

OFFENDERS (LEGAL ACTION) BILL 2000 **Explanatory Notes**

Clause 1 Short title

This clause provides the title by which the Act will be known.

Clause 2 Commencement

As there is no requirement for subsidiary legislation or administrative procedures to be implemented prior to this legislation coming into effect, this clause provides for the Act to come into operation on the day it receives the Royal Assent.

Clause 3 Interpretation

Clause 3 provides definitions of critical terms to ensure that the legislation is interpreted and applied in the manner intended.

Clause 4 Application

Although the statutory defence provided within this Bill will not exist prior to this legislation coming into effect, this provision ensures that the legislation will apply to all actions regardless of whether the cause of an action arose prior to the enactment of the Bill.

Clause 5 Actions in respect of harm suffered by offenders barred

Subclause (1) provides a statutory defence that will prevent an offender (or others on his or her behalf) from suing for compensation for injury or loss suffered by the offender in the course of committing an offence.

To protect against misuse of the defence provision, subclause (2) provides that the statutory defence is not available where the injury or loss arose from:

- (i) an unlawful act that was intended to result in the offender suffering injury or loss; or
- (ii) circumstances which were entirely separate from those to which the offender was exposed by being engaged in criminal conduct and that the offender was exposed in common with others who were not engaged in criminal conduct.

Subclause (3) ensures that the provisions of the Bill will have effect despite section 5 of the *Occupier's Liability Act 1985*.

Section 5 of the *Occupiers' Liability Act 1985* allows a person who has entered upon another person's land to sue for compensation in respect of injury or loss suffered on the land by the entrant, in certain circumstances. Specifically, an occupier of the land is liable to pay compensation to an entrant, even though the entrant entered upon the land for the purpose of committing an offence where:

- (i) the injury was caused by the dangerous condition of the land or a danger that occurred on the land, and
- (ii) the occupier created that danger deliberately and with the intention of harming the entrant, or where the occupier created the danger in circumstances where the occupier did not bother to consider whether a person could be injured by the danger.