assessor considers is attributable to the existing condition.

30

5 Shock

The following applies to the compensable injury of shock:

- (a) Compensation is payable only if the symptoms and disability persist for more than 6 weeks.
- (b) The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions. 5
- (c) The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of self-harm or guilt. 10
- (d) The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.
- (e) Relevant disabilities include impaired work or school or other educational performance, significant adverse effects on social relationships and sexual dysfunction. 15

6 Sexual assault

The following applies to the compensable injury of sexual assault:

- (a) Category 1 sexual assault consists of:
 - indecent assault, or 20
 - an assault with violence in the course of attempted unlawful sexual intercourse.
- (b) Category 2 sexual assault consists of:
 - unlawful sexual intercourse, or
 - the infliction of serious bodily injury in the course of attempted unlawful sexual intercourse. 25
- (c) Category 3 sexual assault consists of:
 - a pattern of abuse involving category 1 or category 2 sexual assault, or
 - unlawful sexual intercourse in which serious bodily injury is inflicted, or 30

-
- unlawful sexual intercourse in which 2 or more offenders are involved, or
 - unlawful sexual intercourse in which the offender uses an offensive weapon.

In this paragraph:

5

indecent assault means the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person.

unlawful sexual intercourse means sexual intercourse (within the meaning of section 61H of the *Crimes Act 1900*) with a person without his or her consent or with consent obtained by means of a non-violent threat, sexual intercourse with a child under the age of 16 years or with a person having an intellectual disability or self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat within the meaning of that section.

10

15

7 Burns and scarring

The following applies to the compensable injuries of burns and scarring:

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- (a) Compensation is not payable for scarring unless it is permanent.
- (b) Compensation is not payable for both burns to any part of the body and scarring of that part of the body caused by burns.
- (c) Payment for burns or scarring is subject to such reasonable inspection of the injury as the Tribunal or compensation assessor may require.

25

8 Injuries not specifically mentioned

An injury not specifically mentioned in Column 1 of the table to this Schedule is a compensable injury if, in the opinion of the Tribunal or compensation assessor dealing with the application for statutory compensation:

30

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Schedule 1 Compensable injuries

- (a) the injury is similar to an injury specifically mentioned in the table, and
- (b) the injury has caused symptoms or disability lasting for at least 6 weeks.

The standard amount of compensation for the injury is the standard amount for that similar injury. 5

9 Other interpretative provisions

- (a) For the purpose of determining the extent of an injury, the extent to which the injury, or the effect of the injury, may be reduced or limited by an external removable aid or appliance is to be disregarded. 10
- (b) If an eligible victim has only one leg, arm, eye or other body part, an injury to the remaining body part is to be regarded as an injury to both of those body parts.

Table 15

Column 1 Description of Injury	Column 2 Standard amount of compensation \$	
		20

Brain damage

moderate impairment of social/intellectual functions.....	36,000	
serious impairment of social/intellectual functions	50,000	
permanent—extremely serious (no effective control of functions)	50,000	25

Burns

multiple first degree burns covering at least 25% of body	50,000	
[For other burns to a part of the body, see burn injuries listed in this table under that part of the body]		30

Table—continued**Disease or other recognised medical illness
causing disability (not being a disease or illness
of the mind)**

disability lasting 6 to 13 weeks.....	2,400	5
disability lasting 14 to 28 weeks.....	9,600	
disability lasting over 28 weeks (but not permanent)	18,000	
permanent disability	48,000	

Epilepsy

fully controlled.....	18,000	10
partially controlled	30,000	
uncontrolled	50,000	

Head

burns (other than face): minor	3,600	
burns (other than face): moderate	9,600	15
burns (other than face): severe	18,000	
burns (face): minor	4,800	
burns (face): moderate.....	12,000	
burns (face): severe.....	50,000	
ear: fractured mastoid.....	2,400	20
ear: loss of one ear.....	24,000	
ear: loss of both ears	42,000	
ear: partial deafness of one ear—remaining hearing socially useful with hearing aid if necessary	8,400	
ear: partial deafness of both ears—remaining hearing socially useful with hearing aid if necessary	18,000	25
ear: total deafness of one ear.....	36,000	
ear: total deafness of both ears	50,000	
ear: partial loss of ear(s)	9,600	
ear: perforated ear drum.....	4,200	30
ear: temporary partial deafness—lasting 6 to 13 weeks	2,400	

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Schedule 1 Compensable injuries

Table—continued

ear: temporary partial deafness—lasting more than 13 weeks	3,600	
ear: tinnitus (ringing noise in ears)—lasting 6 to 13 weeks	2,400	5
ear: tinnitus—lasting more than 13 weeks.....	7,200	
ear: tinnitus—permanent (moderate)	18,000	
ear: tinnitus—permanent (very serious).....	36,000	
eye: blow out fracture of orbit bone cavity containing eyeball	7,200	10
eye: blurred or double vision—lasting 6 to 13 weeks.....	2,400	
eye: blurred or double vision—lasting more than 13 weeks	4,200	
eye: blurred or double vision—permanent	18,000	
eye: cataracts one eye (requiring operation)	7,200	15
eye: cataracts both eyes (requiring operation).....	18,000	
eye: cataracts one eye (permanent/inoperable)	18,000	
eye: cataracts both eyes (permanent/inoperable).....	42,000	
eye: corneal abrasions	4,800	
eye: damage to iris resulting in hyphaema (bleeding in ocular chamber).....	6,000	20
eye: damage to irises resulting in hyphaema (bleeding in ocular chamber).....	14,400	
eye: degeneration of optic nerve	4,800	
eye: degeneration of optic nerves	12,000	25
eye: detached retina.....	12,000	
eye: detached retinas	30,000	
eye: dislocation of lens.....	12,000	
eye: dislocation of lenses	30,000	
eye: glaucoma	6,000	30
eye: loss of one eye	50,000	
eye: loss of both eyes.....	50,000	
eye: loss of sight of one eye	48,000	

Table—continued

eye: loss of sight of both eyes.....	50,000	
eye: partial loss of vision—6/9.....	18,000	
eye: partial loss of vision—6/12.....	24,000	
eye: partial loss of vision—6/24.....	30,000	5
eye: partial loss of vision—6/36.....	36,000	
eye: partial loss of vision—6/60.....	42,000	
eye: residual floaters.....	12,000	
eye: traumatic angle recession of eye.....	6,000	
facial: dislocated jaw.....	4,800	10
facial: fractured malar and/or zygomatic—cheek bones...	4,800	
facial: fractured mandible and/or maxilla—jaw bones.....	7,200	
facial: permanently clicking jaw.....	12,000	
facial: temporary numbness/loss of feeling—lasting 6 to 13 weeks.....	2,400	15
facial: temporary numbness/loss of feeling—lasting more than 13 weeks (recovery expected).....	3,600	
facial: permanent numbness/loss of feeling.....	9,600	
nose: deviated nasal septum.....	2,400	
nose: deviated nasal septum requiring septoplastomy....	4,800	20
nose: undisplaced fracture of nasal bones.....	2,400	
nose: displaced fracture of nasal bones.....	3,600	
nose: partial loss (at least 10%).....	9,600	
nose: partial loss of smell and/or taste.....	12,000	
nose: loss of smell or taste.....	24,000	25
nose: loss of smell and taste.....	36,000	
scarring (face): minor disfigurement.....	3,600	
scarring (face): significant disfigurement.....	8,400	
scarring (face): serious disfigurement.....	18,000	
scarring (other than face): visible, minor disfigurement...	3,600	30
scarring (other than face): significant disfigurement.....	7,200	
scarring (other than face): serious disfigurement.....	12,000	

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Schedule 1 Compensable injuries

Table—continued

skull: balance impaired—permanent.....	18,000	
skull: brain haemorrhage (full recovery).....	9,600	
skull: brain haemorrhage (residual minor impairment of social/intellectual functions)	18,000	5
skull: concussion (lasting at least one week).....	3,600	
skull: simple fracture (no operation).....	6,000	
skull: depressed fracture (no operation).....	9,600	
skull: depressed fracture (requiring operation)	14,400	
skull: stroke (full recovery).....	12,000	10
skull: subdural haematoma—treated conservatively	9,600	
skull: subdural haematoma—requiring evacuation.....	18,000	
teeth: chipped front teeth requiring crown	2,400	
teeth: fractured tooth/teeth requiring crown.....	2,400	
teeth: loss of crowns.....	3,000	15
teeth: loss of one tooth other than front tooth	2,400	
teeth: loss of two or more teeth other than front tooth ..	3,600	
teeth: loss of one front tooth.....	3,600	
teeth: loss of two or three front teeth	4,800	
teeth: loss of four or more front teeth.....	7,200	20
teeth: slackening of teeth requiring dental treatment	2,400	
tongue: impaired speech—slight	4,800	
tongue: impaired speech—moderate.....	12,000	
tongue: impaired speech—serious	24,000	
tongue: impaired speech—severe	42,000	25
tongue: loss of speech—permanent.....	50,000	
tongue: loss of tongue.....	50,000	
Lower limbs		
ankle: fracture of one ankle (full recovery)	7,200	
ankle: fracture of one ankle (with continuing disability)...	12,000	30
ankle: fracture of both ankles (full recovery)	18,000	
ankle: fracture of both ankles (with continuing disability)	24,000	

Table—continued

ankle: sprain of one ankle (disabling for at least 6 to 13 weeks)	2,400	
ankle: sprain of one ankle (disabling for more than 13 weeks)	6,000	5
ankle: sprain of both ankles (disabling for at least 6 to 13 weeks)	4,800	
ankle: sprain of both ankles (disabling for more than 13 weeks)	8,400	
burns: minor.....	3,600	10
burns: moderate.....	9,600	
burns: severe.....	24,000	
femur: fracture of both legs (full recovery).....	18,000	
femur: fracture of both legs (with continuing disability) ...	24,000	
femur: fracture of thigh bone (full recovery)	7,200	15
femur: fracture of one leg (with continuing disability).....	12,000	
fibula: fracture of both legs (full recovery)	18,000	
fibula: fracture of both legs (with continuing disability)....	24,000	
fibula: fracture of one leg (with continuing disability)	12,000	
fibula: fracture of slender bone from knee to ankle (full recovery)	7,200	20
heel bone: fracture of one foot (full recovery)	6,000	
heel bone: fracture of one foot (with continuing disability)	12,000	
heel bone: fracture of both feet (full recovery).....	12,000	25
heel bone: fracture of both feet (with continuing disability)	24,000	
knees: injury requiring arthroscopy (investigative surgery/repair)—no fracture	4,800	
leg: loss of leg below knee	50,000	30
leg: loss of leg above knee	50,000	
leg: loss of both legs.....	50,000	
metatarsal bones: fracture of one foot (full recovery)	6,000	

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Schedule 1 Compensable injuries

Table—continued

metatarsal bones: fracture of one foot (with continuing disability).....	18,000	
metatarsal bones: fracture of both feet (full recovery)	12,000	
metatarsal bones: fracture of both feet (with continuing disability).....	36,000	5
patella: dislocation of one leg (full recovery)	2,400	
patella: dislocation of one leg (with continuing disability)	18,000	
patella: dislocation of both legs (full recovery).....	4,800	
patella: dislocation of both legs (with continuing disability).....	42,000	10
patella: fracture of knee cap (full recovery)	18,000	
patella: fracture of one leg (with continuing disability)	24,000	
patella: fracture of both legs (full recovery)	36,000	
patella: fracture of both legs (with continuing disability)..	48,000	15
phalanges: fracture of toes.....	3,600	
scarring: minor disfigurement.....	3,000	
scarring: significant disfigurement	4,200	
scarring: serious disfigurement	12,000	
tarsal bones: fracture of one foot (full recovery).....	6,000	20
tarsal bones: fracture of one foot (with continuing disability).....	18,000	
tarsal bones: fracture of both feet (full recovery).....	12,000	
tarsal bones: fracture of both feet (with continuing disability).....	36,000	25
tendon(s)/ligament(s): minor damage (full recovery).....	2,400	
tendon(s)/ligament(s): minor damage (with continuing disability).....	7,200	
tendon(s)/ligament(s): moderate damage (full recovery)..	4,800	
tendon(s)/ligament(s): moderate damage (with continuing disability).....	12,000	30
tendon(s)/ligaments(s): severe damage (full recovery)	7,200	

Table—continued

tendon(s)/ligaments(s): severe damage (with continuing disability)	18,000	
tibia: fracture of shin bone (full recovery)	7,200	
tibia: fracture of shin bone (with continuing disability).....	12,000	5
tibia: fracture of both legs (full recovery)	18,000	
tibia: fracture of both legs (with continuing disability).....	24,000	
toe: fracture of one big toe	6,000	
toe: fracture of two big toes	12,000	
Neck		10
burns: minor	3,600	
burns: moderate.....	9,600	
burns: severe.....	24,000	
neck: strained (disabling for 6 to 13 weeks).....	2,400	
neck: strained (disabling for more than 13 weeks)	4,200	15
neck: strained—seriously disabling (not permanent).....	12,000	
neck: strained—seriously disabling (permanent)	24,000	
scarring: minor disfigurement	3,600	
scarring: significant disfigurement.....	7,200	
scarring: serious disfigurement.....	9,600	20
Paralysis		
Paralysis of all 4 limbs (quadriplegia/tetraplegia), paralysis of one side of body (hemiplegia), paralysis of the lower limbs (paraplegia), paralysis of one lower limb, paralysis of one or both upper limbs	50,000	25
Sexual assault		
Category 1	2,400–10,000	
Category 2	10,000–25,000	
Category 3	25,000–50,000	
Shock		30
Lasting 6 to 13 weeks.....	2,400	
Lasting 14 to 28 weeks.....	9,600	

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Schedule 1 Compensable injuries

Table—continued

Lasting over 28 weeks (but not permanent).....	18,000	
Permanent symptoms and disability.....	48,000	
Torso		
back: fracture of vertebra (full recovery).....	6,000	5
back: fracture of vertebra (continuing disability).....	12,000	
back: fracture of more than one vertebra (full recovery)	9,600	
back: fracture of more than one vertebra (continuing disability)	18,000	
back: prolapsed intervertebral disc(s)—seriously disabling (not permanent)	12,000	10
back: prolapsed intervertebral disc(s)—seriously disabling (permanent)	18,000	
back: ruptured intervertebral disc(s) requiring surgical removal.....	24,000	15
back: strained back—disabling for 6 to 13 weeks	2,400	
back: strained back—disabling for more than 13 weeks	6,000	
back: strained back—seriously disabling (not permanent).....	12,000	
back: strained back—seriously disabling (permanent)	18,000	20
burns: minor	3,600	
burns: moderate	9,600	
burns: severe	24,000	
clavicle: fracture of collar bone.....	4,800	
clavicle: fracture of both clavicles.....	12,000	25
coccyx: fracture of tail bone	6,000	
fertility: loss of fertility	50,000	
genitalia: injury requiring medical treatment (no permanent damage).....	4,200	
genitalia: injury requiring medical treatment (permanent damage)	12,000	30
hernia	8,400	

Table—continued

hip: dislocated (full recovery)	4,200	
hip: dislocated (with continuing disability).....	18,000	
hip: fractured.....	18,000	
injury requiring laparotomy	8,400	5
kidney: loss of kidney	48,000	
lung: collapse of lung	8,400	
lung: collapse of both lungs.....	18,000	
lung: puncture of lung.....	7,200	
lung: puncture of both lungs.....	14,400	10
lung: smoke inhalation in both lungs (permanent and disabling damage)	12,000	
pelvis: fracture of pelvis.....	18,000	
rib: fracture of rib.....	2,400	
rib: fracture of two or more ribs.....	3,600	15
scapula: fracture of shoulder blade.....	6,000	
scapula: fracture of both scapula.....	14,400	
scarring: minor disfigurement	3,000	
scarring: significant disfigurement.....	6,000	
scarring: serious disfigurement.....	12,000	20
shoulder: dislocated (full recovery).....	4,200	
shoulder: dislocated (with continuing disability)	12,000	
shoulder: frozen	8,400	
spleen: loss of spleen.....	9,600	
sternum: fracture of breast bone.....	6,000	25
Upper limbs		
arm: loss of arm.....	50,000	
arm: loss of both arms	50,000	
arm: permanently and seriously impaired grip.....	18,000	

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Schedule 1 Compensable injuries

Table—continued

arm: permanently and seriously impaired grip in both arms	36,000	
burns: minor	3,600	
burns: moderate	9,600	5
burns: severe	24,000	
elbow: dislocation/fracture of one elbow (full recovery)...	7,200	
elbow: dislocation/fracture of one elbow (with continuing disability).....	18,000	
elbow: dislocation/fracture of both elbows (full recovery)	18,000	10
elbow: dislocation/fracture of both elbows (with continuing disability).....	24,000	
finger: loss of one other than index	12,000	
finger: loss of index.....	18,000	
finger: loss of two or more.....	24,000	15
finger: partial loss of finger (one joint) other than thumb or index	6,000	
finger(s) or thumb: dislocated one hand (full recovery)...	3,000	
finger(s) or thumb: dislocated one hand (with continuing disability).....	6,000	20
finger(s) or thumb(s): dislocated both hands (full recovery).....	7,200	
finger(s) or thumb(s): dislocated both hands (with continuing disability).....	18,000	
finger(s) or thumb: fractured one hand (full recovery)	3,600	25
finger(s) or thumb: fractured one hand (with continuing disability).....	8,400	
finger(s) or thumb(s): fractured both hands (full recovery).....	9,600	
finger(s) or thumb(s): fractured both hands (with continuing disability).....	18,000	30
hand: fracture of hand (full recovery)	4,800	
hand: fracture of hand (with continuing disability).....	12,000	
hand: fracture of both hands (full recovery).....	8,400	

Table—continued

hand: fracture of both hands (with continuing disability)	18,000	
hand: loss of hand.....	50,000	
hand: loss of both hands.....	50,000	
humerus: fracture of upper arm bone (full recovery).....	7,200	5
humerus: fracture (with continuing disability).....	12,000	
humerus: fracture of both arms (full recovery)	18,000	
humerus: fracture of both arms (with continuing disability)	24,000	
radius: fracture of smaller forearm bone (full recovery)...	7,200	10
radius: fracture (with continuing disability).....	12,000	
radius: fracture of both arms (full recovery)	18,000	
radius: fracture of both arms (with continuing disability)	24,000	
scarring: minor disfigurement	3,000	
scarring: significant disfigurement.....	6,000	15
scarring: serious disfigurement.....	9,600	
tendon(s)/ligament(s): minor damage (full recovery)	2,400	
tendon(s)/ligament(s): minor damage (with continuing disability)	7,200	
tendon(s)/ligament(s): moderate damage (full recovery) ..	4,800	20
tendon(s)/ligament(s): moderate damage (with continuing disability)	12,000	
tendon(s)/ligament(s): severely damaged (full recovery) ..	7,200	
tendon(s)/ligament(s): severely damaged (with continuing disability)	18,000	25
thumb or index finger: partial loss (one joint)	9,600	
thumb: loss of thumb.....	36,000	
ulna: fracture of inner forearm bone (full recovery).....	7,200	
ulna: fractured ulna (with continuing disability).....	12,000	
ulna: fracture of both arms (full recovery).....	18,000	30
ulna: fracture of both arms (with continuing disability)	24,000	
wrist: fracture—colles type (full recovery).....	9,600	

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Schedule 1 Compensable injuries

Table—continued

wrist: fracture—colles type (with continuing disability).....	18,000	
wrist: fracture—including scaphoid (full recovery).....	7,200	
wrist: fracture—including scaphoid (with continuing disability).....	14,400	5
wrist: fracture of both—colles type (full recovery).....	18,000	
wrist: fracture of both—colles type (with continuing disability).....	24,000	
wrist: fracture of both—including scaphoid fracture (full recovery).....	14,400	10
wrist: fracture of both—including scaphoid fracture (with continuing disability).....	24,000	
wrist: sprain—disabling for 6 to 13 weeks.....	2,400	
wrist: sprain—disabling for more than 13 weeks.....	3,600	
wrist: sprain of both—disabling for 6 to 13 weeks.....	4,800	15
wrist: sprain of both—disabling for more than 13 weeks	7,200	

Schedule 2 Provisions relating to Tribunal

(Section 59)

Part 1 Members of Tribunal**1 Magisterial status of members not affected**

- (1) A member of the Tribunal does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Tribunal. 5
- (2) The service of a member of the Tribunal in his or her capacity as such a member is, for all purposes, taken to be service as a Magistrate. 10

2 Term of office of members

- (1) A member of the Tribunal holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 15
- (2) A member of the Tribunal holds office on a full-time or part-time basis, as may be specified in the member's instrument of appointment.

3 Public Sector Management Act 1988 not to apply to members 20

The *Public Sector Management Act 1988* (including Part 8) does not apply to or in respect of the appointment of a member of the Tribunal and a member of the Tribunal is not, as a member of the Tribunal, subject to that Act.

4 Casual vacancies in office of member 25

A person vacates office as a member of the Tribunal if the person:

- (a) ceases to be a Magistrate, or
- (b) resigns office by instrument in writing addressed to the Attorney General. 30

5 Appointment as Magistrate unaffected by resignation

A person does not cease to be a Magistrate merely because of:

- (a) his or her resignation from office as a member of the Tribunal, or
- (b) the expiration of his or her term of office as a member of the Tribunal. 5

Part 2 Proceedings of Tribunal generally

6 Sittings of Tribunal

More than one sitting of the Tribunal may be held at the same time. 10

7 Tribunal may be assisted by Crown Solicitor

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

8 Record of proceedings of Tribunal

The member constituting the Tribunal at any sitting must cause a record to be kept of the proceedings at the sitting. 15

9 Authentication of documents by Tribunal

- (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the Chairperson or the Registrar of the Tribunal. 20
- (2) Judicial notice is to be taken of the signature of the Chairperson or the Registrar when appearing on a document issued by the Tribunal.

10 Application of Defamation Act 1974

For the purposes of section 18 of the *Defamation Act 1974*, the proceedings of the Tribunal is taken to be an inquiry within the meaning of that section. 25

Part 3 Hearings before Tribunal

11 Application

This Part applies to hearings conducted by the Tribunal in connection with an application for statutory compensation.

12 Hearings generally

5

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

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

10

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

13 Hearings to be open to the public

15

Hearings under this Part must be conducted in the presence of the public unless:

(a) criminal proceedings are pending against any person in respect of substantially the same facts as those alleged in the application for statutory compensation, or

20

(b) the Tribunal, in a particular case, determines that the proceedings must be closed to the public.

14 Publication of names

(1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:

25

(a) who appears as a witness before the Tribunal in any hearing under this Part, or

(b) to whom any hearing under this Part relates, or

(c) who is mentioned or otherwise involved in any hearing under this Part,

30

whether before or after the hearing is completed.

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

- (2) This clause does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this clause.
- (3) For the purposes of this clause, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person. 5

15 Presentation of cases

In any hearing under this Part, the applicant for statutory compensation may, by leave of the Tribunal: 10

- (a) call and examine any witness, and
- (b) give evidence on oath, and
- (c) produce documents and exhibits to the Tribunal, and
- (d) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the hearing. 15

16 Tribunal may compel attendance of witnesses

- (1) For the purposes of any hearing under this Part, the Tribunal may: 20
- (a) by instrument in writing require any person on whom the instrument is served personally or by post:
- (i) to appear at the hearing for the purpose of giving evidence, or
- (ii) to produce to the Tribunal any document that is relevant to the hearing, 25
- at a time, date and place specified in the instrument, and
- (b) require a person who appears at the hearing to be sworn for the purpose of giving evidence on oath, and
- (c) administer such an oath. 30

-
- (2) When a document is produced to the Tribunal in accordance with a requirement under this clause, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of completing the hearing.
- (3) The functions conferred on the Tribunal by subclause (1) (a) may be exercised on behalf of the Tribunal by the Registrar of the Tribunal. 5

17 Witnesses to answer questions

- (1) The Tribunal may require a person who appears at a hearing under this Part to answer any question that is reasonably related to the hearing. 10
- (2) A person may refuse to answer such a question on the ground that the answer might tend to incriminate the person.

18 Refusal to attend or to answer questions

A person must not: 15

- (a) fail to comply with a requirement made of the person under clause 16 or 17 by the Tribunal to the extent to which the person is lawfully able to comply with the requirement, or
- (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing at a hearing under this Part. 20

Maximum penalty: 5 penalty units.

19 Witnesses' expenses

A person (other than a public servant) who is required to appear or to give evidence at a hearing under this Part is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules. 25

20 Adjournments

- (1) The Tribunal may from time to time adjourn a hearing under this Part to such times, dates and places, and for such reasons, as it thinks fit. 30

- (2) Without limiting the generality of subclause (1), the Tribunal may adjourn a hearing under this Part pending the determination of criminal proceedings against a person in respect of substantially the same facts as those alleged in the application for statutory compensation. 5

21 Dismissal of frivolous proceedings

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

- (a) that the proceedings are frivolous or vexatious, or
(b) that, for any other reason, the proceedings should not be entertained. 10

22 Misconduct in proceedings before the Tribunal

- (1) A person must not, in a hearing under this Part:
(a) wilfully insult the Tribunal, or
(b) wilfully misbehave during the hearing, or 15
(c) wilfully and without lawful excuse interrupt the hearing, or
(d) without lawful excuse disobey a direction of the Tribunal during the hearing.

Maximum penalty: 10 penalty units. 20

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

- (3) A person must not fail to comply with a direction under this clause. 25

Maximum penalty: 10 penalty units.

Schedule 3 Savings, transitional and other provisions

(Section 89)

Part 1 Preliminary

1 Regulations

5

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

Victims Compensation Act 1996

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10

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

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or 15

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication. 20

Part 2 Provisions consequent on enactment of Victims Compensation Act 1996

2 Definition

In this Part:

the repealed Act means the *Victims Compensation Act 1987*. 25

3 Proceedings for statutory compensation under repealed Act

- (1) An application for compensation made under Part 3 of the repealed Act before the date of assent to this Act and not finally disposed before that date is to continue to be dealt with in accordance with the repealed Act. 30

- (2) An application for compensation may be made under Part 3 of the repealed Act after the date of assent to this Act and before the end of the period of 4 months after that date, but may not be made under that Part after the end of that period. Any such application is to be dealt with in accordance with the repealed Act. 5
- (3) Subclause (2) applies so as to authorise an application under Part 3 of the repealed Act only if the act of violence (and any related act of violence) to which the application relates occurred before the date of assent to this Act. 10
- (4) An application referred to in subclause (2) of a secondary victim of an act of violence may only be dealt with if:
- (a) such an application has also been made by a primary or other victim (other than a secondary victim) of that act of violence, or 15
 - (b) the Tribunal is satisfied that an application for statutory compensation by the primary or other victim will not be made under this Act or the repealed Act.

4 Previous acts of violence

This Act extends, subject to this Act, to an act of violence that occurred before the commencement of this Act (other than an act of violence in respect of which an application for compensation has been made and dealt with under the repealed Act). 20

5 The Tribunal and staff

- (1) The Victims Compensation Tribunal constituted by this Act is a continuation of the Victims Compensation Tribunal constituted under the repealed Act. 25
- (2) A person holding office as a member or Chairperson of the Tribunal, immediately before the repeal of the repealed Act, is taken to have been appointed as a member or Chairperson of the Tribunal under this Act. 30

-
- (3) A Magistrate who was an authorised Magistrate under the repealed Act, immediately before the repeal of the repealed Act, is taken to be an authorised Magistrate under this Act.
- (4) The staff of the Tribunal employed under the repealed Act is taken to be staff employed for the purposes of this Act. 5

6 Continuation of Corporation and Fund

- (1) The Victims Compensation Fund Corporation constituted by section 66 of this Act is a continuation of, and the same legal entity as, the corporation by that name constituted by the repealed Act. 10
- (2) The Victims Compensation Fund constituted by the repealed Act becomes, on the repeal of that Act, the fund by that name constituted by section 67 of this Act.

7 Recovery proceedings against offender for amount payable under award of compensation

- (1) Division 8 of Part 2 of this Act applies to awards of compensation made under Part 2 of this Act, and to awards of compensation made under Part 3 of the repealed Act that were not subject to recovery action under the repealed Act before its repeal. 20
- (2) Part 5 of the repealed Act continues to apply to any recovery action taken under the repealed Act before its repeal.
- (3) However, the provisions of Division 8 of Part 2 of this Act apply to any proceedings for recovery of an amount payable under a determination for restitution under Part 5 of the repealed Act. 25

8 Compensation awarded by a court

- (1) Part 4 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A direction for the payment of compensation given under Part 6 of the repealed Act may be recovered as if it had been given under Part 4 of this Act. 30

Victims Compensation Bill 1996

Schedule 3 Savings, transitional and other provisions

9 Compensation levies

- (1) Part 5 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A levy imposed by the operation of section 65C of the repealed Act may be recovered as if it had been imposed by Part 5 of this Act. 5

Schedule 4 Amendment of other Acts

(Section 91)

4.1 Fines and Penalties Act 1901 No 16

Section 8 Governor may remit penalties

Insert after section 8 (2):

5

- (3) In this section, a reference to a penalty includes a reference to a compensation levy under the *Victims Compensation Act 1996*.

4.2 Prisons Act 1952 No 9

Section 44 Attendance of prisoner before court etc

10

Omit section 44 (3). Insert instead:

- (3) In this section:

appropriate officer means a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court, a Registrar of the Supreme Court, the Registrar of the Court of Criminal Appeal or the Registrar of the Victims Compensation Tribunal.

15

court of record includes the Victims Compensation Tribunal.

Dictionary

- act of violence** has the meaning given to that expression by section 5.
- authorised Magistrate** means a Magistrate who is authorised to exercise the jurisdiction and functions of the Tribunal by virtue of an order in force under section 61. 5
- compensable injury** has the meaning given to that expression by section 10 and Schedule 1.
- compensation assessor** means a compensation assessor appointed by or under section 64.
- Compensation Fund** means the Victims Compensation Fund referred to in section 67. 10
- Compensation Fund Corporation** means the Victims Compensation Fund Corporation constituted by section 66.
- compensation levy** means a levy referred to in section 79.
- compensation rules** means rules made under section 87 and in force. 15
- conviction** includes:
- (a) an order made under section 556A of the *Crimes Act 1900*, and
 - (b) (except in Part 4) an order made under section 33 (1) (b)–(g) of the *Children (Criminal Proceedings) Act 1987*.
- costs** includes allowances and expenses. 20
- Director** means the person holding office as Director of Victims Compensation under Part 2 of the *Public Sector Management Act 1988*.
- exercise** a function includes perform a duty.
- family victim** has the meaning given to that expression by section 9.
- function** includes a power, authority or duty. 25
- imprisonment** includes penal servitude.
- injury** means:
- (a) actual physical bodily harm,
 - (b) nervous shock,
 - (c) mental illness or disorder (whether or not arising from nervous shock), 30
- but does not include injury arising from loss or damage to property.

member of the immediate family of a person has the meaning given to that expression by section 9.

offence means criminal offence.

primary victim has the meaning given to that expression by section 7.

schedule of compensable injuries means the schedule of compensable injuries set out in Schedule 1. 5

secondary victim has the meaning given to that expression by section 8.

sexual assault and apprehended domestic violence means any of the following:

- (a) 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 10
- (b) 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 15
- (c) self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat (within the meaning of that section), or 20
- (d) the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person, or 25
- (e) 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 30
- (f) 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.

Victims Compensation Bill 1996

Dictionary

State means the Crown in right of New South Wales.

statutory compensation means compensation payable under Part 2.

Tribunal means the Victims Compensation Tribunal constituted by this Act.



New South Wales

Victims Compensation Act 1996 No 115

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The dictionary defines the following words and expressions

act of violence	imprisonment
authorised Magistrate	injury
compensable injury	member of the immediate family
compensation assessor	offence
Compensation Fund	primary victim
Compensation Fund Corporation	schedule of compensable injuries
compensation levy	secondary victim
compensation rules	sexual assault and apprehended domestic violence
conviction	State
costs	statutory compensation Tribunal
Director	
exercise	
family victim	
function	



New South Wales

Victims Compensation Act 1996 No 115

Act No 115, 1996

An Act to provide compensation to victims of violence; and to repeal the *Victims Compensation Act 1987*. [Assented to 2 December 1996]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Victims Compensation Act 1996*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Clauses 1, 2 and 3 of Schedule 3 commence on the date of assent to this Act.

3 Objects of Act

The objects of this Act are as follows:

- (a) to give effect to a statutory scheme of compensation for victims of crimes of violence,
- (b) to enable compensation paid under the statutory scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation,
- (c) to impose a levy on persons found guilty of crimes punishable by imprisonment for the purpose of funding the statutory scheme,
- (d) to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.

4 Dictionary and notes

- (1) Expressions used in this Act (or in a particular provision of this Act) that are defined in the Dictionary at the end of this Act have the meanings given to them in the Dictionary.
- (2) Notes in the text of this Act do not form part of this Act.

5 Act of violence

- (1) In this Act, *act of violence* means an act or series of related acts, whether committed by one or more persons:
 - (a) that has apparently occurred in the course of the commission of an offence, and
 - (b) that has involved violent conduct against one or more persons, and
 - (c) that has resulted in injury or death to one or more of those persons.
- (2) For the purposes of this section, violent conduct extends to sexual assault and apprehended domestic violence (as defined in the Dictionary).
- (3) An act is related to another act if:
 - (a) both of the acts were committed against the same person, and
 - (b) in the opinion of the Tribunal or compensation assessor, both of the acts were committed at approximately the same time or were, for any other reason, related to each other.

However, an act is not related to any earlier act in respect of which an award of statutory compensation has been made if it occurs after the award was made.

- (4) For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of violence.

Part 2 Statutory compensation scheme

Division 1 Victims eligible for statutory compensation

6 Persons eligible for statutory compensation

The following persons are eligible for statutory compensation:

- (a) a primary victim of an act of violence,
- (b) a secondary victim of an act of violence,
- (c) a family victim of an act of violence.

7 Who is a primary victim?

- (1) A *primary victim* of an act of violence is a person who receives a compensable injury, or dies, as a direct result of that act.
- (2) A primary victim of an act of violence extends to a person who receives a compensable injury, or dies, as a direct result of:
 - (a) trying to prevent another person from committing that act, or
 - (b) trying to help or rescue another person against whom that act is being committed or has just been committed, or
 - (c) trying to arrest another person who is committing, or who has just committed, that act.

8 Who is a secondary victim?

- (1) A *secondary victim* of an act of violence is a person who receives a compensable injury as a direct result of witnessing the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act.
- (2) A secondary victim of an act of violence extends to a person who receives a compensable injury as a direct result of subsequently becoming aware of the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act, but only if:
 - (a) the person is the parent or guardian of the primary victim of that act, and

- (b) the primary victim was under the age of 18 years at the time of that act, and
- (c) the person did not commit that act.

The person is taken, for the purposes of this Act, to have witnessed the act of violence.

- (3) For the purposes of this section, a primary victim does not include a person who is a primary victim only because of the operation of section 7 (2).

9 Who is a family victim?

- (1) A *family victim* of an act of violence is a person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act.
- (2) It is immaterial whether or not the person suffers a compensable injury in connection with the act of violence or death.
- (3) A *member of the immediate family* of a primary victim is:
 - (a) the victim's spouse, or
 - (b) the victim's de facto spouse, or partner of the same sex, who has cohabited with the victim for at least 2 years, or
 - (c) a parent, guardian or step-parent of the victim, or
 - (d) a child or step-child of the victim or some other child of whom the victim is the guardian, or
 - (e) a brother, sister, step-brother or step-sister of the victim.

Division 2 Schedule of compensable injuries

10 Prescription of schedule of compensable injuries

- (1) The schedule of compensable injuries is set out in Schedule 1.
- (2) The schedule specifies those injuries that are *compensable injuries* for the purposes of this Act.

- (3) The schedule specifies, as the standard amount of compensation for a compensable injury, a specified amount or an amount within a range of specified amounts.

11 Compensable injuries described by reference to act of violence

- (1) This section applies when the schedule of compensable injuries specifies, as a compensable injury, all injuries received as a direct result of a specified act of violence and specifies a single standard amount or range of compensation for all of those injuries.
- (2) An applicant for statutory compensation may elect whether to claim compensation of that single standard amount or range or to claim compensation of the total standard amounts for each of the injuries received by the applicant (subject to any discount rates or other provisions in the schedule of compensable injuries).
- (3) In the absence of an election, the person determining the application is to make the election.

Note. See injury described in Schedule 1 as sexual assault.

12 Substitution or amendment of schedule

The regulations may amend Schedule 1 by substituting or amending the schedule of compensable injuries.

13 Provisions relating to schedule

- (1) If more than one compensable injury is received by an eligible victim, the schedule of compensable injuries may exclude the payment of compensation, or discount the rates of compensation payable, for some of those injuries.

Note. See paragraph 3 of Schedule 1.

- (2) The schedule of compensable injuries may make provision for compensable injuries of a kind not specifically described in the schedule and for the standard amount of compensation payable for such an injury.

Note. See paragraph 8 of Schedule 1.

- (3) The schedule may contain provisions relating to the application of the schedule (including provisions relating to the interpretation of the schedule, provisions relating to establishing whether an injury is a compensable injury and provisions of a transitional nature consequent on the amendment of Schedule 1).

Division 3 Statutory compensation payable

14 Compensation payable to primary victims

- (1) The statutory compensation for which a primary victim of an act of violence is eligible comprises:
- (a) compensation for compensable injuries received by the victim as a direct result of the act of violence, and
 - (b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury.
- (2) A primary victim who dies ceases to be eligible for statutory compensation, but a family victim may then become eligible for statutory compensation under this Act. Any pending application for compensation made by or on behalf of the primary victim does not survive the death of the primary victim.

15 Compensation payable to secondary victims

The statutory compensation for which a secondary victim of an act of violence is eligible comprises:

- (a) compensation for compensable injuries received by the victim as a direct result of witnessing the act of violence, and
- (b) compensation for financial loss incurred by the victim as a direct result of any such compensable injury.

16 Compensation payable to family victims

- (1) The statutory compensation for which all family victims of an act of violence are together eligible is, subject to this Act, \$50,000.

- (2) If there are 2 or more family victims of an act of violence:
 - (a) the victims are eligible to an equal share of the amount of \$50,000, subject to paragraph (b), and
 - (b) victims who were not dependent family members at the time of the act of violence are not eligible for any amount of compensation if there are also dependent family members at that time.
- (3) A family victim is a *dependent family member* if:
 - (a) the person was wholly or mainly dependent on the primary victim's income at the relevant time, or
 - (b) the person is a child of the primary 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 dependent family member of the victim by virtue of paragraph (a).

17 Compensation for compensable injuries

- (1) Compensation for compensable injuries is payable in accordance with the schedule of compensable injuries.
- (2) Unless the amount of compensation is required or authorised to be reduced by this Act, the amount of compensation payable is the standard amount calculated in accordance with the schedule.

18 Compensation for financial loss

- (1) Compensation for financial loss is compensation for the following:
 - (a) actual expenses,
 - (b) actual loss of earnings,
 - (c) loss of personal effects (in the case of a primary victim only).
- (2) Compensation for loss of personal effects is compensation payable to a primary victim who has received a compensable injury for the loss of, or for damage to, any personal effects that were worn or carried by the primary victim at the time of the act of violence and that were lost or damaged as a direct result of that act. The maximum amount payable in respect of an act of violence is \$1,000.

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- (3) Compensation for actual loss of earnings is to be calculated at the rate of weekly payment of compensation payable under the *Workers Compensation Act 1987* after the first 26 weeks of incapacity within the meaning of that Act.
 - (4) The maximum amount of compensation for financial loss to which a person is entitled in respect of an act of violence is \$10,000.
 - (5) Compensation for financial loss is not payable to a person to the extent that the person has received, or is entitled to receive, payment for that loss under any insurance or agreement or under any other Act or law.

19 Maximum amount of compensation

- (1) The maximum amount of statutory compensation payable to a single person in respect of an act of violence is \$50,000.
- (2) The maximum amount of statutory compensation that all of the following victims are together eligible to receive is \$50,000:
 - (a) a primary victim of an act of violence,
 - (b) all secondary victims claiming through that primary victim,
 - (c) all family victims claiming through that primary victim.
- (3) If entitlements to statutory compensation are required to be reduced because of the maximum amount provided by this section:
 - (a) the amounts payable to secondary victims are to be reduced rather than the amounts payable to primary victims or family victims, and
 - (b) the amount of \$50,000 payable to family members is to be reduced by any amount paid to a primary victim (or to any secondary victim claiming through the primary victim) before the primary victim's death.

- (4) If the amount of statutory compensation otherwise payable to 2 or more secondary victims is to be reduced because of this section, the amount available to be paid is to be apportioned among those victims in the same proportions as the amount otherwise payable to each such victim bears to the total of those amounts.
- (5) This section applies despite any other provision of this Act (except section 20).

20 Threshold amount of compensation

- (1) Statutory compensation is not payable to a single person unless the total amount of compensation payable to that person, as compensation for compensable injuries, is at least:
 - (a) subject to paragraph (b)—\$2,400, or
 - (b) such other amount as is fixed by proclamation.
- (2) Any such proclamation:
 - (a) may fix a single amount or different amounts in different cases, and
 - (b) may be revoked or varied from time to time by a further proclamation.
- (3) This section does not apply to statutory compensation payable to family victims.
- (4) This section applies despite any other provision of this Act.

21 Special payments for counselling of victims

- (1) A victim who is eligible for statutory compensation may apply for payment for approved counselling services for the victim as a consequence of the act of violence.
- (2) A victim is entitled to an initial period of 2 hours of counselling (including counselling for the purposes of an application for continued counselling or for statutory compensation).

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- (3) The victim is entitled to payment for such further periods of counselling (not exceeding 20 hours) as a compensation assessor considers appropriate. Payment for any further period of counselling exceeding 20 hours may be made only with the approval of the Director.
 - (4) The victim is entitled to payment for approved counselling services even though the victim is entitled to workers compensation in respect of the matter or is awarded compensation by a court under Part 4.
 - (5) The victim is entitled to payment for approved counselling services even though the maximum amount of statutory compensation is payable in respect of the act of violence.
 - (6) The victim is not entitled to payment for approved counselling services if it is unlikely that the victim would qualify for statutory compensation because of the application of the minimum amount of statutory compensation payable under this Act. A determination under this subsection is to be made on the assumption that the victim is the only victim of the act of violence.
 - (7) Payments for approved counselling services are to be made from the Compensation Fund directly to the service provider, except that payments for the initial period of 2 hours may be made from that Fund by way of re-imbusement of the victim if it was not reasonably practicable for the victim to obtain approval for the payment before undertaking the counselling.
 - (8) An appeal does not lie to the Tribunal against a decision of a compensation assessor or the Director under this section. However, a decision of a compensation assessor may be reviewed by the Director and, if the period of counselling exceeds 20 hours, by a member of the Tribunal.
 - (9) Compensation rules may be made for or with respect to payments for counselling services, including the application (with or without modification) of the provisions of this Act relating to statutory compensation.

- (10) For the purposes of this section, *approved counselling services* are services provided by a professional counsellor chosen by the victim from a list of counsellors designated by the Director.

Division 4 Persons not eligible for statutory compensation

22 Secondary or family victims

- (1) A secondary victim or family victim is not eligible to receive statutory compensation if the primary victim through whom he or she is claiming is not eligible, or if the primary victim had not died would not have been eligible, to receive statutory compensation.
- (2) A secondary victim is not entitled to claim statutory compensation before 1 year has elapsed since the act of violence concerned occurred, unless:
- (a) a notice of the secondary victim's intention to claim statutory compensation has been served (in accordance with the compensation rules) on:
 - (i) the primary victim through whom he or she is claiming, or
 - (ii) if that primary victim has died—at least one of the immediate family of that primary victim, and
 - (b) no application has been made by or on behalf of that primary victim, or a relevant family victim, within 3 months after the service of the notice.
- (3) Despite subsection (2), such a secondary victim is entitled to claim statutory compensation within that period of 1 year if an application for statutory compensation made by or on behalf of that primary victim or a relevant family victim has been finally disposed of.
- (4) An award of statutory compensation is not to be made to a family victim within 3 months after the application was made unless it appears that no other family victim exists or is likely to make an application for statutory compensation.

23 Eligibility to receive compensation in respect of same act of violence

- (1) A person is not eligible to receive more than one award of statutory compensation in respect of the same act of violence.
- (2) No more than one award of compensation may be made with respect to any one application for statutory compensation.
- (3) A person is eligible to receive statutory compensation in respect of the same act of violence in only one of the capacities of primary victim, secondary victim or family victim.

24 Other persons not eligible to receive compensation

- (1) **Claimants for court compensation awards**
A person is not eligible to receive statutory compensation in respect of an act of violence if the person has been paid, or is entitled to be paid, compensation awarded by a court in respect of that act under Part 4 or if the person's application for such compensation is pending.
- (2) **Motor vehicle accidents**
A person is not eligible to receive statutory compensation in respect of an act of violence if that act took the form of, or the injury arose as a consequence of, a motor accident within the meaning of the *Motor Accidents Act 1988*.
- (3) **Offenders**
A person is not eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was engaged in behaviour constituting an offence.
- (4) **Convicted inmates**
A person is not, except as provided by subsection (5), eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was imprisoned as a convicted inmate within the meaning of the *Correctional Centres Act 1952* (unless the person was imprisoned only because of the person's failure to pay a pecuniary penalty).

(5) **Exception to ineligibility of convicted inmates**

However, any such convicted inmate may, in special circumstances, receive statutory compensation. Any such award must not be made unless:

- (a) the award of compensation is made by the Tribunal, and
- (b) the Tribunal is satisfied that the special circumstances of the case justify an exception being made to the general ineligibility of convicted inmates.

Without limiting the foregoing, the Tribunal may determine that special circumstances exist if the convicted inmate is seriously and permanently injured as a result of the act of violence concerned.

Division 5 Applications for statutory compensation

25 Lodging of applications

- (1) An application for statutory compensation may be made:
 - (a) by a primary victim, secondary victim or family victim of an act of violence, or
 - (b) by any other person, on behalf of such a victim, who has a genuine interest in the welfare of that victim.
- (2) An application:
 - (a) must be in the form required by the compensation rules, and
 - (b) must be accompanied by such documentary evidence (such as medical certificates) as may be required by that form, and
 - (c) must be lodged with the Director.
- (3) An application may also be lodged with the Clerk of a Local Court. In that case, the Clerk is to forward the application to the Director as soon as practicable after it is so lodged.

26 Time for lodging applications

- (1) An application for statutory compensation must be duly lodged within 2 years after the relevant act of violence occurred or, in the case of a family victim, within 2 years after the death of the primary victim.
- (2) An application that is lodged out of time may be accepted with the leave of the Director.
- (3) The following policies apply to the giving of leave by the Director for the acceptance of an application lodged out of time:
 - (a) leave should not be given unless the applicant establishes that there is good reason to do so,
 - (b) however, leave should be given in cases of sexual assault, domestic violence or child abuse unless the Director is satisfied that there is no good reason to do so,
 - (c) leave should not be given merely because the applicant is unaware of the time within which applications should be lodged,
 - (d) the matters taken into account under section 30 (2) for the purpose of determining whether an act of violence was reported to a police officer within a reasonable time should also be taken into account for the purpose of determining whether there is a good reason for giving leave.

27 Consideration of applications by compensation assessors

- (1) Each duly lodged application for statutory compensation is to be considered by a compensation assessor.
- (2) The application is to be dealt with by a compensation assessor without conducting a hearing into the matter.

28 Medical examinations

- (1) A compensation assessor may require an applicant for statutory compensation to undergo an examination (not being an examination that is unreasonable, unnecessarily repetitious or dangerous):
 - (a) by a duly qualified medical practitioner, or duly qualified psychologist, specified by the assessor, or

- (b) by a duly qualified medical practitioner or duly qualified psychologist belonging to a class of medical practitioners, or class of psychologists, specified by the assessor.
- (2) The costs of any such examination are to be paid for out of the Compensation Fund.

29 Determination of applications

- (1) After considering an application for statutory compensation, the compensation assessor must determine the application:
- (a) by making an award of statutory compensation, or
 - (b) by dismissing the application.
- (2) An award of statutory compensation must not be made unless the compensation assessor is satisfied, on the balance of probabilities, that the person to whom the application for that compensation relates:
- (a) is a primary victim, secondary victim or family victim of an act of violence, and
 - (b) is eligible to receive the amount of compensation provided by the award.
- (3) The compensation assessor must, in determining the application, have regard to the guidelines issued by the Tribunal under section 65.
- (4) Written notice is to be given to the applicant of the determination of the application.
- (5) If an award of compensation is made, the notice must include:
- (a) a statement of the amount (if any) payable by way of compensation for compensable injuries and a statement of the amount (if any) payable by way of compensation for financial loss, together with a statement of the reasons for awarding those amounts, and
 - (b) a statement of the amount (if any) payable by way of costs.
- (6) If the application is dismissed, the notice must include a statement of the reasons for the dismissal.

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

- (1) In determining whether or not to make an award of statutory compensation and in determining the amount of compensation to award, the compensation assessor must have regard to the following:
 - (a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary or secondary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim,
 - (b) whether the act of violence was reported to a police officer within a reasonable time,
 - (c) whether that victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed,
 - (d) whether that victim has failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence or in the arrest or prosecution of any person by whom the act of violence was committed or alleged to have been committed,
 - (e) such other matters as the compensation assessor considers relevant.

- (2) In determining whether a matter relating to a victim was reported to a police officer within a reasonable time, the compensation assessor may have regard to such matters as the assessor 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 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,

- (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,
 - (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 or consent to no further action being taken in relation to the act of violence.
- (3) In determining the amount of statutory compensation to award to a person, the compensation assessor must have regard to:
- (a) any amount that has been paid to the person or that the person is entitled to be paid:
 - (i) by way of damages awarded in civil proceedings, or
 - (ii) under any other Act or law (including workers compensation), or
 - (iii) under any insurance or other agreement, and
 - (b) any other amount that has been received by the person or that (in the opinion of the assessor) is likely to be received by the person,

in respect of the act of violence to which the application for statutory compensation relates.

- (4) If the compensation assessor is satisfied that the applicant may be entitled to workers compensation (or payment in the nature of workers compensation) in respect of the act of violence to which the application for statutory compensation relates, the assessor is to postpone the determination of the application until any entitlements to workers compensation have been determined.
- (5) This section applies to an application for statutory compensation by a family victim and to the primary victim through whom the claim is made. Accordingly, despite anything to the contrary in section 16, the amount of \$50,000 payable to family victims may be reduced or no award may be made.

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

- (1) For the purpose of giving effect to a determination for restitution under Division 8 that is to be made against a person to whom an award of statutory compensation is to be made, the compensation assessor may reduce the amount of the proposed award by the amount of the proposed determination for restitution.
- (2) On the making of a determination for restitution that has given rise to the reduction of an award of statutory compensation under this section, the person against whom the determination is made is taken to have paid the amount of the determination.

32 Persons to whom compensation may be made payable

- (1) An award of statutory compensation may be made payable:
 - (a) to the person to whom the application for statutory compensation relates, or
 - (b) to any other person for the benefit of that person.
- (2) In making a decision as to whom an award of statutory compensation should be made payable, the compensation assessor must have regard to the likelihood that a person by whom an act of violence was allegedly committed may receive the benefit of the award or any part of the award.

33 Interim awards of compensation

- (1) Pending the determination of an application for statutory compensation, the compensation assessor may:
 - (a) if it appears that the person to whom the application relates is in severe financial hardship, or
 - (b) in the case of a family victim, if payment is due for funeral expenses relating to the primary victim, or
 - (c) in such other circumstances as the compensation assessor considers appropriate,

make an interim award of statutory compensation to that person.

- (2) An interim award is not to be made unless the compensation assessor is satisfied that the applicant will be entitled to receive statutory compensation when the application is determined.
- (3) If an interim award is made but the application for statutory compensation is then dismissed, the amount of the interim award becomes a debt due to the Compensation Fund Corporation by the applicant.
- (4) If, on determining the application, the compensation assessor decides to award statutory compensation to the person to whom the application relates, the assessor must deduct the amount of any interim award of statutory compensation from the amount of statutory compensation that the assessor would otherwise have awarded.

34 Compensation may be awarded subject to conditions

- (1) An award of statutory compensation (including an interim award) may be made subject to such conditions as the compensation assessor thinks fit:
 - (a) as to the notification to the Director of such matters (including matters relating to the financial circumstances of the person to or for whose benefit the award is made) as may be specified in the notice of determination relating to the award, or
 - (b) as to the assignment by the person to or for whose benefit the award is made of that person's right to any entitlement that the person has by way of damages awarded in civil proceedings, or
 - (c) as to the repayment of the whole or any part of the amount of the award under such circumstances as may be specified in the notice of determination relating to the award, or
 - (d) in the case of an award that is payable to a person for the benefit of some other person:
 - (i) as to the payment of the statutory compensation to or for the benefit of that other person, or

- (ii) as to the holding of the whole or any part of the statutory compensation on trust for that other person.
- (2) The compensation rules may prescribe conditions to which an award of statutory compensation is subject.

35 Costs of applications for compensation and proceedings before Tribunal

- (1) An applicant for statutory compensation is entitled to be paid his or her costs in respect of the application (whether or not proceedings are taken before the Tribunal on appeal or otherwise) in accordance with such scale of costs as may be prescribed by the compensation rules.
- (2) An applicant may, if the Tribunal or a compensation assessor so directs, be awarded costs under this section even if the application for compensation is dismissed.
- (3) The Tribunal or a compensation assessor may award an applicant costs in excess of the amount to which the person would otherwise be entitled under this section, if of the opinion that the special circumstances of the case justify such an award being made. The Tribunal or compensation assessor may also decline to make an award of costs or award costs of a lesser amount.
- (4) Despite any Act or law to the contrary, but subject to any order of the Tribunal or compensation assessor, a legal practitioner is not entitled to charge or recover, by way of costs in respect of an application for statutory compensation or of the proceedings of the Tribunal in respect of such an application, any amount in excess of the amount payable in accordance with the scale of costs referred to in subsection (1).
- (5) The Tribunal or a compensation assessor may disallow any costs incurred in connection with a medical report prepared for the purpose of an application for statutory compensation or proceedings before the Tribunal. In that case, the Tribunal or Director 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,

if of the opinion that the fees charged by a medical practitioner in connection with the report are grossly excessive for the services to which they relate.

- (6) A provision of any agreement (whether in writing or not and whether entered into before or after the commencement of this section):
 - (a) under which the operation of subsection (4) is excluded, modified or restricted, or
 - (b) which has the effect of excluding, modifying or restricting the operation of subsection (4),is void.
- (7) An award of costs under this section may be made payable:
 - (a) to the applicant, or
 - (b) to any other person for the benefit of the applicant.

Division 6 Appeals and references to Tribunal and District Court

36 Appeal to Tribunal by applicant

- (1) An applicant for statutory compensation who is aggrieved by the determination of a compensation assessor in respect of the application may appeal to the Tribunal against the determination.
- (2) A person who is aggrieved by a determination of the Director to refuse leave for a late application for statutory compensation may appeal to the Tribunal against the determination.
- (3) An appeal may be made:
 - (a) within the period of 3 months after the day on which the relevant notice of the determination made by the compensation assessor or Director was duly served on the person, or
 - (b) within such further time as the Tribunal may in exceptional circumstances allow.

37 Reference of application to Tribunal by assessor or by Chairperson of Tribunal

- (1) If the compensation assessor dealing with an application for statutory compensation considers that the determination of the application requires a hearing, the Director may refer the application to the Tribunal for a hearing into and determination of the matter.
- (2) If the Chairperson of the Tribunal considers that an application for statutory compensation that has been determined by a compensation assessor should be reviewed by the Tribunal, the Director is to refer the application to the Tribunal for re-determination.

38 Hearing and determination by Tribunal

- (1) The Tribunal may conduct a hearing into a matter the subject of an appeal or reference to it under this Division for determination. The hearing is to be conducted in accordance with Schedule 2.
- (2) If the Tribunal is satisfied that the matter can be properly determined without a hearing, the Tribunal is to proceed to determine the matter accordingly.
- (3) An appeal from a determination of a compensation assessor is to be determined on the evidence and material provided to the compensation assessor. However, the Tribunal may, by leave, receive further evidence and material if it considers that special grounds exist or if the evidence or material concerns matters occurring after the determination appealed against.
- (4) The Tribunal is to determine the matter in accordance with the relevant provisions of Division 5 and, for that purpose a reference in that Division to a compensation assessor or the Director is taken to be a reference to the Tribunal.
- (5) The Tribunal may, without limiting the generality of subsection (4), do any of the following:
 - (a) affirm or set aside any determination of a compensation assessor,
 - (b) remit the application to be considered and determined again by a compensation assessor in accordance with the directions of the Tribunal.

- (6) The Tribunal is to so remit the application if further evidence and material received by the Tribunal could reasonably have been provided to the compensation assessor who dealt with the matter.

39 Appeals to the District Court on questions of law

- (1) An applicant for statutory compensation may, with the leave of the District Court, appeal to the District Court on a question of law arising in any determination of the application by the Tribunal.
- (2) An appeal by a person under this section may be instituted:
- (a) within the period of 3 months after the day on which the relevant notice of the determination made by the Tribunal was duly served on the person, or
 - (b) within such further time as the District Court may in exceptional circumstances allow.
- (3) For the purposes of this section, the following matters are not questions of law:
- (a) a determination of whether an injury for which compensation has been claimed is an injury specified in the schedule of compensable injuries or whether it is a compensable injury of a particular description specified in that schedule,
 - (b) a determination of whether a series of acts are related and constitute a single act of violence.
- (4) An appeal does not lie to the District Court against a decision of the Tribunal to refuse leave for a late application for statutory compensation.
- (5) On an appeal, the District Court may only:
- (a) affirm the determination of the Tribunal, or
 - (b) set aside the determination and remit the matter to be considered and determined again by the Tribunal (either with or without the hearing of further evidence) in accordance with the decision of the District Court on the question of law concerned.

40 Payment of compensation suspended pending appeal to Tribunal or District Court

Subject to any order of the Tribunal or District Court to the contrary, the institution of an appeal to the Tribunal or District Court (or the referral of an application for re-determination by the Tribunal) suspends the application of section 42, in relation to the payment of compensation, pending the determination of the appeal or the re-determination.

41 Compensation Fund Corporation respondent to appeals

The Compensation Fund Corporation is the respondent to any appeal or reference under this Division.

Division 7 Payment of compensation**42 Compensation Fund Corporation to pay compensation**

- (1) An application for payment of the whole or any part of an award of statutory compensation or costs under this Part is to be made to the Director who is required to forward the application to the Compensation Fund Corporation.
- (2) On receiving such an application, the Compensation Fund Corporation must (subject to the conditions of the award and any deductions made in accordance with those conditions) pay the relevant amount to the person to whom the award is payable.
- (3) The amount is to be paid out of the Compensation Fund or, if sufficient money is not available in that Fund, out of the Consolidated Fund which is, to the extent necessary, appropriated accordingly.

43 Effect of award on subsequent civil proceedings

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

- (2) Subject to subsection (3), an award of statutory compensation does not affect a person's right to commence or maintain civil proceedings, and damages in civil proceedings must be assessed without regard to the award.
- (3) On the payment to a person of an award of statutory compensation, the person's right to commence or maintain civil proceedings against any other person in respect of the same facts as those on which the award is based is, by operation of this section, subrogated to the State to the extent of the amount of compensation so paid.
- (4) This section does not limit the operation of section 57 or 76.

44 Recovery from fraudulent claimants

- (1) If a person is convicted of:
 - (a) an offence of obtaining an award of statutory compensation by means of fraud or false pretence or by means of a wilfully false or wilfully misleading statement, or
 - (b) an offence, in relation to the obtaining of an award of statutory compensation, of a kind prescribed by the compensation rules,

the Tribunal may, on application by the Director, make an order for restitution for such amount as has been paid to the person under the award.

- (2) An order for restitution may not be made if 2 years or more have elapsed since the date on which the person was convicted of the relevant offence.
- (3) The provisions of Division 8 relating to the recovery of money under an order for restitution under that Division apply to an order for restitution under this section.

Division 8 Recovery of compensation from offenders

45 Definitions

In this Division:

defendant means the person on whom a provisional order for restitution is served.

notice of objection means notice by the defendant under section 47 of objection to the confirmation of a provisional restitution order.

order for restitution means a provisional order for restitution that is confirmed by the Tribunal under section 48 or 49.

provisional order for restitution means a provisional order for restitution that is made by the Director under section 46.

recovery proceedings means proceedings of the Tribunal concerning the confirmation of a provisional order for restitution.

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

46 Director may make provisional order for restitution by offender

- (1) If the Director is of the opinion that, before or after an award of statutory compensation is made, a person has been convicted of a relevant offence, the Director may make a provisional order for restitution against the person so convicted.
- (2) A **relevant offence** is:
 - (a) an offence arising from substantially the same facts as those constituting an act of violence in respect of which the award of statutory compensation was made, or
 - (b) any other offence if an offence referred to in paragraph (a) was taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that other offence.
- (3) The Director must cause notice of the provisional order to be served on the person so convicted in accordance with the compensation rules.
- (4) The notice of the provisional order must:
 - (a) set out the terms of the order, and
 - (b) specify the date on which the award of statutory compensation was made and the facts on which the award was based, and

- (c) specify the offence to which the order relates and the date on which it is alleged that the person was convicted of the offence, and
 - (d) state that the person has 28 days in which to object to the order by a notice filed in the office of the Director, and
 - (e) state that if the person does not object the order will be confirmed by the Tribunal and become a judgment debt payable by the person, and
 - (f) state that if the person files a notice of objection the Tribunal will conduct a hearing into whether the order should be confirmed, and
 - (g) contain such other particulars as the compensation rules may require.
- (5) A provisional order for restitution may not be made against a person if:
- (a) 2 years or more have elapsed since the date on which the relevant award of statutory compensation was paid, or
 - (b) civil proceedings have been commenced or are being maintained against the person, by or on behalf of the State, in respect of an action for damages arising from substantially the same facts as those on which the relevant award of statutory compensation was based.

47 Notice of objection by defendant

- (1) A defendant served with a provisional order for restitution may, within 28 days after service, file in the office of the Director a notice of objection to the confirmation of the order.
- (2) A notice of objection must comply with the compensation rules and must include the grounds of the objection on which the defendant intends to rely.

48 Confirmation by Tribunal of provisional order for restitution if defendant does not object to order

The Tribunal may confirm a provisional order for restitution without conducting a hearing if it is satisfied that the defendant has not filed a notice of objection within 28 days after notice of the provisional order was duly served on the defendant.

49 Hearing by Tribunal to confirm provisional order for restitution if defendant objects to order

- (1) If the defendant files a notice of objection to a provisional order for restitution within 28 days after notice of the provisional order was duly served on the defendant, the Tribunal must conduct a hearing to determine whether the provisional order should be confirmed (in this Division called *recovery proceedings*).
- (2) The Tribunal may confirm the provisional order if satisfied 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 statutory compensation was made. If the Tribunal is not so satisfied, it must discharge the provisional order.
- (3) The Tribunal may vary a provisional order for restitution that it confirms.

50 Arrangement between Director and defendant as to payment under order for restitution

- (1) The Director and a defendant may enter into an arrangement with respect to payment under a provisional order for restitution or any such order that is confirmed.
- (2) Such an arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.
- (3) For the purpose of enabling the Director and the defendant to come to such an arrangement, the Tribunal may adjourn recovery proceedings for such period as it considers appropriate.
- (4) If the defendant does not comply with such an arrangement, recovery proceedings may be taken for the purposes of confirming the order for restitution for the total amount payable under the order.

51 Provisions relating to orders for restitution

- (1) The Tribunal may, when it confirms a provisional order, reduce the amount to be paid under the provisional order having regard to:

- (a) the financial means of the defendant, and
 - (b) such other matters as are, in the opinion of the Tribunal, relevant to the determination.
- (2) The maximum amount that may be ordered to be paid under an order for restitution (whether made against one or more defendants) is the amount that has been paid to the victim under the award of statutory compensation to which the order relates.
- (3) If an order for restitution is made against two or more defendants in respect of the same award of statutory compensation, each of the defendants is jointly and severally liable under the order.
- (4) If the Tribunal decides under subsection (1) to reduce the amount payable by a defendant under an order made against two or more defendants, the Tribunal may confirm the order subject to the liability of the defendant concerned being limited under the order to an amount specified in the order.

52 Procedural and evidentiary provisions relating to recovery proceedings

- (1) Subject to this Division and the compensation rules, recovery proceedings must be determined:
- (a) in accordance with the rules of evidence, and
 - (b) in accordance with the practice and procedure of Local Courts exercising civil jurisdiction,
- in the same way as the determination by a Local Court of an action commenced by way of an ordinary statement of claim (within the meaning of the *Local Courts (Civil Claims) Act 1970*).
- (2) The victim to whom recovery proceedings relate is competent, but not compellable, to give evidence in the proceedings.
- (3) Despite any rule of law to the contrary, evidence given by the victim:
- (a) in any application for an award of statutory compensation, or
 - (b) in any hearing relating to that application, or

- (c) in any other proceedings (whether civil or criminal) arising from substantially the same facts as those on which the award of statutory compensation was based,
- is admissible in recovery proceedings.
- (4) If evidence so given by the victim is admitted in recovery proceedings but the victim does not attend as a witness in the proceedings, that evidence must be given no greater weight than is appropriate as a consequence of there having been no opportunity for the victim to be cross-examined in relation to that evidence.
- (5) The Tribunal does not have jurisdiction to order payment of costs in relation to recovery proceedings.
- (6) A person (other than a public servant) who is required to attend or to give evidence at recovery proceedings is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules.

53 Orders for restitution to be subject to appeals against relevant awards of statutory compensation

- (1) An order for restitution does not have any effect:
- (a) until the period within which an appeal may be made against the award of statutory compensation from which it arises has expired, or
- (b) if such an appeal is duly made within that period, until the appeal is finally disposed of.
- (2) If the award of statutory compensation to which such an appeal relates is set aside or varied as a result of the appeal, the order for restitution ceases to have effect.
- (3) In the event that the award is varied, a new provisional order for restitution may be made in accordance with this Division as if the original order had not been made.

54 Order for restitution to be a judgment enforceable by Tribunal

- (1) An order for restitution is taken to be a judgment of a Local Court in proceedings on a statement of claim under the *Local Courts (Civil Claims) Act 1970* and may be enforced accordingly by the Tribunal in accordance with the provisions of that Act.

- (2) Interest is payable on the amount payable under an order for restitution in accordance with the provisions relating to interest on the amount payable under such a judgment.
- (3) Money payable under an order for restitution and not paid may be written off in accordance with a relevant policy on the matter determined by the Minister.
- (4) Compensation rules may be made for the purposes of this section, and for that purpose may apply the provisions of the *Local Courts (Civil Claims) Act 1970*, with or without modification.
- (5) In addition, the compensation rules may make provision for the attachment of the prison earnings of convicted persons for the purposes of enforcing orders for restitution.

55 Appeals against orders for restitution

- (1) An order for restitution that is confirmed after a hearing before the Tribunal may be appealed against in the same way as a judgment of a Local Court exercising civil jurisdiction may be appealed against.
- (2) An appeal may not be lodged under this section if 1 month or more has elapsed since the date on which the order for restitution was made.

56 Orders for restitution may be set aside

- (1) The Tribunal, on sufficient cause shown, may, by order, set aside an order for restitution.
- (2) The Tribunal may stay the execution of a judgment pending the determination of any proceedings to set aside the order for restitution.
- (3) If the Tribunal makes an order under this section, the defendant is entitled to be paid such amount, by way of costs in relation to the setting aside of the order for restitution, as may be prescribed by the compensation rules.

57 Effect of order for restitution on subsequent civil proceedings

- (1) This section applies to civil proceedings in respect of an injury or loss sustained by a person to whom an award of statutory compensation has been made (being an award in respect of which an order for restitution has been made) on the basis of the same facts as those on which the civil proceedings are based.
- (2) An order for restitution does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the order.
- (3) However, the right of the State, under section 43, to commence or maintain civil proceedings is extinguished by an order for restitution.
- (4) Subsection (3) does not revive the right of any other person to commence or maintain civil proceedings to the extent to which that right was previously subrogated to the State under section 43.
- (5) This section does not limit the operation of section 43 or 76.

58 Access to information about whereabouts of defendant

Police officers, the Roads and Traffic Authority and other government agencies are authorised to provide the Director with information about the address of a defendant for the purpose of serving a provisional order for restitution on the defendant or taking any action against the defendant to enforce an order for restitution.

Part 3 Administration of statutory scheme

Division 1 Victims Compensation Tribunal

59 Constitution of Tribunal

- (1) There is constituted by this Act a Victims Compensation Tribunal.
- (2) The Tribunal is to consist of such members as the Governor may, on the recommendation of the Attorney General, appoint.
- (3) Only Magistrates are eligible to be appointed as members of the Tribunal.
- (4) Of the members of the Tribunal, one is (in and by the member's instrument of appointment or in and by a subsequent instrument executed by the Governor) to be appointed as Chairperson of the Tribunal.
- (5) Schedule 2 has effect with respect to the Tribunal.

60 Jurisdiction and functions of the Tribunal

- (1) The Tribunal has the jurisdiction and functions conferred or imposed on it by or under this or any other Act.
- (2) In the exercise of its jurisdiction and functions, the Tribunal must do all such things as are necessary to ensure that proceedings before it are disposed of within as short a period as is reasonably practicable.

61 Authorised Magistrates

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

62 Single member to exercise the jurisdiction and functions of the Tribunal

The jurisdiction and functions of the Tribunal may be exercised:

- (a) by a member of the Tribunal, or
- (b) by an authorised Magistrate,
sitting alone.

Division 2 Director, assessors and other staff**63 Director of Victims Compensation, Registrar of Tribunal and other staff**

- (1) A Director of Victims Compensation, Registrar of the Tribunal and such other staff as are necessary for the purposes of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Director may delegate to the Registrar of the Tribunal, a compensation assessor or to any such other staff any of the functions of the Director under this Act, other than this power of delegation.

64 Compensation assessors

- (1) Compensation assessors are to be employed for the purposes of this Act under Part 2 of the *Public Sector Management Act 1988*.
- (2) A person ceases to be a compensation assessor if the person ceases to be so employed.
- (3) The Director is a compensation assessor.

65 Guidelines and arrangements relating to compensation assessors

- (1) The Tribunal may issue guidelines, consistent with this Act and the compensation rules, to compensation assessors with respect to the determination of applications for statutory compensation. Compensation assessors must have regard to those guidelines in the exercise of their functions under this Act.

- (2) The Director is (subject to this Act) responsible for making arrangements for the work of compensation assessors (including the allocation of matters to particular assessors).
- (3) The Director, the appropriate Department Head or any other public servant may not direct, overrule or interfere with the determination of a compensation assessor on a matter allocated to the assessor. However, the Director may, at any time before its determination, re-allocate the matter to another compensation assessor.
- (4) This section does not affect the exercise of functions of the appropriate Department Head under the *Public Sector Management Act 1988* with respect to compensation assessors.

Division 3 Victims Compensation Fund Corporation

66 Victims Compensation Fund Corporation

- (1) There is constituted by this section a corporation with the corporate name of the Victims Compensation Fund Corporation.
- (2) The affairs of the Compensation Fund Corporation are to be managed by the Director-General of the Attorney General's Department.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Compensation Fund Corporation by the Director-General of the Attorney General's Department is taken to have been done by the Corporation.
- (4) The Compensation Fund Corporation may delegate to an officer of the Attorney General's Department any of the functions (other than this power of delegation) conferred or imposed on the Corporation by or under this Act.

Division 4 Victims Compensation Fund

67 Victims Compensation Fund

- (1) There is established a fund called the Victims Compensation Fund (*the Compensation Fund*).

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- (2) The Compensation Fund Corporation has the control and management of the Compensation Fund and the assets of the Compensation Fund are vested in the Corporation.
 - (3) The Compensation Fund Corporation may invest money in the Compensation Fund:
 - (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
 - (b) if that Act does not confer power on the Corporation to invest money—in any manner authorised for the investment of trust funds.

68 Payments into the Compensation Fund

There are to be paid into the Compensation Fund:

- (a) all proceeds or profits confiscated under the *Confiscation of Proceeds of Crime Act 1989*, and
- (b) all money required by the *Drug Trafficking (Civil Proceedings) Act 1990* to be credited to the Fund, and
- (c) all money recovered under Division 8 of Part 2 or Part 5 of this Act, and
- (d) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act, and
- (e) all other money required by or under this or any other Act to be paid into the Fund.

69 Payments from the Compensation Fund

There are to be paid from the Compensation Fund:

- (a) all payments of statutory compensation, costs and victims' counselling under this Act, and
- (b) all expenses incurred by the Tribunal, Director, compensation assessors and other staff in the exercise of their functions under this Act, and
- (c) all expenses incurred by the Victims of Crime Bureau and the Victims Advisory Board under the *Victims Rights Act 1996* and any other expenses incurred in the provision of victim support services approved by the Minister, and
- (d) all expenses incurred in the administration of the Compensation Fund.

Part 4 Compensation awarded by court

70 Definitions

In this Part:

aggrieved person means:

- (a) in relation to an offence other than an offence in respect of the death of a person, a person who has sustained injury or loss through or by reason of:
 - (i) an offence for which the offender has been convicted, or
 - (ii) an offence taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that offence, or
- (b) in relation to an offence in respect of the death of a person, a member of the immediate family of the person.

direction for compensation means a direction for compensation under section 71.

71 Directions for compensation

- (1) If a person is convicted by a court of an offence, the court may (on the conviction or at any time afterwards) on notice given to the offender direct that a sum not exceeding \$50,000 be paid out of the property of the offender:
 - (a) to any aggrieved person, or
 - (b) to any aggrieved persons in such proportions as may be specified in the direction,

by way of compensation for any injury or loss sustained through, or by reason of, the offence or, if applicable, any other offence taken into account (under section 21 of the *Criminal Procedure Act 1986*) when sentence was passed on the offender for that offence.

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

72 Restrictions on court's power to give directions for compensation

- (1) A direction for compensation must not be given in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums specified in a direction for compensation previously given under this Part:
 - (a) on the conviction of any other person for that offence, or
 - (b) on the conviction of that or any other person for a related offence,exceeds \$50,000.
- (2) A direction for compensation for injury or loss for which statutory compensation is payable must not be given if an award of statutory compensation in respect of the injury or loss has been made under Part 2 to or for the benefit of the aggrieved person.
- (3) For the purposes of this section, an offence is related to another offence if:
 - (a) both of the offences were committed against the same person, and
 - (b) in the opinion of the court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.

However, an offence is not related to any earlier offence in respect of which a direction for compensation has been given if it is committed after the direction was given.

- (4) In this section, a reference to a direction for compensation previously given under this Part includes a reference to a direction for compensation previously given under Part 6 of the *Victims Compensation Act 1987*, or under section 437 or 554 (3) of the *Crimes Act 1900*.

73 Factors to be taken into consideration

In determining whether or not to give a direction for compensation and in determining the sum to be paid under such a direction, the court must have regard to:

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

74 Payment of sum directed

Subject to section 9 of the *Criminal Appeal Act 1912* and to the provisions of the *Justices Act 1902*, any sum directed to be paid by an offender to an aggrieved person, under a direction for compensation, must be paid immediately, or within such period (if any) as is specified in the direction, to the registrar or clerk of the court for payment to the aggrieved person.

75 Enforcement of directions for compensation

- (1) If a court gives a direction for compensation and the whole or any part of the amount specified in the direction is not paid in accordance with the direction, the registrar or clerk of the court must, on the application of the aggrieved person, issue to the aggrieved person a certificate:
 - (a) that identifies the direction, and
 - (b) that specifies the offender, and
 - (c) that specifies the amount required by the direction to be paid which has not, as at the date of the certificate, been paid to the registrar or clerk.
- (2) If a certificate is issued under this section, the registrar or clerk must not subsequently accept any payment from the offender in respect of the direction for compensation identified in the certificate.
- (3) An aggrieved person may file such a certificate in the office or registry of a court having jurisdiction to order payment of the

amount specified in the certificate, and the registrar or clerk of that court must immediately enter judgment in favour of the aggrieved person against the offender specified in the certificate for:

- (a) the amount specified in the certificate as having not been paid, and
 - (b) any fees payable to the registrar or clerk in respect of the filing of the certificate.
- (4) A direction for compensation may only be enforced in accordance with this section and any amount not paid is not payable from the Compensation Fund or any other public money.

76 Effect of directions for compensation on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of an injury or loss sustained by a person in respect of whom a direction for compensation has been given on the basis of the same facts as those on which the civil proceedings are based.
- (2) A direction for compensation does not affect a person's right to commence or maintain civil proceedings, and damages in the civil proceedings must be assessed without regard to the direction.
- (3) The judgment of the court in which the civil proceedings are determined:
 - (a) must not be entered in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have been paid under the direction for compensation, and
 - (b) must not be enforced, except with the leave of the court, in respect of so much of the amount of damages assessed by the court as is equivalent to the sum of the amounts that have not been paid under the direction for compensation.
- (4) This section does not limit the operation of section 43 or 57.

77 Directions for compensation not appealable on certain grounds

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

Part 5 Compensation levies

78 Application of Part

- (1) This Part applies to all offences that are:
 - (a) punishable by imprisonment, whether or not they are also punishable otherwise than by imprisonment, and
 - (b) dealt with by the Supreme Court, the District Court, a Local Court or the Children's Court.
- (2) This Part does not apply to an offence merely because it is taken into account (as referred to in section 21 of the *Criminal Procedure Act 1986*) on the sentence of a person in respect of some other offence, whether or not that other offence is an offence to which this Part applies.

79 Imposition of compensation levy

- (1) A person who is convicted of an offence to which this Part applies is, by virtue of the conviction, liable to pay to the State a levy of:
 - (a) \$70, if the person is convicted on indictment or pursuant to a committal under section 51A of the *Justices Act 1902*, or
 - (b) \$30, if the person is convicted otherwise than as referred to in paragraph (a).
- (2) Such a levy is in addition to, and does not form part of, any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.
- (3) 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 any time afterwards, that the person is exempt from liability to pay the levy.
- (4) Any money paid to the State in respect of an offence to which this Part applies is to be applied towards the discharge of such a levy before it is applied to the discharge of any pecuniary penalty or order for payment of compensation imposed in respect of the same offence.

80 Payment and enforcement of compensation levy

- (1) The regulations may make provision for the manner in which compensation levies are to be paid and enforced.
- (2) In particular, the regulations may make provision for:
 - (a) the attachment of the prison earnings of convicted persons, and
 - (b) the imposition of community service orders on persons who fail to pay compensation levies.

81 Effect of appeal proceedings

- (1) The commencement of any proceedings by way of appeal against, or review of, a conviction or sentence in respect of which a compensation levy has been imposed on a person stays the liability of the person to pay the levy.
- (2) The setting aside of any such conviction annuls that liability.
- (3) The dismissal of any such proceedings removes the stay of liability.

Part 6 Miscellaneous

82 Act binds Crown

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

83 Reports by Tribunal

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Chairperson of the Tribunal must prepare and forward to the Minister a report on the work and activities of the Tribunal and the compensation assessors for the 12 months ending on 30 June in that year.
- (2) The Minister must lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) Without limiting the generality of subsection (1), the Chairperson of the Tribunal must submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal and the compensation assessors.
- (4) A report may deal with such matters as the Minister directs and with such other matters as the Chairperson of the Tribunal considers appropriate to include in the report.

84 Inadmissibility of certain evidence in subsequent criminal proceedings

Despite any rule of law to the contrary:

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

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

85 Limitation of liability

- (1) No proceedings lie against the Tribunal, any authorised Magistrate, the Director, a compensation assessor or any other staff employed for the purposes of this Act for or on account of any act, matter or thing:
 - (a) done or ordered to be done or omitted or suffered to be done by the Tribunal, authorised Magistrate, Director, compensation assessor or member of staff, and
 - (b) purporting to be done, ordered, omitted or suffered for the purpose of exercising a function under this or any other Act,

if the Tribunal, authorised Magistrate, Director, compensation assessor or member of staff has acted in good faith and with reasonable care.

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

86 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

87 Compensation rules

- (1) The Governor may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by the compensation rules.
- (2) In particular, compensation rules may be made for or with respect to:
 - (a) the practice and procedure of the Tribunal and compensation assessors, and

- (b) costs awarded by the Tribunal or compensation assessors, and
 - (c) the forms to be used under this Act (including their verification by affidavit or statutory declaration and the authorisation of a person to approve of those forms), and
 - (d) the service of documents under this Act, and
 - (e) the exercise of the functions of compensation assessors.
- (3) The compensation rules are, for the purposes of any Act, to be treated as rules of court.

88 Regulations

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

89 Savings, transitional and other provisions

Schedule 3 has effect.

90 Repeal of Victims Compensation Act 1987 No 237

- (1) The *Victims Compensation Act 1987* is repealed.
- (2) The *Victims Compensation Regulation 1988*, the *Victims Compensation Rule 1988* and any other regulation or rule under that Act are repealed.

91 Amendment of other Acts

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

92 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Compensable injuries

(Section 10)

1 Description of compensable injuries

The injuries specified in column 1 of the table to this Schedule are compensable injuries for the purposes of this Act.

2 Standard amount of compensation

The standard amount of compensation for any such compensable injury is the amount, or an amount within the range of amounts, specified in column 2 of the table to this Schedule opposite the injury.

3 Multiple injuries

If 2 or more compensable injuries are received by an eligible victim, the standard amount of compensation for all of those injuries is the total of the following amounts (subject to the other provisions of this Act):

- (a) The full standard amount for the most serious injury (that is, for the injury that has the largest standard amount payable).
- (b) 10% of the standard amount for the second most serious injury (that is, for the injury that has the same or the second largest standard amount payable).
- (c) 5% of the standard amount for the third most serious injury (that is, for the injury that has the same or the third largest standard amount payable).
- (d) No amount for any further injuries.

4 Reduction of standard amount because of existing condition

If the act of violence results in a compensable injury because of the aggravation, acceleration, exacerbation or deterioration of an existing condition of the eligible victim, the standard amount of compensation for the injury is to be reduced by the proportionate amount that the Tribunal or compensation assessor considers is attributable to the existing condition.

5 Shock

The following applies to the compensable injury of shock:

- (a) Compensation is payable only if the symptoms and disability persist for more than 6 weeks.
- (b) The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions.
- (c) The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of self-harm or guilt.
- (d) The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.
- (e) Relevant disabilities include impaired work or school or other educational performance, significant adverse effects on social relationships and sexual dysfunction.

6 Sexual assault

The following applies to the compensable injury of sexual assault:

- (a) Category 1 sexual assault consists of:
 - indecent assault, or
 - an assault with violence in the course of attempted unlawful sexual intercourse.
- (b) Category 2 sexual assault consists of:
 - unlawful sexual intercourse, or
 - the infliction of serious bodily injury in the course of attempted unlawful sexual intercourse.
- (c) Category 3 sexual assault consists of:
 - a pattern of abuse involving category 1 or category 2 sexual assault, or
 - unlawful sexual intercourse in which serious bodily injury is inflicted, or

- unlawful sexual intercourse in which 2 or more offenders are involved, or
- unlawful sexual intercourse in which the offender uses an offensive weapon.

In this paragraph:

indecent assault means the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person.

unlawful sexual intercourse means sexual intercourse (within the meaning of section 61H of the *Crimes Act 1900*) with a person without his or her consent or with consent obtained by means of a non-violent threat, sexual intercourse with a child under the age of 16 years or with a person having an intellectual disability or self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat within the meaning of that section.

7 Burns and scarring

The following applies to the compensable injuries of burns and scarring:

- (a) Compensation is not payable for scarring unless it is permanent.
- (b) Compensation is not payable for both burns to any part of the body and scarring of that part of the body caused by burns.
- (c) Payment for burns or scarring is subject to such reasonable inspection of the injury as the Tribunal or compensation assessor may require.

8 Injuries not specifically mentioned

An injury not specifically mentioned in Column 1 of the table to this Schedule is a compensable injury if, in the opinion of the Tribunal or compensation assessor dealing with the application for statutory compensation:

Schedule 1 Compensable injuries

- (a) the injury is similar to an injury specifically mentioned in the table, and
- (b) the injury has caused symptoms or disability lasting for at least 6 weeks.

The standard amount of compensation for the injury is the standard amount for that similar injury.

9 Other interpretative provisions

- (a) For the purpose of determining the extent of an injury, the extent to which the injury, or the effect of the injury, may be reduced or limited by an external removable aid or appliance is to be disregarded.
- (b) If an eligible victim has only one leg, arm, eye or other body part, an injury to the remaining body part is to be regarded as an injury to both of those body parts.

Table

Column 1 Description of Injury	Column 2 Standard amount of compensation \$
Brain damage	
moderate impairment of social/intellectual functions.....	36,000
serious impairment of social/intellectual functions.....	50,000
permanent—extremely serious (no effective control of functions).....	50,000
Burns	
multiple first degree burns covering at least 25% of body.....	50,000
[For other burns to a part of the body, see burn injuries listed in this table under that part of the body]	

Table—continued**Disease or other recognised medical illness
causing disability (not being a disease or illness
of the mind)**

disability lasting 6 to 13 weeks	2,400
disability lasting 14 to 28 weeks	9,600
disability lasting over 28 weeks (but not permanent).....	18,000
permanent disability	48,000

Epilepsy

fully controlled	18,000
partially controlled.....	30,000
uncontrolled	50,000

Head

burns (other than face): minor	3,600
burns (other than face): moderate	9,600
burns (other than face): severe	18,000
burns (face): minor	4,800
burns (face): moderate	12,000
burns (face): severe	50,000
ear: fractured mastoid.....	2,400
ear: loss of one ear	24,000
ear: loss of both ears.....	42,000
ear: partial deafness of one ear—remaining hearing socially useful with hearing aid if necessary	8,400
ear: partial deafness of both ears—remaining hearing socially useful with hearing aid if necessary	18,000
ear: total deafness of one ear.....	36,000
ear: total deafness of both ears	50,000
ear: partial loss of ear(s)	9,600
ear: perforated ear drum	4,200
ear: temporary partial deafness—lasting 6 to 13 weeks	2,400

Table—continued

ear: temporary partial deafness—lasting more than 13 weeks	3,600
ear: tinnitus (ringing noise in ears)—lasting 6 to 13 weeks	2,400
ear: tinnitus—lasting more than 13 weeks.....	7,200
ear: tinnitus—permanent (moderate).....	18,000
ear: tinnitus—permanent (very serious)	36,000
eye: blow out fracture of orbit bone cavity containing eyeball	7,200
eye: blurred or double vision—lasting 6 to 13 weeks	2,400
eye: blurred or double vision—lasting more than 13 weeks	4,200
eye: blurred or double vision—permanent.....	18,000
eye: cataracts one eye (requiring operation).....	7,200
eye: cataracts both eyes (requiring operation)	18,000
eye: cataracts one eye (permanent/inoperable).....	18,000
eye: cataracts both eyes (permanent/inoperable)	42,000
eye: corneal abrasions	4,800
eye: damage to iris resulting in hyphaema (bleeding in ocular chamber).....	6,000
eye: damage to irises resulting in hyphaema (bleeding in ocular chamber)	14,400
eye: degeneration of optic nerve.....	4,800
eye: degeneration of optic nerves.....	12,000
eye: detached retina	12,000
eye: detached retinas.....	30,000
eye: dislocation of lens	12,000
eye: dislocation of lenses.....	30,000
eye: glaucoma.....	6,000
eye: loss of one eye.....	50,000
eye: loss of both eyes	50,000
eye: loss of sight of one eye.....	48,000

Table—continued

eye: loss of sight of both eyes.....	50,000
eye: partial loss of vision—6/9	18,000
eye: partial loss of vision—6/12.....	24,000
eye: partial loss of vision—6/24.....	30,000
eye: partial loss of vision—6/36.....	36,000
eye: partial loss of vision—6/60.....	42,000
eye: residual floaters	12,000
eye: traumatic angle recession of eye.....	6,000
facial: dislocated jaw	4,800
facial: fractured malar and/or zygomatic—cheek bones ..	4,800
facial: fractured mandible and/or maxilla—jaw bones.....	7,200
facial: permanently clicking jaw.....	12,000
facial: temporary numbness/loss of feeling—lasting 6 to 13 weeks	2,400
facial: temporary numbness/loss of feeling—lasting more than 13 weeks (recovery expected)	3,600
facial: permanent numbness/loss of feeling	9,600
nose: deviated nasal septum.....	2,400
nose: deviated nasal septum requiring septoplastomy	4,800
nose: undisplaced fracture of nasal bones	2,400
nose: displaced fracture of nasal bones.....	3,600
nose: partial loss (at least 10%).....	9,600
nose: partial loss of smell and/or taste.....	12,000
nose: loss of smell or taste.....	24,000
nose: loss of smell and taste	36,000
scarring (face): minor disfigurement.....	3,600
scarring (face): significant disfigurement	8,400
scarring (face): serious disfigurement	18,000
scarring (other than face): visible, minor disfigurement...	3,600
scarring (other than face): significant disfigurement.....	7,200
scarring (other than face): serious disfigurement	12,000

Table—continued

skull: balance impaired—permanent	18,000
skull: brain haemorrhage (full recovery).....	9,600
skull: brain haemorrhage (residual minor impairment of social/intellectual functions).....	18,000
skull: concussion (lasting at least one week)	3,600
skull: simple fracture (no operation)	6,000
skull: depressed fracture (no operation)	9,600
skull: depressed fracture (requiring operation).....	14,400
skull: stroke (full recovery)	12,000
skull: subdural haematoma—treated conservatively	9,600
skull: subdural haematoma—requiring evacuation	18,000
teeth: chipped front teeth requiring crown	2,400
teeth: fractured tooth/teeth requiring crown	2,400
teeth: loss of crowns.....	3,000
teeth: loss of one tooth other than front tooth	2,400
teeth: loss of two or more teeth other than front tooth..	3,600
teeth: loss of one front tooth	3,600
teeth: loss of two or three front teeth	4,800
teeth: loss of four or more front teeth.....	7,200
teeth: slackening of teeth requiring dental treatment.....	2,400
tongue: impaired speech—slight.....	4,800
tongue: impaired speech—moderate	12,000
tongue: impaired speech—serious.....	24,000
tongue: impaired speech—severe.....	42,000
tongue: loss of speech—permanent	50,000
tongue: loss of tongue	50,000
Lower limbs	
ankle: fracture of one ankle (full recovery).....	7,200
ankle: fracture of one ankle (with continuing disability) ..	12,000
ankle: fracture of both ankles (full recovery)	18,000
ankle: fracture of both ankles (with continuing disability)	24,000

Table—continued

ankle: sprain of one ankle (disabling for at least 6 to 13 weeks)	2,400
ankle: sprain of one ankle (disabling for more than 13 weeks)	6,000
ankle: sprain of both ankles (disabling for at least 6 to 13 weeks)	4,800
ankle: sprain of both ankles (disabling for more than 13 weeks)	8,400
burns: minor	3,600
burns: moderate	9,600
burns: severe.....	24,000
femur: fracture of both legs (full recovery).....	18,000
femur: fracture of both legs (with continuing disability) ...	24,000
femur: fracture of thigh bone (full recovery)	7,200
femur: fracture of one leg (with continuing disability).....	12,000
fibula: fracture of both legs (full recovery)	18,000
fibula: fracture of both legs (with continuing disability)....	24,000
fibula: fracture of one leg (with continuing disability)	12,000
fibula: fracture of slender bone from knee to ankle (full recovery)	7,200
heel bone: fracture of one foot (full recovery)	6,000
heel bone: fracture of one foot (with continuing disability).....	12,000
heel bone: fracture of both feet (full recovery)	12,000
heel bone: fracture of both feet (with continuing disability).....	24,000
knees: injury requiring arthroscopy (investigative surgery/repair)—no fracture	4,800
leg: loss of leg below knee	50,000
leg: loss of leg above knee.....	50,000
leg: loss of both legs	50,000
metatarsal bones: fracture of one foot (full recovery)	6,000

Table—continued

metatarsal bones: fracture of one foot (with continuing disability)	18,000
metatarsal bones: fracture of both feet (full recovery)....	12,000
metatarsal bones: fracture of both feet (with continuing disability)	36,000
patella: dislocation of one leg (full recovery)	2,400
patella: dislocation of one leg (with continuing disability)	18,000
patella: dislocation of both legs (full recovery)	4,800
patella: dislocation of both legs (with continuing disability)	42,000
patella: fracture of knee cap (full recovery)	18,000
patella: fracture of one leg (with continuing disability)....	24,000
patella: fracture of both legs (full recovery)	36,000
patella: fracture of both legs (with continuing disability) .	48,000
phalanges: fracture of toes	3,600
scarring: minor disfigurement.....	3,000
scarring: significant disfigurement	4,200
scarring: serious disfigurement	12,000
tarsal bones: fracture of one foot (full recovery)	6,000
tarsal bones: fracture of one foot (with continuing disability)	18,000
tarsal bones: fracture of both feet (full recovery)	12,000
tarsal bones: fracture of both feet (with continuing disability)	36,000
tendon(s)/ligament(s): minor damage (full recovery)	2,400
tendon(s)/ligament(s): minor damage (with continuing disability)	7,200
tendon(s)/ligament(s): moderate damage (full recovery)..	4,800
tendon(s)/ligament(s): moderate damage (with continuing disability).....	12,000
tendon(s)/ligaments(s): severe damage (full recovery)	7,200

Table—continued

tendon(s)/ligaments(s): severe damage (with continuing disability)	18,000
tibia: fracture of shin bone (full recovery)	7,200
tibia: fracture of shin bone (with continuing disability)	12,000
tibia: fracture of both legs (full recovery)	18,000
tibia: fracture of both legs (with continuing disability)	24,000
toe: fracture of one big toe	6,000
toe: fracture of two big toes	12,000
Neck	
burns: minor	3,600
burns: moderate	9,600
burns: severe.....	24,000
neck: strained (disabling for 6 to 13 weeks)	2,400
neck: strained (disabling for more than 13 weeks)	4,200
neck: strained—seriously disabling (not permanent).....	12,000
neck: strained—seriously disabling (permanent).....	24,000
scarring: minor disfigurement	3,600
scarring: significant disfigurement	7,200
scarring: serious disfigurement.....	9,600
Paralysis	
Paralysis of all 4 limbs (quadriplegia/tetraplegia), paralysis of one side of body (hemiplegia), paralysis of the lower limbs (paraplegia), paralysis of one lower limb, paralysis of one or both upper limbs	50,000
Sexual assault	
Category 1	2,400–10,000
Category 2	10,000–25,000
Category 3	25,000–50,000
Shock	
Lasting 6 to 13 weeks.....	2,400
Lasting 14 to 28 weeks.....	9,600

Table—continued

Lasting over 28 weeks (but not permanent).....	18,000
Permanent symptoms and disability	48,000
Torso	
back: fracture of vertebra (full recovery).....	6,000
back: fracture of vertebra (continuing disability)	12,000
back: fracture of more than one vertebra (full recovery)	9,600
back: fracture of more than one vertebra (continuing disability)	18,000
back: prolapsed intervertebral disc(s)—seriously disabling (not permanent).....	12,000
back: prolapsed intervertebral disc(s)—seriously disabling (permanent)	18,000
back: ruptured intervertebral disc(s) requiring surgical removal.....	24,000
back: strained back—disabling for 6 to 13 weeks.....	2,400
back: strained back—disabling for more than 13 weeks	6,000
back: strained back—seriously disabling (not permanent)	12,000
back: strained back—seriously disabling (permanent).....	18,000
burns: minor.....	3,600
burns: moderate	9,600
burns: severe	24,000
clavicle: fracture of collar bone	4,800
clavicle: fracture of both clavicles.....	12,000
coccyx: fracture of tail bone.....	6,000
fertility: loss of fertility.....	50,000
genitalia: injury requiring medical treatment (no permanent damage).....	4,200
genitalia: injury requiring medical treatment (permanent damage)	12,000
hernia.....	8,400

Table—continued

hip: dislocated (full recovery)	4,200
hip: dislocated (with continuing disability)	18,000
hip: fractured	18,000
injury requiring laparotomy	8,400
kidney: loss of kidney	48,000
lung: collapse of lung	8,400
lung: collapse of both lungs	18,000
lung: puncture of lung	7,200
lung: puncture of both lungs	14,400
lung: smoke inhalation in both lungs (permanent and disabling damage)	12,000
pelvis: fracture of pelvis	18,000
rib: fracture of rib	2,400
rib: fracture of two or more ribs	3,600
scapula: fracture of shoulder blade	6,000
scapula: fracture of both scapula	14,400
scarring: minor disfigurement	3,000
scarring: significant disfigurement	6,000
scarring: serious disfigurement	12,000
shoulder: dislocated (full recovery)	4,200
shoulder: dislocated (with continuing disability)	12,000
shoulder: frozen	8,400
spleen: loss of spleen	9,600
sternum: fracture of breast bone	6,000
Upper limbs	
arm: loss of arm	50,000
arm: loss of both arms	50,000
arm: permanently and seriously impaired grip	18,000

Table—continued

arm: permanently and seriously impaired grip in both arms	36,000
burns: minor	3,600
burns: moderate	9,600
burns: severe	24,000
elbow: dislocation/fracture of one elbow (full recovery) ..	7,200
elbow: dislocation/fracture of one elbow (with continuing disability)	18,000
elbow: dislocation/fracture of both elbows (full recovery)	18,000
elbow: dislocation/fracture of both elbows (with continuing disability).....	24,000
finger: loss of one other than index	12,000
finger: loss of index	18,000
finger: loss of two or more.....	24,000
finger: partial loss of finger (one joint) other than thumb or index.....	6,000
finger(s) or thumb: dislocated one hand (full recovery) ..	3,000
finger(s) or thumb: dislocated one hand (with continuing disability)	6,000
finger(s) or thumb(s): dislocated both hands (full recovery)	7,200
finger(s) or thumb(s): dislocated both hands (with continuing disability).....	18,000
finger(s) or thumb: fractured one hand (full recovery)	3,600
finger(s) or thumb: fractured one hand (with continuing disability)	8,400
finger(s) or thumb(s): fractured both hands (full recovery)	9,600
finger(s) or thumb(s): fractured both hands (with continuing disability).....	18,000
hand: fracture of hand (full recovery)	4,800
hand: fracture of hand (with continuing disability)	12,000
hand: fracture of both hands (full recovery)	8,400

Table—continued

hand: fracture of both hands (with continuing disability)	18,000
hand: loss of hand	50,000
hand: loss of both hands	50,000
humerus: fracture of upper arm bone (full recovery)	7,200
humerus: fracture (with continuing disability).....	12,000
humerus: fracture of both arms (full recovery).....	18,000
humerus: fracture of both arms (with continuing disability).....	24,000
radius: fracture of smaller forearm bone (full recovery) ..	7,200
radius: fracture (with continuing disability).....	12,000
radius: fracture of both arms (full recovery).....	18,000
radius: fracture of both arms (with continuing disability)	24,000
scarring: minor disfigurement	3,000
scarring: significant disfigurement	6,000
scarring: serious disfigurement.....	9,600
tendon(s)/ligament(s): minor damage (full recovery).....	2,400
tendon(s)/ligament(s): minor damage (with continuing disability).....	7,200
tendon(s)/ligament(s): moderate damage (full recovery) ..	4,800
tendon(s)/ligament(s): moderate damage (with continuing disability).....	12,000
tendon(s)/ligament(s): severely damaged (full recovery) ..	7,200
tendon(s)/ligament(s): severely damaged (with continuing disability).....	18,000
thumb or index finger: partial loss (one joint)	9,600
thumb: loss of thumb.....	36,000
ulna: fracture of inner forearm bone (full recovery)	7,200
ulna: fractured ulna (with continuing disability).....	12,000
ulna: fracture of both arms (full recovery)	18,000
ulna: fracture of both arms (with continuing disability)....	24,000
wrist: fracture—colles type (full recovery).....	9,600

Table—continued

wrist: fracture—colles type (with continuing disability).....	18,000
wrist: fracture—including scaphoid (full recovery)	7,200
wrist: fracture—including scaphoid (with continuing disability)	14,400
wrist: fracture of both—colles type (full recovery).....	18,000
wrist: fracture of both—colles type (with continuing disability)	24,000
wrist: fracture of both—including scaphoid fracture (full recovery)	14,400
wrist: fracture of both—including scaphoid fracture (with continuing disability).....	24,000
wrist: sprain—disabling for 6 to 13 weeks.....	2,400
wrist: sprain—disabling for more than 13 weeks.....	3,600
wrist: sprain of both—disabling for 6 to 13 weeks.....	4,800
wrist: sprain of both—disabling for more than 13 weeks	7,200

Schedule 2 Provisions relating to Tribunal

(Section 59)

Part 1 Members of Tribunal

1 Magisterial status of members not affected

- (1) A member of the Tribunal does not cease to be a Magistrate, nor is the member's rank, title, status and precedence as a Magistrate affected, merely because of the member's appointment as a member of the Tribunal.
- (2) The service of a member of the Tribunal in his or her capacity as such a member is, for all purposes, taken to be service as a Magistrate.

2 Term of office of members

- (1) A member of the Tribunal holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A member of the Tribunal holds office on a full-time or part-time basis, as may be specified in the member's instrument of appointment.

3 Public Sector Management Act 1988 not to apply to members

The *Public Sector Management Act 1988* (including Part 8) does not apply to or in respect of the appointment of a member of the Tribunal and a member of the Tribunal is not, as a member of the Tribunal, subject to that Act.

4 Casual vacancies in office of member

A person vacates office as a member of the Tribunal if the person:

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

5 Appointment as Magistrate unaffected by resignation

A person does not cease to be a Magistrate merely because of:

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

Part 2 Proceedings of Tribunal generally

6 Sittings of Tribunal

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

7 Tribunal may be assisted by Crown Solicitor

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

8 Record of proceedings of Tribunal

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

9 Authentication of documents by Tribunal

- (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the Chairperson or the Registrar of the Tribunal.
- (2) Judicial notice is to be taken of the signature of the Chairperson or the Registrar when appearing on a document issued by the Tribunal.

10 Application of Defamation Act 1974

For the purposes of section 18 of the *Defamation Act 1974*, the proceedings of the Tribunal is taken to be an inquiry within the meaning of that section.

Part 3 Hearings before Tribunal

11 Application

This Part applies to hearings conducted by the Tribunal in connection with an application for statutory compensation.

12 Hearings generally

- (1) In hearings under this Part, the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (2) Hearings under this Part must be conducted with as little formality and legal technicality and form as the circumstances of the case permit.
- (3) An applicant for statutory compensation is entitled to be represented in any hearing under this Part by a legal practitioner or, by leave of the Tribunal, by an agent.

13 Hearings to be open to the public

Hearings under this Part must be conducted in the presence of the public unless:

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

14 Publication of names

- (1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:
 - (a) who appears as a witness before the Tribunal in any hearing under this Part, or
 - (b) to whom any hearing under this Part relates, or
 - (c) who is mentioned or otherwise involved in any hearing under this Part,

whether before or after the hearing is completed.

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

- (2) This clause does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this clause.
- (3) For the purposes of this clause, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

15 Presentation of cases

In any hearing under this Part, the applicant for statutory compensation may, by leave of the Tribunal:

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

16 Tribunal may compel attendance of witnesses

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

- (2) When a document is produced to the Tribunal in accordance with a requirement under this clause, the Tribunal may take possession of the document for such period as it considers necessary for the purpose of completing the hearing.
- (3) The functions conferred on the Tribunal by subclause (1) (a) may be exercised on behalf of the Tribunal by the Registrar of the Tribunal.

17 Witnesses to answer questions

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

18 Refusal to attend or to answer questions

A person must not:

- (a) fail to comply with a requirement made of the person under clause 16 or 17 by the Tribunal to the extent to which the person is lawfully able to comply with the requirement, or
- (b) not having been sworn, make a statement that the person knows to be false or misleading in a material particular when the person is appearing at a hearing under this Part.

Maximum penalty: 5 penalty units.

19 Witnesses' expenses

A person (other than a public servant) who is required to appear or to give evidence at a hearing under this Part is entitled to be paid such allowances and expenses as may be prescribed by the compensation rules.

20 Adjournments

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

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

21 Dismissal of frivolous proceedings

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

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

22 Misconduct in proceedings before the Tribunal

- (1) A person must not, in a hearing under this Part:
- (a) wilfully insult the Tribunal, or
 - (b) wilfully misbehave during the hearing, or
 - (c) wilfully and without lawful excuse interrupt the hearing, or
 - (d) without lawful excuse disobey a direction of the Tribunal during the hearing.

Maximum penalty: 10 penalty units.

- (2) The Tribunal may direct a person who does any thing referred to in subclause (1) to leave the place where the hearing is being conducted.
- (3) A person must not fail to comply with a direction under this clause.

Maximum penalty: 10 penalty units.

Schedule 3 Savings, transitional and other provisions

(Section 89)

Part 1 Preliminary

1 Regulations

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

Victims Compensation Act 1996

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

Part 2 Provisions consequent on enactment of Victims Compensation Act 1996

2 Definition

In this Part:

the repealed Act means the *Victims Compensation Act 1987*.

3 Proceedings for statutory compensation under repealed Act

- (1) An application for compensation made under Part 3 of the repealed Act before the date of assent to this Act and not finally disposed before that date is to continue to be dealt with in accordance with the repealed Act.

- (2) An application for compensation may be made under Part 3 of the repealed Act after the date of assent to this Act and before the end of the period of 4 months after that date, but may not be made under that Part after the end of that period. Any such application is to be dealt with in accordance with the repealed Act.
- (3) Subclause (2) applies so as to authorise an application under Part 3 of the repealed Act only if the act of violence (and any related act of violence) to which the application relates occurred before the date of assent to this Act.
- (4) An application referred to in subclause (2) of a secondary victim of an act of violence may only be dealt with if:
 - (a) such an application has also been made by a primary or other victim (other than a secondary victim) of that act of violence, or
 - (b) the Tribunal is satisfied that an application for statutory compensation by the primary or other victim will not be made under this Act or the repealed Act.

4 Previous acts of violence

This Act extends, subject to this Act, to an act of violence that occurred before the commencement of this Act (other than an act of violence in respect of which an application for compensation has been made and dealt with under the repealed Act).

5 The Tribunal and staff

- (1) The Victims Compensation Tribunal constituted by this Act is a continuation of the Victims Compensation Tribunal constituted under the repealed Act.
- (2) A person holding office as a member or Chairperson of the Tribunal, immediately before the repeal of the repealed Act, is taken to have been appointed as a member or Chairperson of the Tribunal under this Act.

- (3) A Magistrate who was an authorised Magistrate under the repealed Act, immediately before the repeal of the repealed Act, is taken to be an authorised Magistrate under this Act.
- (4) The staff of the Tribunal employed under the repealed Act is taken to be staff employed for the purposes of this Act.

6 Continuation of Corporation and Fund

- (1) The Victims Compensation Fund Corporation constituted by section 66 of this Act is a continuation of, and the same legal entity as, the corporation by that name constituted by the repealed Act.
- (2) The Victims Compensation Fund constituted by the repealed Act becomes, on the repeal of that Act, the fund by that name constituted by section 67 of this Act.

7 Recovery proceedings against offender for amount payable under award of compensation

- (1) Division 8 of Part 2 of this Act applies to awards of compensation made under Part 2 of this Act, and to awards of compensation made under Part 3 of the repealed Act that were not subject to recovery action under the repealed Act before its repeal.
- (2) Part 5 of the repealed Act continues to apply to any recovery action taken under the repealed Act before its repeal.
- (3) However, the provisions of Division 8 of Part 2 of this Act apply to any proceedings for recovery of an amount payable under a determination for restitution under Part 5 of the repealed Act.

8 Compensation awarded by a court

- (1) Part 4 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A direction for the payment of compensation given under Part 6 of the repealed Act may be recovered as if it had been given under Part 4 of this Act.

9 Compensation levies

- (1) Part 5 of this Act applies to persons convicted or found guilty of offences after the commencement of that Part even though the proceedings were commenced before that commencement.
- (2) A levy imposed by the operation of section 65C of the repealed Act may be recovered as if it had been imposed by Part 5 of this Act.

Schedule 4 Amendment of other Acts

(Section 91)

4.1 Fines and Penalties Act 1901 No 16

Section 8 Governor may remit penalties

Insert after section 8 (2):

- (3) In this section, a reference to a penalty includes a reference to a compensation levy under the *Victims Compensation Act 1996*.

4.2 Prisons Act 1952 No 9

Section 44 Attendance of prisoner before court etc

Omit section 44 (3). Insert instead:

- (3) In this section:

appropriate officer means a Clerk of a Local Court, a Registrar or Deputy Registrar of the District Court, a Registrar of the Supreme Court, the Registrar of the Court of Criminal Appeal or the Registrar of the Victims Compensation Tribunal.

court of record includes the Victims Compensation Tribunal.

Dictionary

act of violence has the meaning given to that expression by section 5.

authorised Magistrate means a Magistrate who is authorised to exercise the jurisdiction and functions of the Tribunal by virtue of an order in force under section 61.

compensable injury has the meaning given to that expression by section 10 and Schedule 1.

compensation assessor means a compensation assessor appointed by or under section 64.

Compensation Fund means the Victims Compensation Fund referred to in section 67.

Compensation Fund Corporation means the Victims Compensation Fund Corporation constituted by section 66.

compensation levy means a levy referred to in section 79.

compensation rules means rules made under section 87 and in force.

conviction includes:

- (a) an order made under section 556A of the *Crimes Act 1900*, and
- (b) (except in Part 4) an order made under section 33 (1) (b)–(g) of the *Children (Criminal Proceedings) Act 1987*.

costs includes allowances and expenses.

Director means the person holding office as Director of Victims Compensation under Part 2 of the *Public Sector Management Act 1988*.

exercise a function includes perform a duty.

family victim has the meaning given to that expression by section 9.

function includes a power, authority or duty.

imprisonment includes penal servitude.

injury means:

- (a) actual physical bodily harm,
- (b) nervous shock,
- (c) mental illness or disorder (whether or not arising from nervous shock),

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

member of the immediate family of a person has the meaning given to that expression by section 9.

offence means criminal offence.

primary victim has the meaning given to that expression by section 7.

schedule of compensable injuries means the schedule of compensable injuries set out in Schedule 1.

secondary victim has the meaning given to that expression by section 8.

sexual assault and apprehended domestic violence means any of the following:

- (a) 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
- (b) 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
- (c) self-manipulation (within the meaning of section 80A of the *Crimes Act 1900*) which a person is compelled to engage in because of a threat (within the meaning of that section), or
- (d) the commission of an act of indecency with or towards a child under the age of 16 years or the commission of an act of indecency on or in the presence of any person in connection with an assault on the person, or
- (e) 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
- (f) 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.

Dictionary

State means the Crown in right of New South Wales.

statutory compensation means compensation payable under Part 2.

Tribunal means the Victims Compensation Tribunal constituted by this Act.

[Minister's second reading speech made in—
Legislative Council on 15 May 1996
Legislative Assembly on 27 November 1996]

BY AUTHORITY