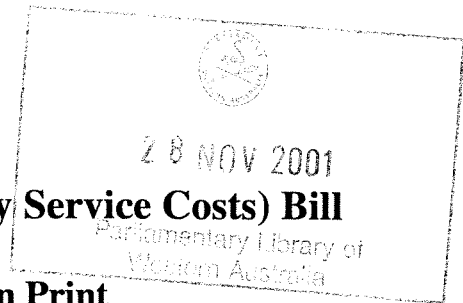


# Sentencing (Emergency Service Costs) Bill

Circulation Print



## EXPLANATORY MEMORANDUM

- Clause 1 sets out the main purpose of the Act.
- Clause 2 provides that the Act is to commence on the day after it receives Royal Assent.
- Clause 3 states that the **Sentencing Act 1991** is called the Principal Act.
- Clause 4 inserts new Division 2B into Part 4 of the Sentencing Act. This Division establishes the cost recovery order and provides for the operation of that order.

New section 87C sets out a number of new definitions—

**Emergency service agency:** The Bill provides a broad definition that explicitly names the major agencies such as police and fire fighters. Paragraph (g) includes other agencies who may become involved in an emergency. This paragraph is intended to have a wide operation and includes any person or body who employs or engages an emergency service worker. This is to ensure that the definition includes any unnamed Crown or government agency that becomes involved in an emergency response and engages a worker who falls within the definition of emergency service worker.

**Emergency service worker** is again a broad definition. It explicitly lists a number of categories of people who are likely to be involved in responding to an emergency. This includes police and fire fighters and also people such as animal and plant safety workers employed by the Department of Natural Resources and Environment. So as not to limit the definition, paragraph (n) is included which is intended to catch any other person who becomes involved in an emergency response.

Paragraph (n) can include private sector workers. If a person works for a private agency or a charity, and that agency or charity is employed or engaged by the Crown or a government agency as part of an emergency response, then that person will fall within paragraph (n). This will bring that Crown or government agency within paragraph (g) of the definition of **emergency service agency**.

New section 87D establishes the cost recovery order. Once a person has been convicted or found guilty of—

- an offence relating to the contamination of goods under Division 4 of Part 1 of the **Crimes Act 1958**; or
- a bomb hoax offence under section 317A of the **Crimes Act 1958**;

the court may make a cost recovery order.

A cost recovery order is an order that the offender pay to the State an amount, determined by the court, for the reasonable costs an emergency service agency has incurred in providing an immediate response to the emergency situation arising out of the offence. It does not, for example, cover training or recruitment costs.

The type of costs that can be claimed is not limited, but it must be costs that were incurred as part of the immediate response to the emergency. It is intended to cover things such as evacuations and decontaminations. It could also cover costs such as the analysis of suspicious materials, where that forms part of the immediate response to the emergency. That emergency must have arisen from the offence that the person has been convicted or found guilty of.

New section 87D(2) provides that these costs can include the costs of wages paid to emergency service workers. Wages includes leave entitlements and similar employment benefits.

New section 87D(3) provides that the cost recovery order need not be paid in a lump sum, but may be paid by instalments. If one instalment is not paid, then the entire amount becomes due.

New section 87E states that a cost recovery order can only be applied for by Director of Public Prosecutions or, if the offence is tried in the Magistrates' Court, by the informant or police prosecutor in addition to the Director of Public Prosecutions. The clause allows 12 months for the making of a cost recovery order application after the date of the finding of guilt or conviction.

New section 87F allows the court to extend the time limit beyond 12 months if it is in the interests of justice. There is no need for the application for extension of time to be made within the initial 12 months time limit. The court cannot extend the time limit unless the offender has had the opportunity to address the court concerning the extension of time application.

New section 87G provides for an offender to appear before the court on an application for a cost recovery order. The offender can appear in person, can be represented by a lawyer or, with leave of the court, by any other person.

New section 87H(1) states that when the court is considering an application for a cost recovery order, it can take into account the facts that were contained in the evidence given, or in any agreed statement of facts provided, during the proceedings relating to the offence. It can also consider admissions made by the offender or any "available documents".

New section 87H(2) defines "available documents" to include admissible statements or admissions and the committal papers—either depositions or statements tendered during the committal. It also includes a written statement made by or on behalf of an emergency service agency itemising its costs.

New section 87I deals with taking evidence on the question of a cost recovery order. It states that the court must not make a cost recovery order unless the offender has had an opportunity to be heard.

The court may also hear from witnesses called by the applicant or the offender. The person who makes the statement itemising emergency service costs may also be required to give evidence and can be cross examined.

Findings of fact made by the court in the proceedings on the offence can be used to prove facts for the purposes of considering the cost recovery order.

New section 87J(1) allows the court, in fixing the amount of the cost recovery order, to take into account the offender's financial situation. It gives the court a discretion not to order that the full amount of the costs incurred be paid by the offender. This mirrors the compensation provisions for victims of crime under the Sentencing Act.

If the court cannot discover the financial circumstances of the offender, it may still make a cost recovery order.

If the court is considering making a cost recovery order and a fine and/or a compensation order under Division 2 of Part 4 of the Sentencing Act, this subclause makes it clear that if the offender cannot pay all of these amounts, the priority is first the compensation order for a victim of crime, then the cost recovery order and lastly the fine.

New section 87K requires the court to give written reasons for its decision on the cost recovery order. However, if it does not give reasons, this does not invalidate the court's decision.

New section 87L states that, unless the court orders otherwise, each party will bear their own costs for the proceedings on the cost recovery order.

New section 87M provides that the availability of a cost recovery order does not affect any other right an emergency service agency may have to recover their costs to the extent that those costs are not recovered under this Division.

New section 87N provides that a cost recovery order is to be treated as a judgment debt. This means that the courts' existing power to make a garnishee order or an attachment of earnings order will be available.

Clause 5 makes cost recovery orders available in any case where a person commits a relevant offence on or after the commencement of the Bill.

Clause 6 amends the **Summary Offences Act 1966**.

Section 53 of the Summary Offences Act already contains a cost recovery provision in subsection (6A). It allows the State to be recompensed for any expenses it incurs, but the subsection only explicitly includes police.

This Bill amends subsection (6A) by replacing "police" with any 'emergency service worker' as defined in this Bill. This is to make it clear that the money spent by the State on agencies other than police who may become involved in the response to a false report can be taken into account under this section. The amendment only applies to offences alleged to have been committed on or after the commencement of the Bill.

Clause 7 amends the **Crimes Act 1958** by inserting a note under—

- each of the offences relating to the contamination of goods under Division 4 of Part 1 of the **Crimes Act 1958**; and
- the bomb hoax offences in section 317A of the **Crimes Act 1958**;

so that the existence of the cost recovery order provisions in the Sentencing Act will be obvious on the face of the Crimes Act.