

Victims Support and Rehabilitation Act 1996

As in force at 18 January 2002

Long Title

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

Part 1 - Preliminary

1 Name of Act

This Act is the *Victims Support and Rehabilitation 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 provide support and rehabilitation for victims of crimes of violence by giving effect to an approved counselling scheme and a statutory compensation scheme,
- (b) to enable compensation paid under the statutory compensation 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 compensation 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 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 - Approved counselling scheme and 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 dependent on the primary victim 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.
- (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).

19A Deduction from certain awards

- (1) There is to be deducted from each award of statutory compensation payable to any person who is awarded an amount of statutory compensation that is less than \$20,001 (or such other amount as may be prescribed by the regulations) the amount of \$750 (or such other amount as may be prescribed by the regulations).
- (2) A deduction under this section is to be made only if, when an award is made to a victim, the total amount of statutory compensation awarded to a primary victim and any secondary victims claiming through the primary victim, is less than \$20,001.
- (3) This section does not apply to statutory compensation payable to family victims.
- (4) A deduction under this section is not to be taken into account for the purpose of determining whether statutory compensation is payable to a single person as set out in 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.

Division 3A - Approved counselling scheme

21 Special payments for approved counselling services

- (1) In this section:

approved counselling services means services provided by a professional counsellor chosen by the victim from a list of counsellors approved by the Director under section 21A.

relevant family member means a person who is a relative of a primary victim who has died as a result of an act of violence, but who is not a family victim within the meaning of this Act.

victim means:

- (a) a family victim, or
- (b) a primary victim or a secondary victim, or
- (c) a person who is a victim of an act of violence but who, merely because the person did not receive a compensable injury, is not a primary victim or secondary

victim within the meaning of this Act, or

(d) a relevant family member,

but does not include a person who is the victim of an act of violence arising in the circumstances described in section 24 (2), (3) or (4).

(2) A victim may apply for payment for approved counselling services for the victim as a consequence of an act of violence. Such an application is to be made to the Director.

(3) Payments for approved counselling services for a victim (other than a family victim or relevant family member) may be made:

(a) for an initial period of 2 hours of counselling (including counselling for the purposes of an application for continued counselling), and

(b) for such further periods of counselling (not exceeding 20 hours) as may be considered appropriate by a compensation assessor.

(4) Payments for approved counselling services for a victim who is a family victim or relevant family member may be made:

(a) for a period of up to 20 hours of counselling, and

(b) for such further periods of counselling as may be requested by the family victim or relevant family member.

(5) Payments may be made for approved counselling services even though:

(a) the victim is entitled to workers compensation in respect of the act of violence concerned or is awarded compensation by a court under Part 4, or

(b) the maximum amount of statutory compensation is payable in respect of the act of violence concerned.

(6) Payments for approved counselling services may be made only with the approval of a compensation assessor. Any payments for a period of counselling to the extent to which it exceeds 20 hours may be made only with the approval of the Director.

(7) Payments for approved counselling services are to be made from the Compensation Fund directly to the service provider, except that payments for an initial period referred to in subsection (3) (a) may be made from that Fund by way of reimbursement of the victim if it was not reasonably practicable for the victim to obtain the 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 under this section may be reviewed by the Director and a decision of the Director under subsection (6) may be reviewed by a member of the Tribunal.

(9) The rules may make provision for or with respect to payments for approved counselling services, including the application (with or without modification) of the provisions of this Act relating to statutory compensation.

21A Approved counselling services

(1) The Director may approve professional counsellors who may provide approved counselling services for the purposes of section 21.

(2) The Director may:

(a) suspend or revoke an approval, and

(b) make an approval subject to conditions, and

(c) vary or revoke any condition of an approval or impose additional conditions on an approval.

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 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) (Repealed)

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 Compensation Act 1999*.
- (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 *Crimes (Administration of Sentences) Act 1999* (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 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.

(1A) An award of statutory compensation may be made to a family victim whenever the compensation assessor who is determining the application is satisfied that there is no other family victim who is likely to make an application for statutory compensation.

- (1B) For the purposes of subsection (1A), the compensation assessor may assume that there is no other family victim who is likely to make an application if:
- (a) 3 months has elapsed since the application being determined was lodged, and
 - (b) no other family victim has lodged an application or notified the Director that an application is intended to be made.
- (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,
 - (d1) whether that victim failed to take reasonable steps to mitigate the extent of the injury sustained by the victim, such as seeking appropriate medical advice or treatment, or undertaking counselling, as soon as practicable after the act of violence was 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 (other than subsection (3)) 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.

33A Reimbursement of persons who incur funeral expenses

(1) This section applies if:

(a) one or more family victims of an act of violence are eligible for statutory compensation, and

(b) reasonable expenses relating to the funeral of the primary victim have been incurred by a person who is not eligible for statutory compensation as a family victim.

(2) Such a person may apply for payment of the amount of the reasonable funeral expenses incurred by the person. Such an application is to be made to the Director.

(3) A compensation assessor may approve payment to the person of an amount that the assessor considers to be fair and reasonable.

(4) Any such payment:

(a) is to be paid from the amount of statutory compensation for which the family victims are eligible, and

(b) is taken to be an award of statutory compensation despite section 6.

(5) Accordingly, and despite section 16, the amount of \$50,000 payable to the family victims concerned may be reduced if an application for payment of reasonable funeral expenses is approved by the compensation assessor under this section.

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.

(1A) An award of compensation is subject to the following conditions:

(a) the person to or for whose benefit the award is made must notify the Director of any money received in the future from other sources in connection with the injuries, expenses and losses taken into account in the award,

(b) the person to or for whose benefit the award is made must repay from the amount awarded any such future amounts referred to in paragraph (a) on demand by the Director,

- (c) the person to or for whose benefit the award is made must repay to the Director the amount awarded if it is subsequently ascertained that the award was obtained by fraud or collusion,
 - (d) the person to or for whose benefit the award is made (if a primary or secondary victim of an act of violence) is to provide reasonable assistance to any person or body engaged in the official investigation of the act of violence.
- (1B) If an amount is required to be repaid in accordance with the conditions to which an award of compensation is subject and the amount is not repaid, that amount may be recovered as a debt due to the Compensation Fund Corporation.
- (2) The rules may prescribe other 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 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, 76 or 77G.

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 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 and to the creation of charges on land 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 or 46A.

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 Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) 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 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 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:
 - (i) the date on which the relevant award of statutory compensation was made, or
 - (ii) the date on which the person was convicted of the relevant offence, whichever is the later, 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.

46A Director may make provisional order for restitution by other person

- (1) If the Director is of the opinion that a person against whom a provisional order for restitution has been made under section 46 has disposed of property as part of a scheme for the purpose of avoiding a liability (whether actual or potential) under this Division, the Director may make a provisional order for restitution against any person:
- (a) who was a party to the scheme, and
 - (b) who obtained property under the scheme without giving sufficient consideration.
- (2) A provisional order may be made against a person under this section whether or not the person has retained the property concerned.
- (3) The Director must cause notice of the provisional order to be served on the person against whom it is made in accordance with the rules.
- (4) The notice of the provisional order must:
- (a) set out the terms of the order, and
 - (b) specify the person against whom the restitution order under section 46 has been made and the transaction that formed part of the scheme to avoid the liability under this Division, and
 - (c) state that the person on whom the notice is served has 28 days in which to object to the order by a notice filed in the office of the Director, and
 - (d) 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
 - (e) state that if the person files a notice of objection the Tribunal will conduct a hearing into whether the order should be confirmed, and
 - (f) contain such other particulars as the rules may require.
- (5) A provisional order may not be made under this section if 2 years or more have elapsed since the provisional order on which it is based was made under section 46.
- (6) A provisional order for restitution may not be made under this section (and any such order that has been made ceases to be in force) if the order under section 46 on which it is based is not confirmed or any consequent restitution order is set aside or ceases to be in force.
- (7) The total amount that may be recovered under an order under this section and under the order under section 46 on which it is based is not to exceed the amount payable under the order under section 46.

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 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 a provisional order made under section 46 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.

(2A) The Tribunal may confirm a provisional order made under section 46A if satisfied that:

- (a) a person against whom a provisional order for restitution has been made under section 46 has disposed of property as part of a scheme for the purpose of avoiding a liability (whether actual or potential) under this Division, and
- (b) the defendant was a party to the scheme and obtained property under the scheme without giving sufficient consideration.

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 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 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, or to which it relates, 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) 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 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 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, 76 or 77G.

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.

58A Charge on property subject to restitution orders

- (1) The Director may apply to the Registrar-General for registration of a restitution order in relation to any land owned by the defendant (including any land owned jointly with another person).
- (2) An application must define the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of a copy of the restitution order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
- (4) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the Compensation Fund Corporation of the amount payable under the order.
- (5) The charge created by force of this section is subject to every charge or encumbrance to which the property was subject immediately before the charge was created and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.
- (6) Such a charge ceases to have effect in relation to the land:
- (a) on registration of cancellation of the charge under section 58B, or
 - (b) on the sale or other disposition of the land with the consent of the Compensation Fund Corporation, or
 - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge, or
 - (d) on full payment of the amount payable under the restitution order,

whichever first occurs.

58B Cancellation of charges

- (1) The Compensation Fund Corporation may cancel a charge created under section 58A at any time for good reason.
- (2) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.

Division 9 - Restraining orders and orders relating to the disposition of property by offenders

58C Application of Division

- (1) This Division applies where:
 - (a) a person has been charged with an offence in relation to which an act of violence occurred resulting in an injury to a victim for which statutory compensation may be paid, or
 - (b) a person has been convicted of an offence in relation to which any such act of violence occurred, or
 - (c) a person was a party to a scheme to avoid a liability (whether actual or potential) under Division 8 and obtained property under that scheme without giving sufficient consideration.
- (2) In this Division:

appropriate officer means the Director, the Director of Public Prosecutions, the Commissioner of Police or any other person, or a person of a class, prescribed by the regulations for the purposes of this definition.

the defendant means a person referred to in subsection (1) (a), (b) or (c).

- (3) In this Division, a reference to a person being charged with an offence is a reference to an information being laid against the person for an offence whether or not:
 - (a) a summons to require the attendance of the person to answer the information has been issued, or
 - (b) a warrant for the arrest of the person has been issued.

58D Nature of restraining order

A restraining order is an order of the Supreme Court directing that any property of the defendant, or under the effective control of the defendant, is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.

58E Application for restraining order

- (1) An appropriate officer may apply, ex parte, to the Supreme Court for a restraining order in relation to property of the defendant or property under the effective control of the defendant.
- (2) On an application under this section:
 - (a) the Supreme Court may, if it thinks fit, require the person making the application to give notice of the application to a person who the Court has reason to believe has an interest in the property or part of the property, and
 - (b) a person to whom the Court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

58F Making of restraining order

- (1) On an application under section 58E relating to a defendant charged with, or convicted of, an offence, the Supreme Court may make a restraining order in relation to

the defendant's property or property under the effective control of the defendant, if it is satisfied (on the information contained in or accompanying the application) that:

(a) the defendant has been charged with an offence in relation to which an act of violence occurred resulting in an injury to a victim for which statutory compensation may be paid or has been convicted of an offence in relation to which any such act of violence occurred, and

(b) amounts of statutory compensation are or are likely to be payable, and

(c) it is appropriate to make the order in the circumstances of the case.

(2) On application under section 58E relating to a defendant who was a party to a scheme to avoid a liability (whether actual or potential) under Division 8, the Supreme Court may make a restraining order in relation to the defendant's property or property under the control of the defendant, if it is satisfied (on the information contained in or accompanying the application) that:

(a) the defendant was a party to a scheme to avoid a liability (whether actual or potential) under Division 8 and obtained property under that scheme without giving sufficient consideration, and

(b) an order has been, or may be, made against the defendant under section 46A, and

(c) it is appropriate to make the restraining order in the circumstances of the case.

(3) Without limiting this section, in considering whether to make a restraining order, the Supreme Court is to consider the effect of any proposed order on the defendant's ability to pay his or her reasonable living expenses or those of his or her dependents or on the defendant's ability to meet legal expenses.

(4) The Supreme Court may not make a restraining order in relation to property if the property is affected by a restraining order in force under the *Criminal Assets Recovery Act 1990* or the *Confiscation of Proceeds of Crime Act 1989*.

(5) A restraining order may be made in relation to property under the *Criminal Assets Recovery Act 1990* or the *Confiscation of Proceeds of Crime Act 1989* even though the property is subject to a restraining order under this Act.

58G Undertakings

The Supreme Court may refuse to make a restraining order if the person making the application refuses or fails to give to the Court such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.

58H Ancillary orders

(1) If the Supreme Court makes a restraining order, it may make any ancillary orders that it considers appropriate.

(2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:

(a) an order for the examination on oath of:

(i) the defendant, or

(ii) another person,

before the Supreme Court, or an officer of the Court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,

(b) an order varying the restraining order in respect of the property to which it relates,

(c) an order varying any conditions to which the restraining order was subject.

(3) An ancillary order may be made on application:

(a) by the applicant for the restraining order, or

(b) by the defendant, or

- (c) with the leave of the Supreme Court, by any other person.
- (4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.
- (5) A person being examined under this section is not excused from answering a question on the ground that:
 - (a) the answer to the question might tend to incriminate the person or make the person liable to a forfeiture or penalty, or
 - (b) the answer would disclose information that is the subject of legal professional privilege.
- (6) A statement or disclosure made by the person in answer to a question put in the course of an examination under this section, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any civil or criminal proceedings, except proceedings that comprise:
 - (a) proceedings in respect of the false or misleading nature of a statement or disclosure made under this Act, or
 - (b) proceedings on an application under this Act, or
 - (c) proceedings ancillary to an application under this Act, or
 - (d) proceedings for enforcement of a restitution order.

58I Registration of restraining orders and lodging of caveats

- (1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.
- (2) If the particulars of a restraining order are so recorded, a person who subsequently deals with the property is, for the purposes of section 58L, taken to have notice of the restraining order.
- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

58J Court may revoke restraining order

- (1) The Supreme Court may revoke a restraining order, on application made to it by the person in relation to whose property it was made.
- (2) The Supreme Court may refuse to revoke the order if the person does not:
 - (a) give security satisfactory to the Court for the payment of any amount for which the person may become liable under Division 8 as a result of the person's commission of an act of violence, or
 - (b) give undertakings satisfactory to the Court concerning the person's property.
- (3) The Supreme Court may revoke a restraining order, on application made to it by an appropriate officer.
- (4) This section does not limit the discretion of the Supreme Court to revoke or refuse to revoke a restraining order.

58K Time when restraining order ceases to be in force

- (1) If, after a restraining order is made in reliance on the charging of a person with an offence:
 - (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal_the restraining order ceases to be in force when the charge is withdrawn, or
 - (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal_the restraining order ceases to be in force when the acquittal occurs.

- (2) If a restraining order is made in reliance on the charging of a person with (or the conviction of a person of) an offence, the restraining order ceases to be in force 2 years after it is made.
- (3) If a restraining order is made against a person referred to in section 58C (1) (c), the restraining order ceases to be in force 2 years after it is made.
- (4) The Supreme Court may, on the application of an appropriate officer, extend for a specified period the period for which a restraining order is in force under this section.

58L Avoidance of liabilities

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.
Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.
- (2) A person who knowingly disposes of, or otherwise deals with property, as a part of a scheme for the purpose of avoiding a liability under Division 8 (whether actual or potential) is guilty of an offence.
Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.
- (3) Proceedings for an offence under this section may be dealt with:
 - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (4) If any such proceedings are brought before a Local Court, the maximum fine that the Court may impose for an offence is \$10,000.

58M Orders setting aside dispositions of property

- (1) Application for order setting aside disposition of or dealing with property If:
 - (a) a restraining order is made or may be sought against property, and
 - (b) the property is disposed of, or otherwise dealt with:
 - (i) in contravention of the restraining order, or
 - (ii) before a restraining order is obtained as part of a scheme for the purpose of avoiding a liability under Division 8 (whether actual or potential), and
 - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,an appropriate officer may apply to the Supreme Court for an order that the disposition of or dealing with the property be set aside.
- (2) Order setting aside disposition or dealing If an application is made under subsection (1) and the Supreme Court is satisfied as to the matters set out in subsection (1) (a), (b) and (c), the Court may make an order:
 - (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
 - (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.
- (3) Protection of successors in title This section does not affect the rights of a person who acquired property from a person in good faith and by giving consideration that was at least as valuable as the market value of the property at the time of its acquisition.

Part 3 - Administration

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, Registrar of Tribunal and other staff

- (1) A Director, Victims Services, 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 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.

65A Inquiries and investigations

Subject to section 27 (2), a compensation assessor may, in connection with exercising the functions of a compensation assessor under this Act, make such inquiries and undertake such investigations as the assessor considers necessary.

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**).
- (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 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, and
- (f) all fines paid for offences under section 58L.

69 Payments from Compensation Fund

There are to be paid from the Compensation Fund:

- (a) all payments of statutory compensation, costs and approved counselling services 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
(c1) all fees to which the Public Trustee is entitled under section 53 of the *Confiscation of Proceeds of Crime Act 1989* ,
(d) all expenses incurred in the administration of the Compensation Fund.

Part 4 - Compensation awarded by court

Division 1 - Compensation for injury

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 through or by reason of:
 - (i) an offence for which the offender has been convicted, or
 - (ii) an offence taken into account (under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) 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 sustained through, or by reason of, the offence or, if applicable, any other offence taken into account (under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) 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 Division:

- (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 for which statutory compensation is payable must not be given if an award of statutory compensation in respect of the injury 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 Division 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 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 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.

Division 2 - Compensation for loss

77A Definitions

In this Division:

aggrieved person , in relation to an offence, means a person who has sustained loss through or by reason of:

- (a) an offence for which the offender has been convicted, or
- (b) a further offence that a court has taken into account under Division 3 of Part 3 in imposing a penalty for an offence for which the offender has been convicted.

court means the Supreme Court, the Court of Criminal Appeal, the District Court or a Local Court.

direction for compensation means a direction for compensation under section 77B.

77B 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 specified sum 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 loss sustained through, or by reason of, the offence or, if applicable, any further offence that the court has taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* in imposing a penalty for an offence for which the offender has been convicted.

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

77C Restrictions on court's power to give directions for compensation

A court may not give a direction for compensation:

- (a) for any loss for which compensation is payable under Part 2 or under Division 1 of this Part, or
- (b) for an amount in excess of the maximum amount that, in its civil jurisdiction, the court is empowered to award in proceedings for the recovery of a debt.

77D 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 that directly or indirectly contributed to the loss sustained by the

aggrieved person, and

- (b) any amount that 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.

77E 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 that a court directs 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.

77F 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 that 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 any public money.

77G Effect of directions for compensation on subsequent civil proceedings

- (1) This section applies to civil proceedings commenced or maintained in respect of a 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.

77H 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, the Drug 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 Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*) 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 (Repealed)

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 and use of certain evidence in subsequent criminal proceedings

(1) Despite any rule of law to the contrary:

(a) an application for statutory compensation or for payment for approved counselling services, and

(b) any documents supporting the application (whether or not furnished when the application is lodged) or any documents furnished to, or prepared by or on behalf of, the Tribunal at any time in connection with the application, 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.

(2) A person cannot be required (whether by subpoena or any other procedure) to produce any application, document or transcript of evidence that is not admissible in evidence in criminal proceedings under subsection (1) in, or in connection with, any criminal proceeding.

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 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 rules.

(2) In particular, 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, and

(f) the establishment of panels of appropriately qualified persons for the purpose of recommending:

(i) counsellors for approval by the Director under section 21A, or

(ii) persons eligible to be placed on lists of people designated under this Act as being able to provide assessments for the purposes of claims under this Act.

(3) The 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 (Repealed)

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 Psychological or psychiatric disorder

(1) For the purposes of establishing whether there is a compensable injury of psychological or psychiatric disorder, an application relating to statutory compensation for such an injury must be accompanied by a written assessment of the applicant's condition prepared by a qualified person chosen from a list of qualified persons designated by the Director.

(1A) In determining such an application, the Tribunal or compensation assessor concerned is not required to have regard to any report or assessment other than the assessment referred to in subclause (1).

(2) The Director may suspend or revoke the designation of a person under subclause (1).

(3) The compensable injury of psychological or psychiatric disorder (category 1) applies only in relation to an act of violence that has apparently occurred in the course of the commission of any of the following offences:

- (a) armed robbery,
- (b) abduction,
- (c) kidnapping.

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.

7A Domestic violence

(1) The compensable injury of domestic violence consists of the following:

- (a) injury resulting from an act that occurred in the commission of a domestic

violence offence (within the meaning of the *Crimes Act 1900*),
 (b) without limiting paragraph (a), injury arising from 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) Subclause (1) (a) is subject to any guidelines issued by the Tribunal under section 65
 relating to the determination of circumstances in which there is a compensable injury of
 domestic violence.

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:

- (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

The following provisions apply:

- (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.

10 Victims Compensation Amendment (Compensable Injuries) Regulation 2000

The amendments made to the table to this Schedule by the *Victims Compensation Amendment
 (Compensable Injuries) Regulation 2000* , and which relate to the amount of statutory
 compensation for the compensable injuries of domestic violence, psychological or psychiatric
 disorder (category 1) and sexual assault (category 1), apply in relation to applications for
 statutory compensation lodged on or after 14 July 2000.

Table

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or other recognised medical illness causing disability (not being a disease or of the mind)

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al deafness of both ears

tial loss of ear(s)

forated ear drum

porary partial deafness_lasting 6 to 13 weeks

porary partial deafness_lasting more than 13 weeks

nitus (ringing noise in ears)_lasting 6 to 13 weeks

nitus_lasting more than 13 weeks

nitus_permanent (moderate)

nitus_permanent (very serious)

ow out fracture of orbit bone cavity containing eyeball

irred or double vision_lasting 6 to 13 weeks

irred or double vision_lasting more than 13 weeks

irred or double vision_permanent

taracts one eye (requiring operation)

taracts both eyes (requiring operation)

taracts one eye (permanent/inoperable)

taracts both eyes (permanent/inoperable)

rneal abrasions

mage to iris resulting in hyphaema (bleeding in ocular chamber)

mage to irises resulting in hyphaema (bleeding in ocular chamber)

generation of optic nerve

generation of optic nerves

tached retina

tached retinas

slocation of lens

slocation of lenses

ucoma

ss of one eye

ss of both eyes

ss of sight of one eye

ss of sight of both eyes

rtial loss of vision_6/9

rtial loss of vision_6/12

rtial loss of vision_6/24

rtial loss of vision_6/36

rtial loss of vision_6/60

sidual floaters

umatic angle recession of eye

dislocated jaw

fractured malar and/or zygomatic_cheek bones

fractured mandible and/or maxilla_jaw bones

permanently clicking jaw

temporary numbness/loss of feeling_lasting 6 to 13 weeks

temporary numbness/loss of feeling_lasting more than 13 weeks (recovery

permanent numbness/loss of feeling

eviated nasal septum

eviated nasal septum requiring septoplastomy

ndisplaced fracture of nasal bones

isplaced fracture of nasal bones

artial loss (at least 10%)

artial loss of smell and/or taste

oss of smell or taste

Loss of smell and taste

3 (face): minor disfigurement

3 (face): significant disfigurement

3 (face): serious disfigurement

3 (other than face): visible, minor disfigurement

3 (other than face): significant disfigurement

3 (other than face): serious disfigurement

Balance impaired_permanent

Brain haemorrhage (full recovery)

Brain haemorrhage (residual minor impairment of social/intellectual functions)

Concussion (lasting at least one week)

Simple fracture (no operation)

Depressed fracture (no operation)

Depressed fracture (requiring operation)

Stroke (full recovery)

Subdural haematoma_treated conservatively

Subdural haematoma_requiring evacuation

Chipped front teeth requiring crown

Fractured tooth/teeth requiring crown

Loss of crowns

Loss of one tooth other than front tooth

Loss of two or more teeth other than front tooth

Loss of one front tooth

Loss of two or three front teeth

Loss of four or more front teeth

Loosening of teeth requiring dental treatment

impaired speech_slight

impaired speech_moderate

impaired speech_serious

impaired speech_severe

loss of speech_permanent

loss of tongue

limbs

fracture of one ankle (full recovery)

fracture of one ankle (with continuing disability)

fracture of both ankles (full recovery)

fracture of both ankles (with continuing disability)

sprain of one ankle (disabling for at least 6 to 13 weeks)

sprain of one ankle (disabling for more than 13 weeks)

sprain of both ankles (disabling for at least 6 to 13 weeks)

sprain of both ankles (disabling for more than 13 weeks)

minor

moderate

severe

fracture of both legs (full recovery)

fracture of both legs (with continuing disability)

fracture of thigh bone (full recovery)

fracture of one leg (with continuing disability)

fracture of both legs (full recovery)

fracture of both legs (with continuing disability)

fracture of one leg (with continuing disability)

fracture of slender bone from knee to ankle (full recovery)

ne: fracture of one foot (full recovery)

ne: fracture of one foot (with continuing disability)

ne: fracture of both feet (full recovery)

ne: fracture of both feet (with continuing disability)

injury requiring arthroscopy (investigative surgery/repair)_no fracture

s of leg below knee

s of leg above knee

s of both legs

sal bones: fracture of one foot (full recovery)

sal bones: fracture of one foot (with continuing disability)

sal bones: fracture of both feet (full recovery)

sal bones: fracture of both feet (with continuing disability)

dislocation of one leg (full recovery)

dislocation of one leg (with continuing disability)

dislocation of both legs (full recovery)

dislocation of both legs (with continuing disability)

fracture of knee cap (full recovery)

fracture of one leg (with continuing disability)

fracture of both legs (full recovery)

fracture of both legs (with continuing disability)

ges: fracture of toes

g: minor disfigurement

g: significant disfigurement

g: serious disfigurement

ones: fracture of one foot (full recovery)

ones: fracture of one foot (with continuing disability)

ones: fracture of both feet (full recovery)

ones: fracture of both feet (with continuing disability)

(s)/ligament(s): minor damage (full recovery)

(s)/ligament(s): minor damage (with continuing disability)

(s)/ligament(s): moderate damage (full recovery)

(s)/ligament(s): moderate damage (with continuing disability)

(s)/ligaments(s): severe damage (full recovery)

(s)/ligaments(s): severe damage (with continuing disability)

acture of shin bone (full recovery)

acture of shin bone (with continuing disability)

acture of both legs (full recovery)

acture of both legs (with continuing disability)

cture of one big toe

cture of two big toes

minor

moderate

severe

trained (disabling for 6 to 13 weeks)

trained (disabling for more than 13 weeks)

trained_seriously disabling (not permanent)

trained_seriously disabling (permanent)

g: minor disfigurement

g: significant disfigurement

g: serious disfigurement

is

is of all 4 limbs (quadriplegia/tetraplegia), paralysis of one side of body
paralysis of the lower limbs (paraplegia), paralysis of one lower limb, paralysis of
per limbs

logical or psychiatric disorder

ry 1, chronic psychological or psychiatric disorder that is moderately disabling 15,000

ry 2, chronic psychological or psychiatric disorder that is severely disabling _50,000

assault

ry 1 10,000

ry 2 _25,000

ry 3 _50,000

racture of vertebra (full recovery)

racture of vertebra (continuing disability)

racture of more than one vertebra (full recovery)

racture of more than one vertebra (continuing disability)

rolapsed intervertebral disc(s)_seriously disabling (not permanent)

rolapsed intervertebral disc(s)_seriously disabling (permanent)

ruptured intervertebral disc(s) requiring surgical removal

trained back_disabling for 6 to 13 weeks

trained back_disabling for more than 13 weeks

trained back_seriously disabling (not permanent)

trained back_seriously disabling (permanent)

minor

moderate

severe

∴ fracture of collar bone

∴ fracture of both clavicles

: fracture of tail bone

: loss of fertility

a: injury requiring medical treatment (no permanent damage)

a: injury requiring medical treatment (permanent damage)

.located (full recovery)

.located (with continuing disability)

ctured

requiring laparotomy

loss of kidney

ollapse of lung

ollapse of both lungs

uncture of lung

uncture of both lungs

noke inhalation in both lungs (permanent and disabling damage)

fracture of pelvis

cture of rib

cture of two or more ribs

l: fracture of shoulder blade

l: fracture of both scapula

g: minor disfigurement

g: significant disfigurement

g: serious disfigurement

xr: dislocated (full recovery)

xr: dislocated (with continuing disability)

xr: frozen

loss of spleen

1: fracture of breast bone

limbs

ss of arm

ss of both arms

ermanently and seriously impaired grip

ermanently and seriously impaired grip in both arms

minor

moderate

severe

dislocation/fracture of one elbow (full recovery)

dislocation/fracture of one elbow (with continuing disability)

dislocation/fracture of both elbows (full recovery)

dislocation/fracture of both elbows (with continuing disability)

loss of one other than index

loss of index

loss of two or more

partial loss of finger (one joint) other than thumb or index

s) or thumb: dislocated one hand (full recovery)

s) or thumb: dislocated one hand (with continuing disability)

s) or thumb(s): dislocated both hands (full recovery)

s) or thumb(s): dislocated both hands (with continuing disability)

s) or thumb: fractured one hand (full recovery)

s) or thumb: fractured one hand (with continuing disability)

s) or thumb(s): fractured both hands (full recovery)

s) or thumb(s): fractured both hands (with continuing disability)

fracture of hand (full recovery)

fracture of hand (with continuing disability)

fracture of both hands (full recovery)

fracture of both hands (with continuing disability)

loss of hand

loss of both hands

is: fracture of upper arm bone (full recovery)

is: fracture (with continuing disability)

is: fracture of both arms (full recovery)

is: fracture of both arms (with continuing disability)

fracture of smaller forearm bone (full recovery)

fracture (with continuing disability)

fracture of both arms (full recovery)

fracture of both arms (with continuing disability)

g: minor disfigurement

g: significant disfigurement

g: serious disfigurement

(s)/ligament(s): minor damage (full recovery)

(s)/ligament(s): minor damage (with continuing disability)

(s)/ligament(s): moderate damage (full recovery)

(s)/ligament(s): moderate damage (with continuing disability)

(s)/ligament(s): severely damaged (full recovery)

(s)/ligament(s): severely damaged (with continuing disability)

or index finger: partial loss (one joint)

loss of thumb

fracture of inner forearm bone (full recovery)

actured ulna (with continuing disability)

acture of both arms (full recovery)

acture of both arms (with continuing disability)

racture_colles type (full recovery)

racture_colles type (with continuing disability)

racture_including scaphoid (full recovery)

racture_including scaphoid (with continuing disability)

racture of both_colles type (full recovery)

racture of both_colles type (with continuing disability)

racture of both_including scaphoid fracture (full recovery)

racture of both_including scaphoid fracture (with continuing disability)

prain_disabling for 6 to 13 weeks

prain_disabling for more than 13 weeks

prain of both_disabling for 6 to 13 weeks

prain of both_disabling for more than 13 weeks

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 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.

Part 4 - Other powers

23 Tribunal may compel production of documents

(1) The Tribunal may, of its own motion or at the request of an assessor and for the purposes of the determination of an application for statutory compensation or a related appeal by the assessor or the Tribunal by instrument in writing require any person on whom the instrument is served personally or by post to produce to the Tribunal any document that is relevant to the application, at a time, date and place specified in the instrument.

(2) When a document is produced to the Tribunal in accordance with a requirement under this clause, the Tribunal may take and keep possession of the document, or, in the case of a document requested on behalf of an assessor, allow the assessor to keep possession of the document, for such period as the Tribunal considers necessary for the purpose of determining the application.

(3) The functions conferred on the Tribunal by subclause (1) may be exercised on behalf of the Tribunal by the Registrar of the Tribunal.

24 Refusal to comply with requirement

A person must not fail to comply with a requirement made of the person under clause 23 to the extent to which the person is lawfully able to comply with the requirement.

Maximum penalty: 5 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

Victims Compensation Amendment Act 1998

Victims Compensation Amendment Act 2000

Courts Legislation Amendment Act 2001 (but only to the extent that it amends this Act)

(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.

3A (Repealed)

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.

Part 3 - Provisions consequent on enactment of Victims Compensation Amendment Act 1998

10 Definition

In this Part:

amending Act means the *Victims Compensation Amendment Act 1998* .

11 Deductions from statutory compensation

Section 19A, as inserted by the amending Act, applies to amounts of statutory compensation awarded where the application for compensation is made after the commencement of that section, whether or not the act of violence that resulted in the injury for which the compensation

is awarded occurred before or after that commencement.

12 Compensation for shock

The provisions of Schedule 1 relating to shock that were omitted by the amending Act continue to have effect in the case of any person who applied for statutory compensation for the compensable injury of shock before the omission of those provisions.

13 Compensation for new injuries

(1) A person may apply for statutory compensation for a psychological or psychiatric disorder, or for the compensable injury of domestic violence, whether or not the injury resulted from an act of violence that occurred before the insertion of those categories of injury in Schedule 1.

(2) This clause does not affect the operation of section 26.

14 Provisional restitution orders

The Director may make a provisional order for restitution under section 46A, as inserted by the amending Act, whether or not the order is based on an order that was granted, or a transaction relating to property that occurred, before the commencement of that section.

15 Charges on property

An application may be made under section 58A, as inserted by the amending Act, to register a restitution order whether or not the restitution order was made before or after the commencement of that section.

16 Restraining orders and other property orders

An application may be made for an order under Division 9 of Part 2 concerning the property of a person whether or not:

- (a) the person was charged with, or convicted of, an offence before or after the commencement of that Division, or
- (b) the property was (in the case of an order under section 58M) disposed of or dealt with before or after the commencement of that Division.

Part 4 - Provisions consequent on enactment of Victims Compensation Amendment Act 2000

17 Compensation for psychological or psychiatric disorder

Clause 5 (3) of Schedule 1 to this Act (as inserted by Schedule 1 [22] to the *Victims Compensation Amendment Act 2000*) applies to or in respect of an application for statutory compensation that is, or was, lodged on or after the day on which the Bill for that Act was introduced into the Legislative Assembly.

Date of introduction: 31.5.2000.

18 Compensation for family victims

Schedule 1 [9] to the *Victims Compensation Amendment Act 2000* applies to or in respect of an application for statutory compensation whether lodged before or after the commencement of that item.

19 Compensation rules

Any rules made under section 87 and in force immediately before the amendment of that section by the *Victims Compensation Amendment Act 2000* are taken to have been made under section 87 as amended by that Act.

Part 5 - Provision consequent on enactment of Courts

Legislation Amendment Act 2001

20 Inadmissibility and use of certain evidence in criminal proceedings

(1) Section 84, as amended by Schedule 8 to the *Courts Legislation Amendment Act 2001* , applies to and in respect of an application for statutory compensation or for payment for approved counselling services, whether made before, on or after the commencement of that amendment.

(2) Despite clause 3 of this Schedule, section 84, as amended by Schedule 8 to the *Courts Legislation Amendment Act 2001* , applies to and in respect of an application for compensation made under Part 3 of the *Victims Compensation Act 1987* as if that application were an application for statutory compensation made under this Act.

Schedule 4 (Repealed)

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.

conviction includes:

- (a) an order made under section 10 of the *Crimes (Sentencing Procedure) Act 1999* , 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, Victims Services 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.

injury means:

- (a) actual physical bodily harm,

(b) psychological or psychiatric disorder,
(c)
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 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 use 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, or
- (g) any other act resulting in injury that occurred in the commission of a domestic violence offence (within the meaning of the *Crimes Act 1900*).

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.