



# Prisoners' and Victims' Claims Act 2005

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Commencement see section 2

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## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Prisoners' and Victims' Claims Act 2005.

### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### General provisions

#### 3 Purpose of this Act

- (1) The purpose of subpart 1 of Part 2 is to restrict and guide the awarding of compensation sought by specified claims in order to help to ensure that the remedy of compensation is reserved for exceptional cases and used only if, and only to the extent that, it is necessary to provide effective redress.
- (2) The purpose of subpart 2 of Part 2 is to—
  - (a) establish, require payments into, and regulate the operation of, a victims' claims trust bank account; and
  - (b) provide a procedure for the making and determination of victims' claims.
- (3) The purpose of subpart 3 of Part 2 is to suspend the running of limitation periods for certain claims by victims.
- (4) The purpose of Part 3 (amendments to other Acts) is to—
  - (a) amend the Legal Services Act 2000 to facilitate the granting of legal aid in respect of victims' claims proceedings under subpart 2 of Part 2 of this Act; and
  - (b) amend the Privacy Act 1993 to enable the Ministry of Justice to have access to police records on offender identity and victim identity for the purpose of providing assistance to victims in accordance with this Act; and
  - (c) amend the Victims' Rights Act 2002 to require the Secretary for Justice to request, for the purposes of a notice under section 20 of this Act, the current address (including the full name) of a victim who has asked for notice of certain matters under that Act; and
  - (d) amend consequentially the Human Rights Act 1993, the Limitation Act 1950, and the Privacy Act 1993.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**account** means the victims' claims trust bank account established under section 54

**accused**, in relation to any person who is alleged to be the victim of an offence, means a person charged (whether as a principal or party or an accessory after the fact or otherwise) with the commission of that offence

**action** means any proceeding in a court or tribunal other than a criminal proceeding

**child** means a boy or girl under the age of 14 years

**civil custody** has the same meaning as in section 2(1) of the Armed Forces Discipline Act 1971

**community-based sentence** means—

- (a) a community-based sentence as defined in section 4(1) of the Sentencing Act 2002; and
- (b) a community-based sentence as defined in section 2(1) of the Criminal Justice Act 1985; and
- (c) a sentence of a similar kind to those referred to in paragraphs (a) and (b) (including, without limitation, a sentence of community care, a sentence of probation, or a sentence of residential periodic detention) imposed under an earlier corresponding enactment

**compensation**—

- (a) means any form of monetary compensation or damages (however described) required by a court or tribunal to be paid (including, without limitation, an amount of, or in the nature of, exemplary damages); and
- (b) for the purposes only of subpart 2 of Part 2, includes any form of monetary compensation or damages (however described) required to be paid as, or as part of, an out-of-court final settlement of a claim (including, without limitation, an amount paid in final settlement of a claim for an amount of, or in the nature of, exemplary damages); and
- (c) includes an amount or award of interest related to compensation or damages in paragraph (a) or (b); but
- (d) does not include an amount required or agreed to be paid as, or towards, the costs of making a claim

**detention quarter** means a building or part of a building set aside under the Armed Forces Discipline Act 1971 as a detention quarter

**fine** includes—

- (a) a sum of money adjudged or ordered to be paid by a conviction or order, whether described as a fine or as costs, expenses, fees, or otherwise;
- (b) any costs, expenses, or fees payable in respect of the enforcement of any fine as defined in paragraph (a)

**home detention** has the same meaning as in section 4(1) of the Sentencing Act 2002; but also includes home detention as defined in section 2(1) of the Criminal Justice Act 1985

**immediate family**, in relation to a victim,—

- (a) means a member of the victim's family, whānau, or other culturally recognised family group, who is in a close relationship with the victim at the time of the offence; and
- (b) to avoid doubt, includes a person who is—
  - (i) the victim's spouse, civil union partner, or de facto partner; or
  - (ii) the victim's child or a child of a person who is, or was, the victim's spouse, civil union partner, or de facto partner; or
  - (iii) the victim's brother or sister or the child of a person who is, or was, the spouse, civil union partner, or de facto partner of a parent of the victim; or
  - (iv) a parent of the victim or a person who is, or was, the spouse, civil union partner, or de facto partner of a parent of the victim; or
  - (v) a grandparent of the victim

**incapable**, in relation to a person,—

- (a) means that the person—
  - (i) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or
  - (ii) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of matters of that kind; and
- (b) includes the person being in a state of continuing unconsciousness

**Judge Advocate General** means the Judge Advocate General of the Armed Forces appointed under section 203 of the Armed Forces Discipline Act 1971

**judgment** includes an award, direction, order, or other requirement

**offence**, in relation to a victim, means an offence against an enactment—

- (a) committed against the victim (or committed against a child or young person of whom the victim is a parent or legal guardian); or
- (b) through which, or by means of which, the victim (or a child or young person of whom the victim is a parent or legal guardian) suffered physical injury or emotional harm, or loss of, or damage to, property; or
- (c) that resulted in the death of a member of the victim's immediate family, or in a member of the victim's immediate family being incapable

**offender** has the meaning given to it by section 5

**penal institution** has the same meaning as in section 2(1) of the Penal Institutions Act 1954

**parent** has the same meaning as in section 2(1) of the Children, Young Persons, and Their Families Act 1989

**person arrested and detained under the Armed Forces Discipline Act 1971 pending release or trial** means a person who, in accordance with that Act, and in or outside New Zealand, is—

- (a) arrested for an alleged offence, and detained before being delivered into civil custody, service custody, or other custody, in connection with the offence; or
- (b) in any of those kinds of custody pending release, or pending trial for the alleged offence by a court of competent jurisdiction in or outside New Zealand

**person under control or supervision** means—

- (a) a prisoner:
- (b) a person who is subject to a community-based sentence:
- (c) a person who is on home detention:
- (d) a person who is subject to conditions—
  - (i) under the Parole Act 2002 (including, without limitation, conditions applying to a person who is subject to an extended supervision order under section 107I of that Act); or
  - (ii) under section 93 of the Sentencing Act 2002; or
  - (iii) of a similar kind under earlier corresponding enactments:
- (e) a person who is arrested and detained under the Armed Forces Discipline Act 1971 pending release or trial:

(f) a service detainee or a service prisoner

**prison** has the same meaning as in section 3(1) of the Corrections Act 2004

**prisoner** means—

- (a) a person (in section 7 called a **2004 Act prisoner**) who is not a service detainee or a service prisoner but who is for the time being in the legal custody under the Corrections Act 2004 of either of the following persons:
  - (i) the chief executive (as defined in section 3(1) of that Act);
  - (ii) the Commissioner of Police; or
- (b) a person (in section 7 called a **1954 Act prisoner**) who is not a service detainee or a service prisoner but who is for the time being in the legal custody of the Superintendent of a penal institution

**Secretary** means the Secretary for Justice; and includes a person or body authorised by the Secretary to exercise or perform his or her functions, powers, and duties under this Act

**Secretary of the Tribunal** means the officer or employee of the Ministry of Justice who is for the time being exercising or performing the functions, powers, or duties of that office

**sentence of imprisonment**—

- (a) means a sentence of imprisonment imposed before or after the commencement of this Act and under any 1 or more enactments or other rules of law (for example, under the Armed Forces Discipline Act 1971 or the Sentencing Act 2002); and
- (b) includes the following (as defined in section 4(1) of the Sentencing Act 2002):
  - (i) a determinate sentence of imprisonment; and
  - (ii) an indeterminate sentence of imprisonment; but
- (c) does not include a term of imprisonment imposed, whether by committal, sentence, or order, for—
  - (i) non-payment of a sum of money; or
  - (ii) disobedience of a court order; or
  - (iii) contempt of court

**service detainee** means a person who is—

- (a) undergoing a sentence, imposed under the Armed Forces Discipline Act 1971 by a court-martial or an officer exercising summary powers, that includes the punishment of detention; and

- (b) in accordance with that Act, for the time being in or outside New Zealand—
  - (i) in civil custody or service custody while awaiting delivery to the prison, penal institution, or service penal establishment in which he or she is to serve his or her sentence; or
  - (ii) serving the term of his or her detention in a detention quarter, in service custody, or as field punishment

**service penal establishment** has the same meaning as in section 2(1) of the Armed Forces Discipline Act 1971

**service prison** has the same meaning as in section 2(1) of the Armed Forces Discipline Act 1971

**service prisoner** means a person who is—

- (a) undergoing a sentence, imposed under the Armed Forces Discipline Act 1971 by a court-martial, that includes imprisonment; and
- (b) in accordance with that Act, for the time being in or outside New Zealand—
  - (i) in civil custody or service custody while awaiting delivery to the prison, penal institution, or service penal establishment in which he or she is to serve his or her sentence; or
  - (ii) serving the sentence of imprisonment in a prison, penal institution, service prison, detention quarter, or in other service custody

**specified claim** has the meaning given to it by section 6

**specified internal and external complaints mechanisms** has the meaning given to it by section 7

**Tribunal**—

- (a) means a Victims' Special Claims Tribunal referred to in section 58; and
- (b) in relation to a victim's claim filed under section 28, means the particular Victims' Special Claims Tribunal to which the claim has been referred under section 30

**victim** has the meaning given to it in section 8

**victim's claim** has the meaning given to it in section 9

**young person** means a boy or girl of or over the age of 14 years but under 17 years; but does not include a person who is or has been married or in a civil union.

## 5 Offender

- (1) In this Act, **offender**, in relation to a victim, means—
- (a) for the purposes only of subpart 3 of Part 2, a person—
    - (i) convicted (alone or with others) by a court or court-martial of the offence that affected the victim; and
    - (ii) on whom a court or court-martial has, because of the person's conviction for that offence, imposed a sentence of imprisonment (the **sentence of imprisonment for the offence**); and
  - (b) for all other purposes, a person found guilty (alone or with others) by a court or court-martial of the offence that affected the victim, or found guilty of that offence (alone or with others) by an officer exercising summary powers under the Armed Forces Discipline Act 1971, or who pleads guilty to that offence (alone or with others) before a court or court-martial or an officer exercising those powers.
- (2) For the purposes of subsection (1)(a), it does not matter whether, at the time the court or court-martial imposed the sentence of imprisonment for the offence, the person was already subject to, or was at that time or later also made subject to, a sentence of imprisonment for another offence or offences.

## 6 Specified claim

- (1) In this Act, **specified claim** means a claim for compensation, made by or on behalf of a person (the **plaintiff**) who is or was a person under control or supervision, and based on—
- (a) an act or omission by or on behalf of the Crown (the **defendant**)—
    - (i) before or after the commencement of this Act; and
    - (ii) affecting the person as a person under control or supervision; and
  - (b) a breach of, or interference with, a specified right (the **right concerned**) or, if subpart 2 of Part 2 applies, the law relating to liabilities in tort.
- (2) In this section,—
- a breach of, or interference with, a specified right** means—

- (a) a breach of, or interference with, a right contained in and affirmed by the New Zealand Bill of Rights Act 1990; or
- (b) a breach of Part 1A or Part 2 of the Human Rights Act 1993; or
- (c) an interference with the privacy of an individual (within the meaning of section 66 of the Privacy Act 1993)

**Crown** includes a contractor or security contractor as defined in—

- (a) section 3(1) of the Corrections Act 2004; or
- (b) section 2(1) of the Penal Institutions Act 1954.

## **7 Specified internal and external complaints mechanisms**

(1) In this Act, **specified internal and external complaints mechanisms** means,—

- (a) for a 2004 Act prisoner, the following mechanisms:
  - (i) the relevant prison's internal complaints system, as required, defined, and facilitated by sections 151 to 155 of the Corrections Act 2004; and
  - (ii) investigation of a complaint by a person appointed as an inspector of corrections under section 28 of that Act, as contemplated by sections 156 to 159 of that Act; and
  - (iii) in relation only to a matter that is not more properly within the jurisdiction of another authority, official agency or body, or statutory officer, investigation by an Ombudsman or by an employee of the Office of the Ombudsmen of a complaint under the Ombudsmen Act 1975; and
- (b) for persons under control or supervision (other than 2004 Act prisoners) after the commencement of the Corrections Act 2004, the following mechanisms:
  - (i) the internal complaints system available at or through the relevant community work centre or probation office, or through the controlling officer of the relevant probation area, as required, defined, and facilitated by sections 151 to 155 of that Act; and
  - (ii) investigation of a complaint by a person appointed as an inspector of corrections under

- section 28 of that Act, as contemplated by sections 156 to 159 of that Act; and
- (iii) in relation only to a matter that is not more properly within the jurisdiction of another authority, official agency or body, or statutory officer, investigation by an Ombudsman or by an employee of the Office of the Ombudsmen of a complaint under the Ombudsmen Act 1975; and
- (c) for a 1954 Act prisoner, the following mechanisms:
- (i) the relevant penal institution's internal complaints system, as required, defined, and facilitated by regulations 178 to 180 of the Penal Institutions Regulations 2000 or by any earlier corresponding enactment; and
  - (ii) assistance from an outside agency (as defined in subsection (2)) for the purpose of resolving a complaint, as contemplated by regulations 181 and 182 of those regulations or by any earlier corresponding enactment; and
- (d) for persons under control or supervision (other than 1954 Act prisoners) before the commencement of the Corrections Act 2004, the following mechanisms:
- (i) any internal complaints system available at or through the relevant community work centre or probation office, or through the controlling officer of the relevant probation area; and
  - (ii) in relation only to a matter that is not more properly within the jurisdiction of another authority, official agency or body, or statutory officer, investigation by an Ombudsman or by an employee of the Office of the Ombudsmen of a complaint under the Ombudsmen Act 1975; and
- (e) for a service detainee or service prisoner, the following mechanisms:
- (i) investigation by a Service authority of a complaint made under section 49 of the Defence Act 1990; and
  - (ii) investigation (for example, by a visiting officer) of a complaint made in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the Armed Forces Discipline Act 1971.

- (2) In this section,—
- 2004 Act prisoner** and **1954 Act prisoner** have the meanings given to them by the definition of **prisoner** in section 4
- outside agency** means—
- (a) an inspector of penal institutions appointed under section 5 of the Penal Institutions Act 1954; or
  - (b) in relation only to a matter that is not more properly within the jurisdiction of another authority, official agency or body, or statutory officer, an Ombudsman; or
  - (c) a Visiting Justice, which, in relation to a penal institution, means—
    - (i) a District Court Judge; or
    - (ii) a Justice of the Peace appointed under section 10(2) of the Penal Institutions Act 1954 to be a Visiting Justice for that institution.

## 8 Victim

- (1) In this Act, **victim** means—
- (a) a person against whom an offence is committed by another person; and
  - (b) a person who, through, or by means of, an offence committed by another person, suffers physical injury, or loss of, or damage to, property; and
  - (c) a parent or legal guardian of a child, or of a young person, who falls within paragraph (a) or (b), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and
  - (d) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.
- (2) To avoid doubt, if an offence is committed by a person, a **victim** does not include another person charged (whether as a principal or a party or an accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,—
- (a) that offence; or
  - (b) an offence relating to the same incident or series of incidents as that crime or offence.

- (3) Subsection (2) overrides subsection (1).

**9 Victim's claim**

In this Act, **victim's claim** means a claim for damages or exemplary damages—

- (a) made by or on behalf of a victim; and
- (b) made against an offender; and
- (c) based on acts done or omitted to be done by the offender in committing the offence.

**10 Act binds the Crown**

This Act binds the Crown.

**Part 2**  
**Prisoners' and victims' claims**

Subpart 1—Compensation sought by claims by  
prisoners, etc

**11 Overview of this subpart**

To help to achieve its purpose, when compensation is sought from a court or tribunal by a specified claim, this subpart—

- (a) ensures compensation is not awarded unless the plaintiff has first made reasonable use of the specified internal and external complaints mechanisms reasonably available to him or her; and
- (b) requires other remedies to be used if, in the particular circumstances, they are capable, alone or in combination, of providing effective redress; and
- (c) encourages timely mitigation of loss or damage by the plaintiff and the defendant if that is reasonably practicable; and
- (d) ensures the Court or Tribunal takes into account specified matters (including the extent (if any) to which effective redress has been, or could be, provided otherwise than by compensation) before awarding compensation.

## 12 Application

- (1) This subpart applies only to proceedings in or before a court or tribunal in which 1 or more specified claims are made and that—
  - (a) have been commenced, and not determined at first instance by the Court or Tribunal, before the commencement of this Act; or
  - (b) are commenced after the commencement of this Act.
- (2) If, under this section, this subpart applies to proceedings, this subpart applies to them both—
  - (a) at first instance; and
  - (b) on any appeal or rehearing.

## 13 Restriction on awarding of compensation

- (1) No court or tribunal may, in proceedings to which this subpart applies, award any compensation sought by a specified claim unless satisfied that—
  - (a) the plaintiff has made reasonable use of all of the specified internal and external complaints mechanisms reasonably available to him or her to complain about the act or omission on which the claim is based, but has not obtained in relation to that act or omission redress that the Court or Tribunal considers effective; and
  - (b) another remedy, or a combination of other remedies, cannot provide, in relation to the act or omission on which the claim is based, redress that the Court or Tribunal considers effective.
- (2) In this section, **reasonable use** of a complaints mechanism means the use that the Court or Tribunal considers it reasonable for the plaintiff to have made in the circumstances.

## 14 Guiding considerations for awarding of compensation

- (1) A court or tribunal must take into account the matters specified in subsection (2) in determining, in proceedings to which this subpart applies,—
  - (a) whether compensation is required to provide effective redress; and (if it is)
  - (b) the quantum of an award of compensation required to provide effective redress.
- (2) The matters referred to in subsection (1) are—

- (a) the extent (if any) to which the plaintiff, the defendant, or both took, within a reasonable time, all reasonably practicable steps to mitigate loss or damage arising from the act or omission on which the claim is based; and
  - (b) whether the defendant's breach of, or interference with, the right concerned was deliberate or in bad faith; and
  - (c) the relevant conduct of the plaintiff; and
  - (d) the consequences for the plaintiff of the breach of, or interference with, the right concerned; and
  - (e) the freedoms, interests, liberties, principles, or values recognised and protected by the right concerned; and
  - (f) any need to emphasise the importance of, or deter other breaches of or other interferences with, the right concerned; and
  - (g) the extent (if any) to which effective redress in relation to that act or omission has been, or could be, provided otherwise than by compensation; and
  - (h) any other matters the Court or Tribunal considers relevant.
- (3) In this section, the **right concerned** has the meaning given to it by the definition of **specified claim** in section 6.

**15 Subpart does not prevent complaints or access to assistance**

Nothing in this subpart prevents a person under control or supervision from complaining to, or seeking the assistance of, an authority, official agency or body, or statutory officer.

**16 Expiry of subpart**

This subpart expires with the close of 30 June 2007.

**Subpart 2—Victims' claims**

*Payment of money into account and information about filing claims*

**17 Compensation of prisoners, etc, must be paid to Secretary**

- (1) A person must pay to the Secretary, immediately, all money that, after the commencement of this Act, the person becomes liable to pay as compensation and—

- (a) in satisfaction of a final judgment of a court or tribunal on a specified claim made before 1 July 2007; or
  - (b) as, or as part of, an out-of-court final settlement of a specified claim made before 1 July 2007.
- (2) For the purposes of subsection (1)(a), a judgment of a court or tribunal (whether at first instance or on appeal) is final—
- (a) when the time for filing appeals against the judgment expires and no appeals of that kind have been filed; or
  - (b) if appeals against the judgment may be brought or heard only by leave, when—
    - (i) the time for applying for leave expires and no application for leave has been made; or
    - (ii) all applications for leave have been withdrawn or finally determined and declined; or
    - (iii) no party granted leave to appeal has, within the time for commencing an appeal, commenced an appeal; or
  - (c) when all appeals against the judgment have been withdrawn or finally determined.
- (3) Nothing in subsection (1)(b) applies to an out-of-court final settlement of a specified claim containing a provision to the effect that it is a settlement that is not subject to this subpart.
- (4) Subsection (1) applies even if that money is also—
- (a) required to be paid to a creditor of the accused or the offender; or
  - (b) liable to be attached or taken in execution at the instance of a creditor of the accused or the offender.
- (5) In subsection (4), a **creditor** includes the Commissioner of Inland Revenue or any other person or body to whom any taxes, duties, fines, levies, or other charges, deductions, or amounts (for example, under the Child Support Act 1991 or the Student Loan Scheme Act 1992) are payable.
- (6) No person has a right of action against the Crown, an agent of the Crown, or any other person, in respect of any investment or payment of money permitted or required by this subpart or by regulations made under section 57.

## **18 Secretary deducts money for legal aid, reparation, and earlier orders, then pays surplus into account**

- (1) On receiving money under section 17, the Secretary must, as soon as practicable,—

- (a) first, pay out of that money any sum necessary to satisfy fully any relevant charge—
    - (i) in favour of the Legal Services Agency; and
    - (ii) on proceeds of proceedings relating to the specified claim, and to which a grant of legal aid relates; and
    - (iii) arising by operation of section 32 of the Legal Services Act 2000; and
  - (b) second, pay out of that money any sum necessary to satisfy fully any amounts of reparation owed by the accused or the offender; and
  - (c) third, pay out of that money any sum necessary to satisfy fully any amounts owed by the accused or the offender under any relevant order made under section 46 following an earlier receipt of money under section 17; and
  - (d) fourth, pay any surplus remaining into the account.
- (2) In this section,—
- amounts of reparation** means—
- (a) an amount due under a sentence of reparation imposed under—
    - (i) the Sentencing Act 2002; or
    - (ii) the Criminal Justice Act 1985; and
  - (b) an amount due under an order of reparation
- order of reparation** means—
- (a) an order under section 106, section 108, or section 110 of the Sentencing Act 2002; or
  - (b) an order under section 84(1)(b) of the Children, Young Persons, and Their Families Act 1989; or
  - (c) an order under section 283(f) or (g) of the Children, Young Persons, and Their Families Act 1989; or
  - (d) an order that requires the payment of an amount to compensate, or to make restitution to, the victim of an offence against an enactment.
- (3) Subsection (1)(b) applies regardless of the conditions of a relevant sentence of reparation or order of reparation, for example, any conditions in respect of the following matters:
- (a) whether the total amount of reparation to be paid is to be paid in 1 lump sum or in instalments:
  - (b) if the amount is to be paid in 1 lump sum, whether it is to be paid immediately or at some specified future date:

- (c) if the amount is to be paid in instalments, the frequency and amounts of the instalments.

## **19 Status of money paid to Secretary or into account**

- (1) Money paid into the account, or to the Secretary, in accordance with this subpart, may be paid out only in accordance with this subpart or regulations made under section 57.
- (2) In particular, until paid out to the accused or the offender in accordance with this subpart or regulations made under section 57, that money is, even if the accused or the offender has a beneficial interest in it,—
  - (a) not available for the payment of a creditor of the accused or the offender; and
  - (b) not liable to be attached or taken in execution at the instance of a creditor of the accused or the offender.
- (3) In subsection (2), a **creditor** includes the Commissioner of Inland Revenue or any other person or body to whom any taxes, duties, fines, levies, or other charges, deductions, or amounts (for example, under the Child Support Act 1991 or the Student Loan Scheme Act 1992) are payable.
- (4) Money paid into the account, in accordance with this subpart, is money paid to the Crown in trust for the accused or the offender.
- (5) Nothing in Part 7 of the Public Finance Act 1989 (which relates to trust money) applies to money that, in accordance with this section, is paid to the Crown in trust for the accused or the offender.

## **20 Secretary to give notice of payments into account, etc**

- (1) After paying money into the account under section 18(1)(d), the Secretary must as soon as practicable—
  - (a) give a written notice communicating—
    - (i) the fact that compensation is required to be paid to the accused or the offender; and
    - (ii) the fact that, under this subpart, the compensation must be paid to the Secretary and he or she must, after making certain deductions, pay any surplus remaining into the account; and
    - (iii) the name and other identifying details of the accused or the offender; and
    - (iv) the amount of money paid into the account; and

- (v) the date on which the payment was made; and
  - (b) explain in the notice that the money paid into the account must be held in trust for the accused or the offender until it is paid out in accordance with this subpart or regulations made under section 57; and
  - (c) give in the notice general information about how victims of the person for whom money is required to be held in trust might file a victim's claim under section 28 and within the deadline fixed by section 28(2)(c).
- (2) This section and section 21 do not permit or require a written notice in respect of a matter to be given contrary to an enactment, rule of law, or order or direction of a court or tribunal prohibiting or forbidding the publication of—
- (a) any report or account of the whole or any part of proceedings (including, without limitation, the evidence adduced or the submissions made); or
  - (b) the name of any person, or any name or particulars likely to lead to the identification of that person; or
  - (c) the affairs of any person.

## **21 How and to whom notice, etc, given**

- (1) The notice required by section 20 must be given—
- (a) by being served on people—
    - (i) whom the Secretary reasonably believes may be or are victims of the accused or the offender; and
    - (ii) whose contact details are available to the Secretary; and
  - (b) by being sent to the chief executive of each Government department that the Secretary believes may have an interest in the matter.
- (2) If the notice required by section 20 is given under subsection (1) to the people to whom it is required to be given under that subsection, it may, if the Secretary thinks fit, also be given by 1 or more of the methods in subsection (4).
- (3) However, if the notice required by section 20 is not given under subsection (1) to all the people to whom it is required to be given under that subsection, it must be given by 1 or more of the methods in subsection (4).
- (4) The methods referred to in subsections (2) and (3) are—
- (a) publication in the *Gazette*; and

- (b) publication through a site on the Internet that is publicly accessible at all reasonable times; and
  - (c) publication in daily newspapers published in Auckland, Hamilton, Wellington, Christchurch, and Dunedin.
- (5) The Secretary is not required by this section to give a person, by any method, the notice required by section 20 if the Secretary believes on reasonable grounds that a limitation defence could be pleaded successfully in response to a victim's claim made by that person.
- (6) The Secretary must send the Secretary of the Tribunal a copy of every notice required by section 20 and given in accordance with this section.

## 22 Single process for 2 or more payments in same period

If a notice required by section 20 is to be given within 6 months after the sending date of any previous notice required by section 20 in respect of the same accused or offender, the notice must—

- (a) be given as an addition to the previous notice; and
- (b) indicate that, under section 28(2)(c), the deadline for filing victims' claims under this subpart is the later of the following:
  - (i) the close of the day that is 6 months after the sending date of the previous notice; and
  - (ii) the close of the day that is 2 months after the sending date of the notice.

## 23 Sending date: what it means

In sections 22 and 28, **sending date**, in relation to a notice required by section 20 notifying a payment into the account, means whichever is the earlier of the following dates:

- (a) the date that is 2 months after the date of the payment; or
- (b) the date on which the notice is first given in accordance with section 21.

## 24 Secretary's duties for purposes of section 21

- (1) The Secretary must, for the purposes of section 21, take reasonable steps to identify, and ascertain the contact details of, people who may be or are victims of the accused or the offender.

- (2) Those steps include requesting under section 33A of the Victims' Rights Act 2002 the current address (including the full name) of a person—
  - (a) who may be or is a victim of the accused or the offender; and
  - (b) who asked for notice of certain matters under that Act and gave his or her current address for that purpose.
- (3) To help to identify, and ascertain the contact details of, people who may be or are victims of the accused or the offender, the Secretary may, by making a request for the purpose to the appropriate Registrar or Judge Advocate General, and without paying a fee, access or search, inspect, and take or be issued with copies of or extracts from, court documents or records that—
  - (a) relate to criminal proceedings, proceedings of a court-martial held under the Armed Forces Discipline Act 1971, or proceedings of an officer exercising summary powers under that Act; and
  - (b) are or may be relevant to that purpose.
- (4) Those court documents or records include the ones specified in section 35(2)(a) to (d).
- (5) The Secretary is not required by this section to take steps to ascertain the contact details of a person if the Secretary believes on reasonable grounds that a limitation defence could be pleaded successfully in response to a victim's claim made by that person.

**25 Access to records of court-martial proceedings, etc, to identify, and ascertain contact details of, victims**

- (1) This section applies to a document or record specified in section 35(2)(c) or (d), requested under section 24(3), and that the Judge Advocate General considers, and has advised the Secretary, should not be disclosed for reasons of security.
- (2) The Secretary cannot access or search, inspect, and take or be issued with copies or extracts from, the document or record.
- (3) The Judge Advocate General may, if he or she thinks fit, perform the Secretary's duties under sections 20 to 24 so far as they relate to and arise from the document or record.
- (4) This section overrides sections 20 to 24.

**26 Procedure if no victims of accused or offender**

- (1) The Secretary must apply to a Tribunal for an order that all money held in the account for the accused or the offender be paid to the accused or the offender promptly if the Secretary—
  - (a) has, under section 24, taken reasonable steps to identify, and ascertain the contact details of, people who may be or are victims of the accused or the offender; but
  - (b) is satisfied that there are no people who may be or are victims of the accused or the offender.
- (2) On an application under subsection (1), the Tribunal must,—
  - (a) if satisfied that there are no people who may be or are victims of the accused or the offender, order that the Secretary is not required to give notice under sections 20 and 21 but must pay to the accused or the offender promptly all money held in the account for the accused or the offender:
  - (b) in every other case, order that the Secretary is required to give notice under sections 20 and 21.
- (3) The Secretary must comply with the order of the Tribunal.
- (4) Subsection (3) applies subject to the prior implementation of any provision of an out-of-court final settlement of a specified claim requiring compensation to be withheld from the accused or the offender and used to satisfy outstanding fines of the accused or the offender.

**27 Service of notices**

- (1) A notice or other document required by this Act to be served on, or given to, a person is sufficiently served if it is—
  - (a) delivered personally to the person; or
  - (b) delivered to the person at the person's usual or last known place of residence or business; or
  - (c) sent by fax or email to the person's fax number or email address; or
  - (d) posted in a letter addressed to the person at the person's usual or last known place of residence or business.
- (2) If the person is absent from New Zealand, the notice or other document may be served on or given to the person's agent in New Zealand.
- (3) If the person is deceased, the notice or other document may be served on or given to the person's personal representatives.

- (4) A notice or other document sent to a person by post must, unless the contrary is shown, be treated as having been delivered to the person on the seventh day after the day on which it was posted; and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.
- (5) Despite anything in subsections (1) to (4), a Tribunal may in any circumstances make an order directing the manner in which a notice or other document is to be served or given, or dispensing with the service or giving of the notice or document.

*Procedure for making and determination of victims' claims*

**28 Filing of claims**

- (1) A victim's claim may be filed by or on behalf of a person if—
  - (a) a notice is given under section 20 notifying a payment into the account of money paid to the Crown in trust for an accused or an offender; and
  - (b) in the case where the money is required to be paid in trust for an accused, the accused is an offender (whether by reason of any earlier finding of guilt or entry of a plea of guilty in relation to an offence, or by reason of a finding of guilt or entry of a plea of guilty, after the giving of the notice under section 20 but before the filing of the person's claim under this section, in relation to the offence charged); and
  - (c) the person is a victim of the offender and has not obtained, and is not seeking, a judgment—
    - (i) in respect of the conduct on which the claim is based; and
    - (ii) in civil proceedings against the offender in a District Court or the High Court.
- (2) The claim must be—
  - (a) in a form approved for the purpose by the Secretary; and
  - (b) filed with the Secretary of the Tribunal; and
  - (c) filed before the deadline specified in subsection (3).
- (3) The deadline referred to in subsections (2), (4), and (5) is,—
  - (a) if the notice is, under section 22, given as an addition to a previous notice, the later of the following:
    - (i) the close of the day that is 6 months after the sending date of the previous notice; and

- (ii) the close of the day that is 2 months after the sending date of the notice; and
  - (b) in every other case, the close of the day that is 6 months after the sending date of the notice.
- (4) The Tribunal may permit a victim's claim to be filed within a further period it specifies if it is satisfied that the victim was prevented by factors beyond his or her control from filing the claim before the deadline.
- (5) The Tribunal's power under subsection (4) is exercisable on a written application for the purpose filed with the Secretary of the Tribunal before the deadline.

### **29 No filing fees payable**

No fee is payable to the Secretary of the Tribunal for filing a document relating to, or for the Tribunal hearing or determining, a victim's claim filed under this subpart.

### **30 Secretary of Tribunal to refer claims filed to Tribunal**

- (1) The Secretary of the Tribunal must, as soon as practicable after a claim or application is filed under section 28, refer the claim or application to the appropriate Tribunal to be dealt with in accordance with this subpart.
- (2) The **appropriate Tribunal** is a Tribunal designated in writing by the Chief District Court Judge to deal with the group of victims' claims (if any) arising from—
  - (a) a notice required by section 20 (the **notice**); or
  - (b) a notice that, under section 22, is given as an addition to the notice.
- (3) The Chief District Court Judge may designate a Tribunal for 1 or more specified groups of claims, or 1 or more specified classes of groups of claims, filed under section 28.
- (4) The Chief District Court Judge may designate another Tribunal to deal with some or all of a claim or application if the Tribunal to which it has been referred under this section is, because of exceptional circumstances, unable to deal with all or that part of the claim or application.
- (5) However, the Chief District Court Judge must consult with the Judge Advocate General before designating a Tribunal under this section if a claim to which the designation relates involves an offender convicted by a court-martial, or found guilty by an

officer exercising summary powers, under the Armed Forces Discipline Act 1971.

**31 Offender to be given copy of claim and reasonable opportunity to make written submission on it**

- (1) Before determining a victim's claim, the Tribunal must—
  - (a) serve a copy of the claim on the offender; and
  - (b) give him or her a reasonable opportunity to make written submissions on the claim.
- (2) A copy of the claim must be served on the offender as soon as practicable after it is filed under section 28.
- (3) Information that identifies, or that may lead to the identification of, the address of the place where the victim lives must be removed from the copy of the claim served on the offender unless, in the Tribunal's opinion, that information is necessary to ensure that the offender is fully and fairly informed of the nature of the claim.
- (4) The Tribunal gives the offender the reasonable opportunity required by subsection (1) by requiring his or her written submissions to be filed with the Secretary of the Tribunal—
  - (a) within 60 days after the expiry of the periods specified in section 33(a); or
  - (b) within a further period the Tribunal is satisfied, on an application for the purpose before the expiry of that 60-day period, is justified by exceptional circumstances.
- (5) In determining under subsection (4)(b) whether it is satisfied a further period is justified by exceptional circumstances, the Tribunal must have regard to the number and complexity of the victims' claims filed against the offender.
- (6) The Tribunal must, as soon as practicable, serve on a victim a copy of all submissions filed by the offender and relating to that victim.

**32 Procedure if no claims filed**

- (1) If, at the expiry of the periods specified in section 33(a), no claims have been filed under section 28,—
  - (a) the Secretary of the Tribunal must advise the Secretary of that fact; and

- (b) the Secretary must pay to the accused or the offender promptly all amounts of money held in the account for the accused or the offender.
- (2) Subsection (1)(b) applies subject to the prior implementation of any provision of an out-of-court final settlement of a specified claim requiring compensation to be withheld from the accused or the offender and used to satisfy the accused's or the offender's outstanding fines.

### **33 Period to allow all claims, offender's submissions, etc**

The Tribunal cannot determine a victim's claim filed under section 28 until—

- (a) the 6-month period in section 28(3), and any further periods allowed under section 28(4), have expired; and
- (b) the offender has been given the reasonable opportunity to make written submissions referred to in section 31; and
- (c) any oral submissions the Tribunal has agreed to hear under section 38 have been heard.

### **34 Claims determined on papers**

- (1) Unless the Tribunal determines under section 38 also to hear oral submissions from the parties to a victim's claim,—
  - (a) neither the parties nor their representatives may appear before the Tribunal; and
  - (b) the claim must be determined by the Tribunal on the basis of the written material before it.
- (2) Consideration of written material before the Tribunal may be undertaken in whatever manner it thinks fit.

### **35 Access to relevant court documents or records**

- (1) To help to determine a claim filed under section 28, the Tribunal may, by making a request for the purpose to the appropriate Registrar or to the Judge Advocate General, and without paying a fee, access or search, inspect, and take or be issued with copies of or extracts from, court documents or records that—
  - (a) relate to criminal proceedings, proceedings of a court-martial held under the Armed Forces Discipline Act 1971, or proceedings of an officer exercising summary powers under that Act; and

- (b) are or may be relevant to the determination of the claim.
- (2) Those court documents or records include—
  - (a) criminal records kept under section 71 of the Summary Proceedings Act 1957, including—
    - (i) a reserved decision entered in those records; and
    - (ii) a minute or memorandum of criminal proceedings in a District Court appointed for the exercise of criminal jurisdiction; and
  - (b) documents referred to in the Criminal Proceedings (Search of Court Records) Rules 1974, including—
    - (i) the register of persons committed for trial and sentence, the register commonly known as the Return of Prisoners Tried and Sentenced, and the indexes to those registers; and
    - (ii) a file, or part of a file, or document relating to a criminal proceeding; and
  - (c) records of court-martial proceedings delivered to, and kept in accordance with the directions of, the Judge Advocate General, under section 145 of the Armed Forces Discipline Act 1971; and
  - (d) any documents or records (for example, a charge report) created in connection with, and retained after, the summary disposal of a charge by an officer exercising summary powers under the Armed Forces Discipline Act 1971.

**36 Access to records of court-martial proceedings, etc, to help to determine victims' claims**

- (1) This section applies to a document or record specified in section 35(2)(c) or (d), requested under section 35(1), and that the Judge Advocate General considers, and has advised the Secretary, should not be disclosed for reasons of security.
- (2) The Tribunal must not access or search, inspect, and take or be issued with copies or extracts from, the document or record, and must not use it for the purpose in section 35(1), except with the permission of, and in accordance with any conditions specified by, the Judge Advocate General.
- (3) The Tribunal must comply with, and take all reasonably practicable steps to ensure others comply with, conditions specified by the Judge Advocate General.
- (4) This section overrides section 35.

**37 Relevant findings in criminal proceedings or proceedings of court-martial or officer to be evidence**

- (1) A finding of fact is conclusive evidence of the matters to which it relates for the purposes of the determination of a victim's claim filed under section 28 if the finding—
  - (a) is recorded in a court document or record referred to in, and accessed under, section 35(1); and
  - (b) is, in the Tribunal's opinion, relevant to the determination of the claim.
- (2) In this section, a **finding of fact** means—
  - (a) a fact agreed on by the prosecutor and the offender; or
  - (b) a fact, express or implied, that was essential to a plea of guilty or a finding of guilt; or
  - (c) a fact disclosed by evidence at the hearing or trial, accepted as proved, and recorded in a decision.
- (3) This section does not affect rights of appeal under section 51.

**38 Tribunal may also hear submissions in exceptional cases**

- (1) The Tribunal may also hear oral submissions from the parties to a victim's claim (or from their representatives) if satisfied that exceptional circumstances make that necessary in the interests of justice.
- (2) In determining whether to hear oral submissions, the Tribunal must consider—
  - (a) the nature of the victim's claim; and
  - (b) the complexity of the issues concerned; and
  - (c) the amount claimed; and
  - (d) any other matters it considers relevant.
- (3) If it agrees to hear oral submissions, the Tribunal must as soon as practicable—
  - (a) fix a time and place for the hearing; and
  - (b) give all parties notice of the time and place fixed.
- (4) The Tribunal may alter the time and place fixed for the hearing, or adjourn it from time to time and from place to place.

**39 Power to require information, documents, or answers**

- (1) If it considers it necessary or desirable for the determination of a victim's claim filed under section 28, the Tribunal may, by written notice served on a person (for example, a party to the claim), require that person—

- (a) to give the Tribunal any information or class of information, or to answer any questions, specified in the notice; or
  - (b) to produce to the Tribunal, or to a person specified in the notice acting on the Tribunal's behalf in accordance with the notice, any document or class of documents specified in the notice; or
  - (c) to appear before the Tribunal, or before a person specified in the notice acting on the Tribunal's behalf in accordance with the notice, at a time and place specified in the notice, and answer questions related to matters specified in the notice.
- (2) Information required by a notice under subsection (1)(a) must be given in writing and,—
  - (a) if given by a natural person, must be signed by the person; and
  - (b) if given by a body corporate, must be signed by an officer authorised to sign on behalf of the body corporate.
- (3) A person on whom a written notice under subsection (1) is served, or who, in accordance with a notice of that kind, appears before the Tribunal or a person acting on its behalf to answer questions, has the same privileges and immunities as witnesses and counsel in courts of law.
- (4) This section does not limit or affect an enactment, rule of law, or order or direction of a court or tribunal that prohibits or restricts—
  - (a) the making available of information or documents sought by, or sought by questions asked under, a notice under subsection (1); or
  - (b) the manner in which information or documents of that kind may be made available.
- (5) Every person commits an offence against this section, and is liable on summary conviction to a fine not exceeding \$1,000, who, without reasonable excuse, fails to comply with a notice under subsection (1), or fails to answer a question asked under the notice.

#### **40 Power to maintain order at hearings, etc**

For the purposes of dealing with the matters before it, a Tribunal has the powers of a District Court, in the exercise of

its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Tribunal.

#### **41 Power to restrict publication of proceedings, etc**

- (1) If a victim's claim is filed under section 28, the Tribunal may, if satisfied that it is desirable to do so, make or give 1 or more of the following orders or directions:
  - (a) an order forbidding publication of a report or account of the whole or a part of—
    - (i) the evidence adduced:
    - (ii) the submissions made:
    - (iii) a document, or information, filed with the Secretary of the Tribunal, or received by or on behalf of the Tribunal in connection with the claim:
  - (b) an order forbidding the publication of—
    - (i) the name of a person, or a name or particulars likely to lead to the identification of that person:
    - (ii) the affairs of a person:
  - (c) a direction forbidding inspection without the Tribunal's leave of a document filed with the Secretary of the Tribunal, or received by or on behalf of the Tribunal in connection with the claim:
  - (d) an order excluding all or any persons other than the parties to the proceedings, a lawyer engaged in the proceedings, and an officer of the Tribunal, from the whole or a part of the proceedings.
- (2) In exercising a power under subsection (1), the Tribunal must have regard to—
  - (a) the interests of every person affected (including, without limitation, the privacy of a victim); and
  - (b) the public interest.
- (3) The Tribunal may make or give an order or direction under this section on its own initiative or on the application of a party to the proceedings.
- (4) Every application to the Tribunal for an order or direction under this section may be heard in public or in chambers.
- (5) An order or direction under subsection (1)(a) or (b) or (c)—
  - (a) may be made or given for a limited period or permanently; and

- (b) if it is made or given for a limited period, may be renewed for a further period or periods by the Tribunal under section 42; and
- (c) if it is made or given permanently, may be reviewed by the Tribunal at any time under section 42.

Compare: 1997 No 92 s 39

#### **42 Application for renewal or review of order or direction under section 41**

- (1) If an order or direction is made or given under section 41(1)(a) or (b) or (c), a person may at any time apply to the Tribunal—
  - (a) for a renewal of the order or direction, if the order or direction was made or given for a limited time; or
  - (b) for a review of the order or direction, if the order or direction was made or given permanently.
- (2) An application may be made under subsection (1) by a person who was a party to the proceedings in which the order or direction was made or given or by any other person.
- (3) After considering an application under this section, the Tribunal may renew, revoke, vary, or continue the order or direction as the Tribunal thinks fit.

Compare: 1997 No 92 s 40

#### **43 Contravention of orders or directions under section 41**

- (1) Every person commits an offence who breaches an order or direction made or given under section 41(1)(a) or (b) or (c) or (d) or evades or attempts to evade the order or direction.
- (2) Every person who commits an offence against subsection (1) is liable on summary conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$1,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$5,000.

Compare: 1997 No 92 s 41

#### **44 Availability of documents filed in connection with claims**

- (1) The availability of documents filed with the Secretary of the Tribunal, filed in the Tribunal, or accessed under section 35 by the Tribunal, in connection with a victim's claim under this

subpart must be determined in accordance with the rules regulating the practice and procedure of District Courts.

- (2) For the purposes of this section, a direction given by the Tribunal forbidding inspection of a document without the Tribunal's leave must be treated as if it were given by, and required the leave of, a District Court Judge.
- (3) Nothing in this section applies to a document or record to which section 31(3) or section 36 applies.

#### **45 Other aspects of procedure**

Subject to sections 28 to 44, 46, 59, and 60, the Tribunal may regulate the procedure for determining victims' claims in any manner it thinks fit.

#### **46 Tribunal to determine group of claims received**

- (1) The Tribunal must determine together as a group victims' claims (including related questions as to interest and costs) filed under section 28 in response to—
  - (a) a notice required by section 20 (the **notice**); or
  - (b) a notice that, under section 22, is given as an addition to the notice.
- (2) The Tribunal must not accept a victim's claim unless satisfied, on the balance of probabilities, that—
  - (a) the claimant is a victim of the offender; and
  - (b) the victim has, through or by means of the offence, suffered injury, loss, or damage for which the victim has not received, and is not to receive, effective redress; and
  - (c) the claim discloses a cause of action that is, under the general law, one for which damages are, in the particular case, payable.
- (3) If the Tribunal accepts a victim's claim it may, after having had regard to all other related claims accepted by it, order that an amount of money must be paid to the victim concerned.
- (4) The Tribunal may also order that an amount of money must be paid to the victims concerned if the payment proposed is—
  - (a) agreed to by all victims and the offender concerned; and
  - (b) one that the Tribunal considers is reasonable by way of final settlement of the victims' claims concerned.

- (5) The Tribunal's determination of a group of claims filed under section 28 must be recorded in a single written order that specifies the entitlements (if any) of all victims concerned.

#### **47 Further provisions on determination of claims received**

- (1) The Tribunal must determine any amounts to be paid to victims without taking account in any way of the amount of money actually held in the account for the offender.
- (2) In determining whether to order under section 46(3) or (4) that an amount be paid to a victim by way of damages or exemplary damages, and in quantifying that amount, the Tribunal must apply the general law relating to the awarding of damages.
- (3) The Tribunal may, if it thinks fit, include in the amount ordered to be paid to a victim under section 46(3) or (4) interest at a rate, not exceeding the prescribed rate, it thinks fit on some or all of the damages for all or a part of the period between the date when the cause of action arose and the date of the order.
- (4) However, the Tribunal cannot give interest upon interest.
- (5) In this section and in section 50, **the prescribed rate** means the prescribed rate as defined in section 62B(4) of the District Courts Act 1947.
- (6) Without limiting the Tribunal's powers, the Tribunal may dismiss a victim's claim if satisfied that it is frivolous, vexatious, or made solely for the purpose of delay.

#### **48 Implementation of order**

- (1) The Secretary must implement promptly an order under section 46—
- (a) if, at the expiry of the 20-working day period in section 51(3)(b) (the **period**), no appeals against the order (**appeals**), or applications for further time for filing appeals (**applications**), have been filed; or
- (b) if every application filed within the period has been withdrawn, or has been finally determined and declined; or
- (c) if, at the expiry of all further time allowed under section 51(3)(b) in response to applications filed within the period, no appeals have been filed; or

- (d) once all appeals filed within the period, or filed within further time allowed under section 51(3)(b) in response to an application within the period, have been withdrawn or finally determined.
- (2) However, if an application has been filed after the expiry of the period, the Secretary may defer implementing the order until any resulting appeal is withdrawn or finally determined.
- (3) If the amounts to be paid under the order are, in total, equal to or less than the amount of money held in the account for the offender, the Secretary must implement the order fully by paying from the money held in the account for the offender the amounts to be paid under the order to the victims concerned.
- (4) If the amounts to be paid under the order are, in total, more than the amount of money held in the account for the offender, the Secretary must implement the order in part by paying the money held in the account for the offender to the victims concerned on a proportional basis by reference to the amounts to be paid under the order to each of those victims.
- (5) Implementation of an order in part, under subsection (4), does not prevent any or all of the victims concerned from enforcing their entitlements under the order against the offender, and the partially implemented order may be enforced—
  - (a) by way of a deduction, under section 18(1)(c), from any money received later under section 17; or
  - (b) under subsection (6) of this section, as if it were a judgment of the District Court.
- (6) A copy of a partially implemented order under section 46 or an order under section 50(3)(b) may be filed without fee in an office of a District Court for the purposes of enforcement and, on being so filed, the copy of the order has the same effect as a judgment of the District Court, and may be enforced accordingly.

#### **49 Procedure if victim or others entitled cannot be found**

- (1) The Secretary must pay the money to the offender promptly if the Secretary is, 1 year after first being required by section 48(3) or (4) to pay to a victim money held in the account for the offender, unable, despite having taken reasonable steps for the purpose, to locate the victim or to identify and locate another person legally entitled to the money.

- (2) Subsection (1) applies subject to the prior implementation of any provision of an out-of-court final settlement of a specified claim requiring compensation to be withheld from an offender and used to satisfy the offender's outstanding fines.
- (3) This section overrides section 48.

### **50 Order under section 46 must be varied in certain circumstances**

- (1) This section applies if, after an order is made under section 46, the conviction of the offender to which the order relates is set aside—
  - (a) without an order for retrial; or
  - (b) with a retrial being ordered but the retrial—
    - (i) is not proceeded with; or
    - (ii) does not result in a conviction; or
    - (iii) is ended by a stay of proceedings.
- (2) If this section applies, the person whose conviction was set aside may file with the Tribunal any court record or other official document that records any or all of the matters referred to in subsection (1).
- (3) If the Tribunal is satisfied, on receiving any record or other official document under subsection (2), that this section applies, the Tribunal must—
  - (a) vary the relevant order made under section 46 to exclude its application in respect of the conviction that has been set aside; and
  - (b) if any money has been paid to a victim under that order, order that that money be repaid to the person whose conviction was set aside, together with interest on that sum at the prescribed rate.

### **51 Appeal to High Court**

- (1) A party to a claim determined under section 46 may appeal to the High Court against the order concerned only on a question of law.
- (2) However, no party may appeal against an order made by the Tribunal with the agreement of all parties under section 46(4).
- (3) An appeal must be—
  - (a) brought by way of notice of appeal in accordance with rules of Court; and

- (b) filed within 20 working days after notice of the decision or order is communicated to the appellant, or within any further time a High Court Judge allows on application made before or after the period expires.
- (4) On any appeal under this section, the High Court may—
  - (a) make any determination or determinations it thinks should have been made;
  - (b) direct the Tribunal to—
    - (i) consider or determine (whether for the first time or again) any matters the High Court directs; or
    - (ii) rehear the proceeding;
  - (c) make any order or further order it thinks fit.
- (5) The relevant order under section 46 is suspended until an appeal under this section is withdrawn or finally determined.

## **52 Release of surplus money to offender**

- (1) The Secretary must pay to the offender promptly any amount of money that continues to be held in the account for the offender after an order under section 46 has been implemented fully under section 48(3).
- (2) Subsection (1) applies subject to the prior implementation of any provision of an out-of-court final settlement of a specified claim requiring compensation to be withheld from an offender and used to satisfy the offender's outstanding fines.

## **53 End of process to be notified publicly in certain cases**

- (1) The Secretary must, by notice in the *Gazette*, notify publicly the fact that the procedure contemplated by this subpart in respect of a particular sum of money has concluded if the Secretary—
  - (a) paid the money into the account under section 18(1)(d); and
  - (b) gave the notice of the payment of the money required by section 20 using a method in section 21(4); and
  - (c) has, under a section specified in subsection (2), paid out all or the last of the money.
- (2) The sections referred to in subsection (1)(c) are—
  - (a) section 32 (procedure if no claims filed); or
  - (b) section 48(3) or (4) (implementation of order); or
  - (c) section 49(2) (procedure if victim or others entitled cannot be found); or

- (d) section 52 (release of surplus money to offender); or
  - (e) section 56 (procedure if offender or others entitled cannot be found).
- (3) The notice in the *Gazette* required by subsection (1) must identify the sum of money by reference only to the notice referred to in subsection (1)(b).
  - (4) A copy of every notice required by subsection (1) must be sent by the Secretary to the chief executive of each Government department that the Secretary believes may have an interest in the matter.

### *Victims' claims trust bank account*

#### **54 Secretary must establish account**

- (1) The Secretary must, for the purposes of this subpart, establish at a bank a victims' claims trust bank account.
- (2) The bank must be a registered bank as defined in section 2(1) of the Reserve Bank of New Zealand Act 1989.
- (3) The bank at which the account is established—
  - (a) must pay, for any month, interest on the sums held in the account at the same rate as that bank pays on money deposited for that month, at call, in an interest-bearing deposit account with that bank; and
  - (b) may, with the Secretary's agreement, retain for its own use, instead of all banking charges and fees otherwise payable to it in respect of the account, some or all of the interest payable by it on the account; and
  - (c) must pay into the account, for the benefit of the relevant accused or offender, any interest payable by it on the account and that is not retained under paragraph (b).
- (4) The arrangement in subsection (3)(a) is the only permitted and required investment of the money in the account.
- (5) The account must be audited by a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996) at the times and in the manner (if any) prescribed by regulations made under section 57.

#### **55 Payments from, and other operation of, account**

The Secretary must ensure that money is paid out of the account, and that the account is otherwise operated, only as

permitted or required by this subpart or by regulations made under section 57.

**56 Procedure if offender or others entitled cannot be found**

- (1) This subsection applies to money if, 1 year (or a longer period the Minister of Finance directs) after first being required by this subpart to pay the money to an accused or an offender, the Secretary is unable, despite having taken reasonable steps for the purpose, to locate the accused or the offender or to identify and locate another person legally entitled to the money.
- (2) Money to which subsection (1) applies—
  - (a) must, along with interest (if any) added to it under section 54(3), be treated as public money; and
  - (b) must be transferred to the Crown Bank Account.
- (3) Money must be paid to a person out of the Crown Bank Account without further appropriation than this section if—
  - (a) the money is required by this section to be treated as public money; and
  - (b) the person claims the money and establishes that claim to the satisfaction of the Treasury.

Compare: 1989 No 44 s 70

**57 Regulations on operation and auditing of account**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for the circumstances and manner in which money may or must be paid out of the account;
- (b) providing for the manner in which, and the conditions subject to which, the Secretary may or must otherwise operate the account;
- (c) providing for the manner and timing of the auditing of the account.

*Victims' Special Claims Tribunals*

**58 Tribunals**

- (1) Every Victims' Special Claims Tribunal consists of a District Court Judge designated for the purpose of this subpart by the Chief District Court Judge.
- (2) The Judge must be designated from a panel of District Court Judges maintained by the Chief District Court Judge.

- (3) The Chief District Court Judge may at any time add or remove a Judge from the panel.
- (4) The function of a Tribunal is to determine, in accordance with this subpart, victims' claims filed under this subpart.

### **59 Evidence**

A Tribunal may receive as evidence any statement, document, information, or matter that, in the Tribunal's opinion, may help the Tribunal to determine a victim's claim, whether or not it would be admissible in a court of law.

### **60 Decisions to be given in writing**

- (1) Every decision of a Tribunal, and the reasons for the decision, must be recorded in writing, and a copy (together with a copy of any related order or direction) must, if practicable, be given promptly to—
  - (a) the victims concerned; and
  - (b) the accused or the offender; and
  - (c) the Secretary.
- (2) This section does not limit a Tribunal's duty under section 46 to record in a single written order its determination of a group of victims' claims filed under section 28.

### **61 Proceedings of Tribunal not invalid for want of form**

Proceedings before a Tribunal must not be held invalid for want of form.

### **62 Services for Tribunal**

The Ministry of Justice must provide any secretarial, recording, and clerical services necessary to enable a Tribunal to discharge its function.

## **Subpart 3—Suspension of limitation periods for certain claims by victims**

### **63 Application**

- (1) This subpart applies to every applicable limitation period for an action that is based on a claim—
  - (a) made by or on behalf of a victim; and
  - (b) made against an offender; and

- (c) based on acts done or omitted to be done (whether before or after the commencement of this Act) by the offender in committing the offence.
- (2) This subpart applies whether or not the action was—
  - (a) commenced before the commencement of this Act; or
  - (b) one in respect of which a limitation defence (under the Limitation Act 1950 or any other law of New Zealand) could, before the commencement of this Act, have been pleaded successfully.
- (3) However, nothing in this subpart affects—
  - (a) an action or arbitration determined before the commencement of this Act; or
  - (b) the title to any property which is the subject of an action or arbitration of that kind.

#### **64 Limitation periods suspended**

- (1) The limitation periods to which this subpart applies cease to run while the offender is serving a sentence of imprisonment in a penal institution, prison, or service prison.
- (2) In this section, **serving a sentence of imprisonment in a penal institution, prison, or service prison**—
  - (a) means serving in a penal institution, prison, or service prison—
    - (i) the sentence of imprisonment for the offence (as defined in section 5(1)(a)(ii)); and
    - (ii) any earlier sentence of imprisonment on which the sentence of imprisonment for the offence is directed to be served cumulatively; and
    - (iii) any later sentence that is directed to be served cumulatively on the sentence of imprisonment for the offence; and
  - (b) includes spending time in a penal institution or a prison following a related recall application (as defined in section 59 of the Parole Act 2002), but only if a final recall order (as defined in section 4(1) of that Act) is made following the recall application.

### Part 3 Amendments to other Acts

#### *Amendment to Human Rights Act 1993*

##### **65 Damages**

Section 92M(2) of the Human Rights Act 1993 is consequentially amended by inserting, after the expression “92O”, the words “of this Act and to subpart 1 of Part 2 of the Prisoners' and Victims' Claims Act 2005”.

#### *Amendments to Legal Services Act 2000*

##### **66 Interpretation**

- (1) Section 4(1) of the Legal Services Act 2000 is amended by omitting from the definition of **transition date** the expression “2001.”, and substituting the expression “2001”.
- (2) Section 4(1) of the Legal Services Act 2000 is amended by adding the following definition:  
“**victims' claims proceedings** means proceedings of the kind specified in section 7(1)(q).”

##### **67 Proceedings for which legal aid may be granted: civil matters**

Section 7(1) of the Legal Services Act 2000 is amended by adding the following paragraph:

“(q) proceedings before a Tribunal under subpart 2 of Part 2 of the Prisoners' and Victims' Claims Act 2005 in respect of 1 or more victims' claims under that subpart.”

##### **68 When legal aid may be granted: civil matters**

Section 9 of the Legal Services Act 2000 is amended by inserting, after subsection (4), the following subsection:

“(4A) Subsections (1)(b), (2), and (4)(a) and (b) do not apply to applications for legal aid in respect of victims' claims proceedings (as defined in section 4(1)).”

##### **69 Conditions on grant of legal aid**

Section 15 of the Legal Services Act 2000 is amended by inserting, after subsection (3), the following subsection:

“(3A) Subsection (1) and the provisions of subsection (3) relating to a charge as security for payment of a contribution required by a condition referred to in subsection (1)—

“(a) do not apply to the maximum grant under section 20(4) of legal aid in respect of victims' claims proceedings (as defined in section 4(1)); but

“(b) apply to an amendment under section 24(3) of the maximum grant under section 20(4) of legal aid in respect of proceedings of that kind.”

## **70 Maximum grant**

Section 20 of the Legal Services Act 2000 is amended by adding the following subsection:

“(4) However, every grant of legal aid in respect of victims' claims proceedings (as defined in section 4(1)) must specify a maximum grant of the amount prescribed for the purposes of this subsection by regulations made under this Act.”

## **71 Application for amendment to grant of legal aid**

Section 24 of the Legal Services Act 2000 is amended by adding the following subsections:

“(3) However, the Agency may, on an application under this section, amend the maximum grant under section 20(4) of legal aid in respect of victims' claims proceedings (as defined in section 4(1)) only if satisfied that the aided person would, if section 9(1)(b) and (2) applied to his or her application for legal aid in respect of those proceedings, be granted legal aid.

“(4) The Agency may, in either or both of the following circumstances, refuse to amend under subsection (3) the maximum grant under section 20(4) of legal aid in respect of victims' claims proceedings:

“(a) the Agency is unable to obtain full information concerning the applicant's financial affairs, because of the default or failure of the applicant:

“(b) if, in the opinion of the Agency, the amount of the contribution that the applicant is likely to be required to make is greater than the likely cost of the proceedings.”

**72 Regulations**

Section 113(1) of the Legal Services Act 2000 is amended by repealing paragraph (b), and substituting the following paragraphs:

- “(b) prescribing a method or methods for calculating what maximum grant, if any, should be granted under a grant of legal aid in respect of proceedings that are not victims' claims proceedings (as defined in section 4(1));
- “(ba) prescribing, for the purposes of section 20(4), the amount of the maximum grant to be specified for every grant of legal aid in respect of victims' claims proceedings (as so defined):”.

*Amendment to Limitation Act 1950***73 Limitation of actions of contract and tort, and certain other actions**

Section 4(1) of the Limitation Act 1950 is consequentially amended by inserting, after the word “Act”, the words “or in subpart 3 of Part 2 of the Prisoners' and Victims' Claims Act 2005”.

*Amendments to Privacy Act 1993***74 Damages**

Section 88 of the Privacy Act 1993 is consequentially amended by inserting, after subsection (1), the following subsection:

- “(1A) Subsection (1) applies subject to subpart 1 of Part 2 of the Prisoners' and Victims' Claims Act 2005.”

**75 Schedule 5 amended**

The items under the heading “*Police records*” in Schedule 5 of the Privacy Act 1993 are amended—

- (a) by omitting from the item relating to the Ministry of Justice in the third column opposite the item “Offender identity” the words “and the Victims' Rights Act 2002; or”, and substituting the words “the Victims' Rights Act 2002, and the Prisoners' and Victims' Claims Act 2005; or”; and
- (b) by omitting from the item relating to Ministry of Justice in the third column opposite the item “Victim identity”

the words “and the Victims’ Rights Act 2002”, and substituting the words “the Victims’ Rights Act 2002, and the Prisoners’ and Victims’ Claims Act 2005”.

*Amendments to Victims’ Rights Act 2002*

**76 Police to give information about right to ask for notice and appointment of representative**

Section 32(1)(a) of the Victims’ Rights Act 2002 is amended by inserting, after the expression “section 39”, the words “of this Act, or under section 20 of the Prisoners’ and Victims’ Claims Act 2005”.

**77 New section 33A inserted**

The Victims’ Rights Act 2002 is amended by inserting, after section 33, the following section:

**“33A Secretary must request victim’s current address for notice under Prisoners’ and Victims’ Claims Act 2005**

“(1) If the Secretary is required by section 20 of the Prisoners’ and Victims’ Claims Act 2005 to give a written notice notifying the payment of money into the victims’ claims trust bank account to be held in trust for an accused or an offender,—

“(a) the Secretary must advise each specified person (as defined in subsection (2)) of that fact, and must ask each specified person to give the current address (including the full name) of a person who is or may be a victim of the accused or the offender to the Secretary if that address—

“(i) has been given or forwarded to the specified person under section 31 or section 33; and

“(ii) has not been forwarded by the specified person under section 33; and

“(b) each specified person must, as soon as practicable after receiving a request under paragraph (a), consider, respond to, and if possible comply with, that request.

“(2) For the purposes of subsection (1), each of the following persons is a specified person:

“(a) the Commissioner of Police:

“(b) the chief executive of the Department of Corrections:

“(c) the Director-General of Health.”

**Legislative history**

14 December 2004	Introduction, first reading and referral to Justice and Electoral Committee (Bill 241-1)
5 May 2005	Reported from Justice and Electoral Committee (Bill 241-2)
12 May 2005	Second reading
1 June 2005	Committee of the whole House, third reading
3 June 2005	Royal assent

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This Act is administered in the Ministry of Justice.

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