

**CRIMINAL INJURIES COMPENSATION AMENDMENT BILL 2004**  
**EXPLANATORY MEMORANDUM**

This Bill amends the *Criminal Injuries Compensation Act 2003* (WA) (the 2003 Act) to ensure that a secondary victim claiming for mental and nervous shock consequent upon injury to another person is eligible for compensation, and to ensure that the recovery procedures in the 2003 Act are available to assist recovery of orders made under the repealed *Criminal Injuries Compensation Act 1985* (1985 Act).

Clause 1- Short title

Contains the citation of the Act.

Clause 2 - Commencement

Makes provision for the commencement of the Act on the day it receives Royal Assent.

Clause 3 – The Act amended

Provides that the Act to be amended is the 2003 Act.

Clause 4 – Section 35 amended

Section 35 of the 2003 Act provides that an assessor must not make an award for mental and nervous shock, or any loss in respect of such shock, unless satisfied that:

1. the victim suffered bodily harm or became pregnant;
2. the victim was the person against whom of the offence was committed;
3. another person died or suffered bodily harm as a consequence of an offence and the victim was present at the time of or immediately after the offence;
4. the victim was the parent of step parent of a person who died as a consequence of the offence; or
5. the victim was a close relative of the person who suffered bodily harm or died as a consequence of the offence, and was living with the person at the time of the offence.

In addition, this section provides that compensation for mental and nervous shock may not be paid to a close relative of a person who was injured or died as a consequence of an offence if the person who was injured or died was committing an offence when he or she was injured or killed. The section applies to applications made on or after the 23 September 2003.

It was intended that section 35 of the 2003 Act would limit claims for secondary mental and nervous shock to cases where the primary victim suffered injury as a consequence of the commission of the offence. "Injury" has a defined meaning in the 2003 Act, namely "bodily harm, mental and nervous shock, or pregnancy".

However, sub-sections 35(2)(c) & (e) of the 2003 Act have been drafted to apply only where the primary victim suffered bodily harm as opposed to injury. This means that some classes of secondary victims, who it was not intended to exclude, will not be eligible for compensation. For example, neither a child who witnessed the sexual abuse of another nor a parent who was living with a child at the time of offences against the

child will be eligible for compensation unless the child suffered bodily harm as a consequence of the offence(s).

To remedy this, clause 4 deletes the words “bodily harm” and substitutes the word “injury” in sub-sections 35(2)(c) & (e).

Clause 5 - Section 49 amended

Part 6 of the 2003 Act provides a procedure which identifies the debt to the State of a convicted offender in relation to an award of compensation, and assists the State to recover the amount. Part 6 re-enacted the provisions of the 1985 Act in this regard.

No transitional provision was included in the 2003 Act to deal with recovery of awards made under the 1985 Act. In order to enable the recovery of awards made under the 1985 Act using the 2003 Act procedures, clause 5 adds an award of compensation made under the 1985 Act to section 49(a) of the 2003 Act.