

CLAUSE NOTES

CRIMINAL INJURIES COMPENSATION BILL 2003

This Bill provides for the payment of criminal injuries compensation to victims of crime in some circumstances and for related matters. It repeals the *Criminal Injuries Compensation Act 1985* (“the 1985 Act”), and brings applications under the 1985 Act and the repealed *Criminal Injuries Compensation Act 1970* and *Criminal Injuries Compensation Act 1982* under one Act. The Bill brings all applications under the jurisdiction of the Chief Assessor and standardises the procedural requirements for making and determining an application. The legislation makes a number of important changes to assist victims of crime, such as increasing the maximum award to \$75,000, providing for interim awards, providing for future treatment costs and improved prospects of recovery from offenders, whilst preserving the successful framework of the 1985 Act.

PART 1 – PRELIMINARY

Clause 1-Short Title

Citation of the Act.

Clause 2 - Commencement

Clause 2 makes provision for the commencement of the Act, on a date to be set by proclamation.

Clause 3 - Interpretation

Clause 3 defines the terms used in the Bill. Of particular note are the following terms which are new or have been amended:

“**Health Professional**”: This term is defined to mean an appropriately registered dentist, medical practitioner or psychologist. The definition is inserted to provide for qualification of those from whom reports may be sought by an assessor about an applicant pursuant to clause 20.

“**Interested Person**”: This definition has been amended to make it clear that the only persons who can ask for reasons for decisions and who must be served with notices are persons connected with the application, namely the applicant, the offender and the CEO. The capacity of another person to satisfy an assessor that he or she is an interested party has been removed, to enhance the protection and confidentiality afforded to victims of crime. This clause varies section 18 of the 1985 Act.

“**Record**”: This term is defined widely to mean any record of information. The definition is included to govern the types of record for which an assessor may give notice to produce under clause 19, and which a witness may be required to produce at a hearing under clause 62.

“**Satisfied**”: This term provides that an assessor must be satisfied on the balance of probabilities of matters of fact requiring determination. The standard of proof has not changed from the 1985 Act, but the term was not defined in that Act.

“**Victim**”: This term which was not used in the 1985 Act means a person who suffers injury or who dies as a result of the commission of an offence.

Clause 4 – “Close relative”, meaning of

Clause 4 provides a definition of “Close Relative”: The definition includes a de facto partner, and the requirement under the 1985 Act that a de facto relationship must have existed for 2 years has been removed. The definition must be read with s13A of the *Interpretation Act* which provides the criteria relevant to establishing the existence of a de facto relationship in any written law. These criteria take into account the length of the relationship, whether the parties resided together, whether there was a sexual relationship, the degree if any of financial interdependence, ownership of property, care of children, and commitment to a shared life. De facto partners can be of the same sex. The clause also imports some of the provisions of the *Family Court Act 1997*, which raise a number of presumptions available where it is necessary to determine parentage. The provisions govern presumptions arising from marriage, cohabitation, the registration of birth, findings of a Court and acknowledgement of parentage. The presumptions may be rebutted by evidence on a balance of probabilities.

Clause 5 – “Convicted”, meaning of

Clause 5 provides a definition of “Convicted”: This definition has been expanded to include situations where a juvenile offender is proceeded against by way of referral to the Juvenile Justice Team (“JJT”). This amendment is to made cure anomalies in cases under which some juveniles dealt with by charging could face recovery proceedings and others dealt with by referral to the JJT are not liable to repay the award. In addition in some cases depending on the procedure adopted in the Children’s Court the victim may not be eligible for compensation. This clause expands the definition of “convicted” in section 3(1a) of the 1985 Act.

Clause 6 – “Loss”, meaning of

Clause 6 provides an expanded definition of “Loss” when incurred by a person who was also injured in the commission of an offence. The definition provides that an award may include provision for expenses likely to be reasonably incurred in the future for treatment of injury. Upon proof of having incurred the loss, the applicant may recover the cost. The definition in the 1985 Act operated to exclude many claims for damage to clothing caused during the commission of an offence. In order to achieve a standardised definition for all claims and to clarify entitlements the definition has been extended to all claims including those under the first *Criminal Injuries Compensation Act 1970* which had no provision for loss, and to include clothing damaged in the commission of the offence, as opposed to damaged as a consequence of the injury as is required in the definition of loss in the 1985 Act.

Clause 7 - Construction of Act

This clause provides that the provisions of this Bill add to rather than detract from existing legislation, subject to clauses 41(3) and (4) and 67. Clause 41(3) and (4) provide that the assessor must deduct any amount of compensation that the victim has or will receive from any other source. Clause 67 provides that an amount equal to the lesser of the amount awarded to the victim or the amount of any insurance payment received, is a debt due to the State by the victim.

PART 2 – APPLYING FOR COMPENSATION

Division 1 – General

Clause 8 – Offences for which compensation may be sought

This clause limits the operation of the Bill to offences committed on or after the date of commencement of the original *Criminal Injuries Compensation Act 1970*. All claims for compensation whenever the offence was committed after the original commencement date will be dealt with under this Bill.

Clause 9 – Time Limit For Making Application

This clause provides for a time in which applications must be commenced, namely within 3 years of the date of the offence or the last offence, and allows an assessor to extend time for bringing an application if the justice of the case requires it. This clause replicates section 17 of the 1985 Act.

Clause 10 – Death of a person entitled to compensation ends entitlement

The District Court recently held that compensation can be awarded to the estate of an applicant who dies before the claim is made or finalized. Criminal injuries compensation is intended to assist victims of crime and not the estate of victims who die of unrelated causes. Prior to this decision the Office of Criminal Injuries Compensation refused to make awards where the applicant was deceased. This clause provides that any entitlement of a victim or a close relative of a deceased victim ceases on the death of the victim. This is a new clause.

Clause 11 – How to make a compensation application

This clause provides that an application for compensation must be made in writing on a form approved by the Chief Assessor, and that applications may be made on behalf of children and represented persons. Unlike section 16 of the 1985 Act, this clause does not prescribe the information which must be supplied to the Chief Assessor. This will enable the development of a consolidated, “user friendly” application form.

Division 2 – When and what compensation can be claimed

Clause 12 – Proved offence

This clause provides that a person who suffers injury as a consequence of the commission of a proved offence may apply for compensation for the injury and any loss also suffered. It also provides that a close relative of a person who dies as a consequence of the commission of a proved offence may apply for compensation for loss. This clause recreates section 7 of the 1985 Act.

Clause 13 – Alleged offence: acquittal

This clause provides that a person who suffers injury in consequence of an alleged offence (or the personal representative of the deceased) may apply for compensation, where a person is found not guilty of the offence *other than* on account of unsoundness of mind, *and* the applicant claims the alleged offence was committed by a person other than the person acquitted. Sub clause 13(4) specifies the matters of which the assessor must be satisfied before making an award, including that the assessor must be satisfied that some person other than the acquitted person committed the offence. The assessor must also be satisfied that the alleged offender bore criminal responsibility for the act or omission constituting the offence, except if the person was not criminally responsible by reason of section 27 of *The Criminal Code* which deals with insanity. In other words for example if the assessor was satisfied that the alleged offender was aged under the age of criminal responsibility, compensation could not be awarded. This provision is similar to the effect of section 14 of the 1985 Act.

Clause 14 – Alleged offence: acquittal due to unsoundness of mind

This clause provides that where a person is found not guilty of an alleged offence on account of unsoundness of mind pursuant to section 27 of *The Criminal Code*, a person who suffers injury (or the personal representative of the deceased) may apply for compensation. This provision combines section 8 and part of section 13 of the 1985 Act

Clause 15 - Alleged offence: accused not mentally fit to stand trial

This clause deals with the situation where a person is charged with an offence but is later found to be unfit to stand trial in respect of it. The clause identifies the things of which the assessor must be satisfied before making an award, and these include that the alleged offender was not lacking criminal responsibility for a reason *other than* the operation of s27 of *The Criminal Code*, *at the time* of the act or omission constituting the alleged offence. This clause recreates and expands section 9 of the 1985 Act. The commencement date of section 9 has been preserved to avoid unfairness to persons who may have been denied compensation before the introduction of that new section into the 1985 Act on 1 January 1986.

Clause 16 – Alleged offence: charge not determined

This clause provides for eligibility for compensation where a charge of an offence was not determined for one of a number of specified reasons not including because the alleged offender was unfit to be tried (dealt with in clause 15). Cases covered include withdrawal or *nolle prosequi*, dismissal with no finding of guilt or with no evidence offered, death of the accused before trial, or other cases where the accused is not brought to trial such as where he fails to appear after being released on bail. The clause identifies the things of which the assessor must be satisfied before making an award, and these include that the alleged offender was not lacking criminal responsibility for a reason *other than* the operation of s27 of *The Criminal Code* at the time of the act or omission constituting the alleged offence. This clause recreates and clarifies sections 10 and 11 and of the 1985 Act.

Clause 17 - Alleged offence: no person charged

This clause provides for compensation where no person has been charged for an alleged offence, for instance because the police were unable to identify or locate the offender, or may have decided not to charge an alleged offender because of material indicating he was not of sound mind at the time. The clause addresses the anomaly occurring under the 1985 Act when an act or omission which caused injury was committed by a person who was apparently not criminally responsible by operation of s27 of *The Criminal Code* at the time of the act or omission constituting the alleged offence, and that person was not charged with the offence. The clause creates eligibility to apply and establishes that the assessor must be satisfied that the alleged offender was not lacking criminal responsibility for a reason *other than* the operation of s27 of *The Criminal Code* at the time of the act or omission constituting the alleged offence. The clause recreates and amends section 12 and part of section 13 of the 1985 Act.

PART 3 – DEALING WITH COMPENSATION APPLICATIONS

Clause 18 – Procedure, general matters

This clause provides that the assessor is to deal with applications expeditiously and informally and is not bound by legal rules and procedures. Although the language has been simplified and modernised, the effect of the clause is the same as section 28 of the 1985 Act.

Clause 19 – Assessor’s general powers

This clause outlines the assessor’s general powers in deciding an application, which include giving notice of an application, seeking further information, making inquiries and requesting the applicant to provide information. It consolidates sections 29, 30, 31 and 35 of the 1985 Act into one clause. The penalty for not complying with a notice is increased from \$1,000 to \$5,000 as the penalty under the 1985 Act is regarded as being inadequate.

Clause 20 – Victim may be directed to attend doctor etc.

This clause enables the assessor, on the application of an interested person or on the assessor's own initiative, to direct the victim to be examined by a health professional and to defer the application until the applicant has complied with the direction. This is a new provision which enables an assessor to obtain an independent report from a health professional who is more experienced or objective, or has more expertise. A health professional is defined in clause 3 to mean a dentist, medical practitioner or psychologist.

Clause 21 – Applicant may be required to enforce other remedies

This clause provides that an assessor may require an applicant who has reasonable grounds for taking legal proceedings to obtain compensation or who may be entitled to payment under a contract of insurance to take proceedings to enforce the entitlement and may defer the application. The clause is similar to section 22 of the 1985 Act.

Clause 22 – CEO may apply for a stay of compensation

This clause provides that the CEO may request that an application be stayed pending determination of criminal proceedings. The clause recreates section 32 of the 1985 Act.

Clause 23 – Interim payments

This is a new provision which enables the assessor to make payment for reasonable treatment and funeral expenses before the award is finalized. The total amount of interim payments for treatment expenses is limited to a maximum of 3% of the potential maximum award, and the amount payable for funeral expenses is in the discretion of the assessor. Interim payments will be taken into account in determining the final award and to ensure payments do not exceed the maximum available. If an award is not made, the amount of interim payments will become a debt to the state which can be recovered from the applicant.

Clause 24 – Hearing to be held if the assessor thinks fit

This clause provides that an assessor may conduct a hearing. For claims falling under the *Criminal Injuries Compensation Act 1982* a hearing had to be held. Under the 1985 Act the assessor has a discretion to determine an application without having a hearing. The clause recreates section 33 of the 1985 Act.

Clause 25 – Hearings

This clause regulates the requirements for hearings. It provides that hearings are to be in private unless the assessor orders otherwise, and provides for notification to interested parties, the right to be represented and to give evidence and call witnesses and cross examine witnesses. The clause consolidates sections 34, 35 and 36 of the 1985 Act.

Clause 26 – Awards etc. to be in writing

Clause 26 provides that an award or a refusal must be in writing and provided to the applicant, and recreates section 21(1) of the 1985 Act.

Clause 27 – Reasons for decisions

This clause provides that the assessor must give reasons for an award, upon receiving a written request from an interested party. The assessor must give reasons to the applicant for a refusal to make an award, and must give a copy of the reasons to an interested party who asks in writing. The clause recreates section 21(2) of the 1985 Act.

Clause 28 – Copy of awards to be sent to CEO

A copy of each award must be sent to the CEO. This clause recreates section 19(2) of the 1985 Act.

PART 4 – MATTERS GOVERNING COMPENSATION AWARDSClause 29 – Assessor’s general discretion

This clause provides an assessor with a general discretion in deciding whether or not to make an award, the amount of the awards and the factors and circumstances the assessor may have regard to. The clause recreates section 27 of the 1985 Act, and specifies the clauses of the Bill to which clause 29 is subject.

Clause 30 – Compensation awards, general

This clause provides that an assessor may award compensation that is justified for the injury or loss. Subclause 30(2) provides that an assessor may include a direction that compensation may be held in trust for the victim on any terms specified. Subclause 30(4) provides that on an application by a personal representative of a victim who dies as a consequence of the offence, an assessor may apportion the compensation between two or more relatives and/or include a direction that compensation may be held in trust for a close relative by a person on any terms specified. The clause recreates section 19 of the 1985 Act.

Clause 31 – Maximum for single offence

This clause specifies the maximum amounts that can be awarded under the *Criminal Injuries Compensation Act 1970*, the *Criminal Injuries Compensation Act 1982*, the 1985 Act and this Bill. This clause provides for a maximum award of \$75,000 (currently the maximum is \$50,000), subject to clauses 32, 33 and 34. Subclause (2) recreates the rule applicable under the 1982 and 1985 Acts that in a claim for loss suffered by a dependant upon the death of another and injury caused by the death, no more than the statutory maximum may be awarded to any one person. Subclause 31(3) enables the maximum award to be amended by regulation. This clause incorporates part of section 20, and consolidates the maximum awards under the previous Acts.

Clause 32 – Maximum for single offence by multiple offenders

This clause provides that the maximum amounts specified in clause 31 apply, even if an offence is committed by two or more persons acting in concert. This clause recreates section 20(2(a) of the 1985 Act.

Clause 33 – Maximum for multiple related offences

Subclause 33(1) provides that two or more offences are related if they are committed at approximately the same time or are related for any other reason.

Subclause 33(2) provides that where a person suffers injury, and/or loss as a close relative as a result of two or more related offences, the aggregate amount that can be awarded under clause 30 must not exceed the maximum for the last offence. This subclause incorporates section 20(2)(b) of the 1985 Act.

Subclause 33(3) provides that if a close relative of two or more victims who die as a consequence of two or more related offences, and as a result of two or more of those deaths the person suffers injury and/or loss as a close relative, the aggregate award that can be made under clause 30 must not exceed *twice* the maximum for the last offence. This subclause provides for an aggregate award of twice the maximum award, for example, for a parent of two or more murdered children. This is a new provision, section 20(3) of the 1985 Act limits the aggregate award to the maximum award for one offence.

Clause 34 – Maximum for multiple unrelated offences by one offender

This clause provides that if, as a consequence of two or more offences committed by one person that are not related offences, a person suffers injury or loss, or suffers loss as a close relative of a victim who dies as a consequence of one or more of the offences, the aggregate award that can be awarded under clause 30 must not exceed *twice* the maximum for the last offence. This is a new clause which caps the maximum award for example for victims of long term offending (e.g. sexual assault or domestic violence) to ensure greater equity between victims of crime. It applies to applications made on or after the 23 September 2003, the day the Bill is presented to Parliament.

Clause 35 – Mental and nervous shock, compensation for limited to certain persons

This clause 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 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.

The clause does not change the entitlements of the first three categories. However, in respect of close relatives seeking compensation for mental and nervous shock as a consequence of an injury to or death of a close relative, clause 35(2)(e) imposes an additional requirement, namely that the applicant was living with the person who was injured or died at the time of the offence. This additional aspect is not applicable in the case of a parent or step parent of a person who died. An applicant in this category may be compensated even though he or she was not living with his or her deceased child at the time of the death.

In addition the clause provides that compensation may not be paid to a close relative of a person who was injured or died as a consequence of an offence if the injured person was committing an offence when he or she was injured.

The clause applies to applications made on or after the 23 September 2003, the day the Bill is presented to Parliament.

Clause 36 – No award if compensation likely to benefit offender

This clause provides that an assessor must not make an award if it is likely to benefit the offender by reason of a relationship between the offender and the victim. This clause recreates section 23 of the 1985 Act.

Clause 37 – No award if injury is from motor vehicle in certain cases

This clause provides that an assessor must not make an award to a person injured by the commission of an offence if satisfied that the injury was caused directly by the driving of a motor vehicle, unless the motor vehicle was used for the purposes of committing the offence and the offence is a crime. This clause recreates section 24B of the 1985 Act which applied from 1 July 1993. The original commencement date is preserved. Section 24B was introduced and is maintained in order to support the principle of there being one scheme for compensation of persons injured by motor vehicles.

Clause 38 – No award if the applicant did not assist investigators

This clause provides that the assessor must not make an award if the victim or close relative did not assist in the identification, apprehension or prosecution of the person who committed the offence. It recreates section 24 of the 1985 Act.

Clause 39 – No award if victim was engaged in criminal conduct

This clause provides that an assessor must not make an award if satisfied that the person injured or killed as a consequence of the commission of an offence was committing an offence at the time. The prohibition applies to a claim by the person injured, and to a claim by a close relative of a person who was killed. This is a new provision to prevent persons engaged in criminal conduct claiming compensation.

Clause 40 – No award if compensation already awarded

This clause provides that an applicant who has already received an award of compensation for an offence under any of the Criminal Injuries Compensation Acts may not receive a further award in relation to an injury suffered as a consequence of that offence. The clause applies to claims on the part of a person injured in the commission of an offence, and to claims by a close relative of a person who died as a result of the commission of the offence. The clause however allows a person to have a claim as a dependant determined, and to obtain compensation on another occasion for injury as a consequence of the offence causing the death upon which the dependant claim was made. In this case the aggregate of the additional award and the first one is limited to the maximum determined in clause 31(1)&(2). This is a new provision.

Clause 41 – Behaviour etc. of victim to be considered

This clause provides that an assessor must have regard to the behaviour, condition attitude or disposition of the victim which contributed to the injury or death, when deciding whether or not to make an award and the quantum of an award. In addition to recreating section 25 of the 1985 Act, the clause expressly provides that the assessor can decide to not make an award on the basis of contributory behaviour by the victim.

Clause 42 – Insurance payments etc., to be deducted from award

This clause provides that an assessor must deduct from an award any amount that a victim would be entitled to receive from health insurance for loss but for this Bill, or has received or will receive under a contract of insurance for the injury or loss. The clause seeks to ensure any health and insurance entitlements are not denied due to the potential for criminal injuries compensation, and prevents “double dipping”. It combines sections 24A and 26 of the 1985 Act.

Clause 43 – Award to be set off against any amount owed to the State

This clause enables an assessor to reduce an award by the amount the victim or close relative owes to the State arising from an interim award, reimbursement of an award by an offender, or an amount received from an insurance contract or as compensation which was not deducted from the award at the time it was made. This provision formalises the existing practice of setting off awards against money owed to the State by offenders, and provides for setting off in relation to interim awards (which are introduced by this Bill) and insurance payments.

Clause 44 – Person who incurs expenses may be paid directly

The clause provides that where expenses are incurred by a person on behalf of a victim or close relative they may be paid directly to that person. It recreates section 38 of the 1985 Act.

Clause 45 – Order about reimbursement order may be made

This clause provides that when making an award in relation to a proved offence, an assessor may make an order preventing recovery proceedings from the offender or

limiting recovery proceedings to part of the award. On an application from the Chief Executive Officer, an assessor may cancel an order made under this section. This clause provides for the situation where seeking a compensation reimbursement order from an offender could jeopardize the safety or well being of the victim.

PART 5 – PAYING COMPENSATION AWARDED

Clause 46 – Consolidated Fund charged with payment

This clause provides that the payment of awards is from the consolidated fund.

Clause 47 – Appeal period, payment may be withheld

This clause provides that payment is not to be made until the 21 day appeal period has elapsed and any appeal is determined, except with written authority of an assessor. This is a new clause which gives explicit authority to the current practice of withholding payment of an award until the appeal period has expired or the appeal has been determined.

Clause 48 – Future expenses, payment of

This clause provides that where an award includes an amount for expenses which are likely to be incurred for treatment, the amount is not to be paid unless evidence is provided that the expense has been reasonably incurred. This clause, in conjunction with the definition of “loss” which makes provision for future expenses for treatment, enables an award to be made taking into account the likelihood of further loss being incurred in the future. The component of the award for future treatment can only be paid on production of a receipt or account or other evidence that the expense has been incurred.

PART 6 – RECOVERING COMPENSATION FROM OFFENDERS

Clause 49 – CEO may request offender to reimburse compensation

This clause provides that, subject to there not being an order barring recovery proceedings, the CEO may give a person convicted of the offence a written notice requesting the offender pay the whole or part of the amount of the award. This recreates part of section 38A of the 1985 Act.

Clause 50 – Compensation reimbursement orders, application for

This clause provides that the CEO may apply to the Chief Assessor for a compensation reimbursement order against a person convicted of the offence. The purpose of a compensation reimbursement order is to fix the liability of the offender to repay the amount of the award or part of it to the State. This clause recreates part of section 39 of the 1985 Act.

Clause 51 – Dealing with applications

This clause prescribes the procedural requirements at the hearing of a compensation reimbursement order. The requirements relate to: serving notice of the hearing on the offender and CEO; the entitlements of persons who are notified of the hearing; the hearing being conducted in private unless the assessor decides otherwise; and the matters an assessor may inquire into. The requirements seek procedural fairness, ensure privacy and enable an assessor to access relevant information. This clause recreates parts of section 39 of the 1985 Act.

Clause 52 – Compensation order, making

Subclause 52(1) enables an assessor to make a compensation reimbursement order that the offender pay the State a specified amount being the whole or part of the award.

Subclause 52(2) specifies the factors to which an assessor may have regard when deciding whether or not to make a compensation reimbursement order and the quantum of the order. These include: the extent to which the offender contributed to the injury or death; the behaviour of the victim and any contribution to the injury or death; and the offender's income, assets and ability to satisfy an order in a reasonable time. The clause requires an assessor to take into account the contribution of any co-offenders, any contribution by the victim and the offender's capacity to satisfy an order and the time this may take. It does not prevent the assessor from taking into account other factors. The clause enables the liability of an offender to be assessed on the basis of the factors mentioned to determine whether it is just to require repayment of the whole or part. It also entitles an assessor to accept a lump sum to settle a liability, taking account of the benefit of doing this compared to receipt of a small sum paid periodically over a longer period.

Subclause 52(3) provides that the CEO may apply for a compensation order to be amended or cancelled.

This clause recreates part of section 39 of the 1985 Act.

Clause 53 – Compensation reimbursement order, enforcement of

This clause provides that a compensation reimbursement order may be lodged with a court of competent jurisdiction. Once a compensation reimbursement order is lodged it is taken to be an order of the court and may be enforced accordingly. This clause replaces section 39(9) of the 1985 Act to enable easy transition once the *Civil Judgements Enforcements Bill 2003* comes into effect, which is expected early in 2004. The *Civil Judgements Enforcements Bill 2003* standardises and enhances the procedures available to judgement creditors for debt collection, and will provide an efficient framework for recovery of criminal injuries debts.

Clause 54 – Reimbursed amounts to be credited to Consolidated Fund

This clause provides that any money paid or recovered under this Part must be credited to the Consolidated Fund. This clause recreates section 39(9) of the 1985 Act.

PART 7 – APPEALS AND REFERRALS

Clause 55 – Appeal lies to the District Court

This clause provides for appeals to the District Court by the applicant, an offender or the CEO. Appeals must be commenced within 21 days, although the District Court may allow appeals after that time. The clause incorporates part of section 41 of the 1985 Act and the requirement that appeals must be conducted in accordance with the Rules of the District Court.

Clause 56 – Dealing with appeals

Subclause 56(1) provides that the District Court must decide appeals on the evidence that was in the possession of the assessor but may admit additional evidence.

Subclause 56(2) prescribes the powers of the court in relation to appeals.

The clause incorporates part of sections 41 and 43 of the 1985 Act, and the new power of a District Court Judge to refer a question of law that arises in an appeal to the Full Court of the Supreme Court for determination. This will enable binding judgments in respect of the legislation, but does not enable a further appeal in respect of the award itself.

Clause 57 – District Court decision is final

This clause provides that a District Court decision on an appeal is final and there is no further appeal to the Supreme Court. This clause recreates section 43(2) of the 1985 Act.

Clause 58 – Assessor may refer questions of law to Supreme Court

This clause provides that an assessor may refer a question of law to the Full Court of the Supreme Court for determination. This is a new provision which will enable an assessor to obtain a ruling on a question of law in circumstances where the point is not raised by any appeal to the District Court or the District Court does not refer the point of law to the Full Court.

PART 8 – ADMINISTRATIVE MATTERSClause 59 – Chief Assessor and Assessors, appointment of etc.

This clause provides that the appointment of assessors is governed by Schedule 1. This clause recreates sections 5(1) and 5A(1) of the 1985 Act.

Clause 60 – Chief Assessor may allocate work to assessors

This clause provides that the Chief Assessor may allocate work to assessors. It recreates subsection 5(2) of the 1985 Act.

Clause 61 – Administrative staff

This clause provides that administrative staff must be appointed under the *Public Sector Management Act 1994* (WA). It recreates section 6 of the 1985 Act.

Clause 62 – Annual report and other reports

This clause provides that the Chief Assessor must provide the Minister with an annual report 3 months after the end of each financial year. It replaces section 48 of the 1985 Act which provided for an annual report 3 months after the end of the calendar year.

PART 9 – MISCELLANEOUS

Clause 63 – Witnesses at hearings of applications

This clause enables an assessor to require a witness to appear at a hearing to give evidence or produce a record, in relation to an application for compensation or a reimbursement order. It also enables the assessor to administer oaths, ask questions and determine witness fees. Failure to appear or refusal to take an oath or give evidence is an offence punishable by a fine of \$5,000. The clause recreates and extends section 35 of the 1985 Act, and increases the fine for breach from \$1,000 to \$5,000. The clause also makes offenders liable for witness fees, this aspect recreates section 44(2) of the 1985 Act

Clause 64 – Publicity, assessor may restrict

This clause provides that, if it is in the interests of justice to do so, an assessor may make an order that prohibits the publication of specified proceedings or the publication of any particular that is likely to lead to the identification of a victim, close relative of the deceased or the offender. The clause replaces section 46 of the 1985 Act, and increases the penalty for contravening an order from \$1,000 to \$5,000 for a person and \$25,000 for a corporation.

Clause 65 – Immunity for assessors, lawyers and witnesses

This clause provides assessors, lawyers and witnesses with the same protection as a judge, lawyer or witness in the Supreme Court. The clause recreates section 46 of the 1985 Act in relation to lawyers and witnesses and Clause 6 of Schedule 1 in relation to assessors.

Clause 66 – Protection of assessors from personal liability

This clause provides protection to an assessor against civil liability for things done in good faith in the performance of the functions of an assessor. This is a new provision.

Clause 67 – Costs

This clause provides that an assessor has no power to award costs, and recreates section 44(1) of the 1985 Act.

Clause 68 – Repayment to State of insurance payments etc.

This clause provides that where an applicant receives an award of compensation and also receives a payment under an insurance contract or by way of damages or compensation, and this payment is not taken into account at the time of making the award, then the amount of the award payment or of the other compensation, which ever is the lesser, becomes a debt to the State. This clause prevents an applicant being compensated twice, and recreates section 40 of the 1985 Act.

Clause 69 – Debts due to State, recovery of

This clause provides that a debt due to the payment of an interim award where an award is not later made and a debt due to the receipt by the applicant of other compensation not taken into account in the award, may be recovered in a court of competent jurisdiction and any sum recovered is to be paid to the Consolidated Fund.

Clause 70 – False information, offence of giving

This clause creates an offence of giving false information with a penalty of \$5,000, and provides that the Court convicting a person for the offence may order the offender to repay any compensation which may have been awarded in reliance upon the false information.

Clause 71 – Limitation period for prosecutions

This clause provides that a prosecution for an offence under the Act must be commenced within 2 years of its alleged commission. This is a new provision.

Clause 72 – Regulations

This clause enables the Governor to make regulations, and specifies some matters on which regulations can be made. It replaces section 49 of the 1985 Act.

Clause 73 – Repeal, transitional provisions and consequential amendments

This clause provides that these matters are governed by Schedule 2.

SCHEDULE 1 – PROVISIONS ABOUT ASSESSORS1 Qualification for appointment

This clause provides the qualification for the office of Chief Assessor, namely 8 years standing as a lawyer, or a barrister or solicitor of the Supreme Court of another State or Territory. The clause recreates the effect of sections 5(1), 5B and the definition of “qualified person” in the 1985 Act.

2 Appointment

This clause provides that the Governor may appoint a Chief Assessor, and as many Assessors as are required to deal with the applications for compensation, and recreates sections 5(1) and 5B of the 1985 Act.

3 Conditions of Appointment

An assessor may be appointed for up to 5 years, is eligible for reappointment, may be part time, and is to be paid such remuneration and allowances as determined by the Governor on the recommendation of the Minister for Public Sector Management. The section recreates clauses 1, 2, and 3 of schedule 1 of the 1985 Act.

4 Oath of Office

This clause requires an assessor to take an oath before a Judge of the Supreme Court faithfully and impartially to perform the duties of the office. The clause recreates clause 5 of Schedule 5 of the 1985 Act.

5 Termination and Resignation

The clause provides that the Governor may terminate the appointment of an assessor who is incapable or incompetent, or neglects the duties of an assessor, or is guilty of misconduct. An assessor may resign by notice in writing to the Governor. The clause recreates clause 1(b) and (c) of the 1985 Act.

SCHEDULE 2 – REPEAL, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Division 1 – Repeal

1. *Criminal Injuries Compensation Act 1985* repealed.

The clause repeals the 1985 Act.

Division 2 - Transitional provisions

2. Interpretation

This clause defines “commencement” and “repealed Act” and preserves the operation of Part V of the *Interpretation Act 1984* unless there is inconsistency, in which case the Schedule prevails. Part V of the *Interpretation Act 1984* contains a number of provisions for transition when a written law is repealed.

3. Pending applications

3(1) This clause provides that where a *Criminal Injuries Compensation Act 1970* application is pending before a Court at the date of commencement then after commencement it is continue to be dealt with under the *Criminal Injuries Compensation Act 1970*.

3(2) This clause provides that where a *Criminal Injuries Compensation Act 1982* application is pending before the assessor at the date of commencement then after commencement it is to be dealt with under the Act. All of the new provisions will apply to the application.

3(3) This clause provides that where a 1985 Act application is pending before the Chief Assessor or an assessor at the date of commencement then after commencement it is to be dealt with under the Act. All of the new provisions will apply to the application.

3(4) This clause provides that where an appeal or referred application under the *Criminal Injuries Compensation Act 1982* is pending before the District Court at the date of commencement then after commencement it is to be dealt with under the *Criminal Injuries Compensation Act 1982* provisions and rules of court.

3(5) This clause provides that where an appeal or referred application under the 1985 Act is pending before the District Court at the date of commencement then after commencement it is to be dealt with under the 1985 Act provisions and rules of court.

4. Appeals started after commencement

If an appeal to the District Court is started after commencement in respect of a decision made under the *Criminal Injuries Compensation Act 1982* or the 1985 Act then the District Court cannot make an order that could not have been made at the time of the decision being appealed against. This clause prevents appeals being commenced out of time retrospectively to attract the new provisions such as compensation for future treatment expenses.

5. Assessors

5(1) If at commencement a person holds office as Chief Assessor under the 1985 Act the person is taken to have been appointed under the Bill, but for the term and on the conditions of the appointment under the 1985 Act.

5(2) If at commencement a person holds office as Acting Chief Assessor under the 1985 Act the person is taken to have been appointed under s52 of the *Interpretation Act*, but for the term and on the conditions of the appointment under the 1985 Act. The Interpretation Act provision governs temporary appointments and removal.

5(3) If at commencement a person holds office as Assessor under the 1985 Act the person is taken to have been appointed under the Bill, but for the term and on the conditions of the appointment under the 1985 Act.

6. Annual Reports

For the purposes of clause 61, if the Bill commences before 1 January 2004 then an annual report covering 18 months to 30 June 2004 will be required, by 1 October 2004. If the Bill commences on or after 1 January 2004 then an annual report will be required for the 12 months to 31 December 2003 by 1 April, and one for the 6 months to 30 June 2004 by 1 October 2004.

Division 3 – Consequential provisions**7. *Adoption Act 1994* amended**

This provision inserts the title of the new Act where the 1985 Act is referred to and deletes reference to an alleged offence in 2 places in the *Adoption Act 1994*.

8. *Constitution Acts Amendment Act 1899* amended

The reference in the *Constitution Acts Amendment Act 1899* to an assessor under the *Criminal Injuries Compensation Act 1982* is to be substituted with reference to the title of the new Act.

9. *Offenders (Legal Action) Act 2000* amended

The reference to the 1985 Act is to be deleted from the *Offenders (Legal Action) Act 2000*.

10. *Sentencing Act 1995* amended

All references to the 1985 Act are substituted with reference to the new Act.