

Prisoners' and Victims' Claims Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Prisoners' and Victims' Claims Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill responds to public concern at the awarding of monetary compensation in damages to prison inmates, many of whom had been subject to the Department of Corrections' Behaviour Management Regime. The Government's policy objectives in introducing the bill were to strengthen the rights of victims to make civil claims against offenders, and to recognise that victims should have first claim against any compensation awards. The intention was to restrict access to compensation for persons under control or supervision, while not breaching international and domestic obligations to ensure an effective remedy and the right to equal protection under the law. Legal advice provided by the Crown Law Office confirms that the bill as drafted did not breach these requirements, and that it complies with the minimum guarantees contained in the New Zealand Bill of Rights Act 1990.¹

We gave careful consideration to concerns expressed in the hearings of evidence. We note that many submitters whose family members

¹ This advice is available at: <http://www.justice.govt.nz/bill-of-rights/bill-list-2004/p-bill/prisoners-victims-bill.html>.

had been the victims of heinous crimes indicated that they would prefer that no need for compensation should arise in the first place. We agree that prisoners should not be subject to abuse. We note also that the complaints procedures available to prisoners and persons under control or supervision are currently being reviewed.

This commentary focuses initially on relevant international obligations. It then addresses matters considered by the committee, including some options discussed and the reasons they did not lead to amendments, and sets out our recommendations for legislative and systemic change.

In this commentary, "most of us" refers to Labour and United Future members.

International obligations

We were briefed on New Zealand's international obligations and how they relate to the payment of compensation to prisoners for abuses of their human rights. In our view the bill complies with New Zealand's international obligations and does not breach the New Zealand Bill of Rights Act 1990.

New Zealand is party to a number of human rights treaties, which embody commitments that are binding at international law. These commitments have influenced both the drafting of the bill and our ability as a select committee to recommend changes to it.

New Zealand has obligations to protect the rights of individuals, including the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the right not to be arbitrarily or unlawfully detained, and the right to equality before the law. These rights are set out in the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. New Zealand jurisprudence supports the view that the availability of compensation for breaches of domestic human rights law is part of compliance with the covenant.²

The above conventions require the Government to provide effective remedies that adequately redress any breach of a particular individual's fundamental rights and freedoms in the circumstances. The Government must also protect individuals against discrimination in

² Following *Simpson v Attorney-General* (Baigent's case) [1994] 3 NZLR 667; (1994) HRNZ 42 (CA).

the protection of the rights and in the application and protection of the law.

While New Zealand has entered reservations to two of its obligations, the reservations do not allow the complete removal of the possibility of compensation. Similar jurisdictions to New Zealand, including Canada, Australia, the United Kingdom, and the United States of America, do not prohibit damages as a remedy for breaches of human rights. The advice we received from officials was that to do so in the case of all prisoners who succeed in a public law claim against the State would breach international obligations, particularly those relating to the availability of effective remedies and the right to equal protection of the law.

The Human Rights Commission submitted that comment by the United Nations Human Rights Committee, the Committee against Torture, and the European Court of Human Rights on what constitutes an effective remedy suggests that while it need not necessarily involve monetary compensation, a monetary award is the usual form of remedy. It went on to note that part of the reason international human rights law requires States to provide an effective remedy is because it is seen as a deterrent to future abuses.

Matters considered by the committee

Two distinct issues

The most common criticism of the bill during the submission process was that it creates an incorrect relationship by combining two distinct issues. Thus the submission from the New Zealand Council of Victim Support Groups commented that:

The rights of a victim to receive compensation for a crime and the rights of a prisoner to receive compensation as a result of abuse of power on an individual basis are two separate issues and should in no way be directly linked.

Arbitrary victim compensation

We considered ways in which to remove the connection that the bill makes between victims' compensation and the experiences of prisoners. We accept that victims are very often vulnerable to re-victimisation through offenders' experiences. At the same time we question whether abuse in the prison system should serve as a trigger for victim compensation. We were concerned that the bill might create different classes of victims, some of whom would have more

access to potential compensation than others purely because a prisoner's claim was upheld.

Removal of, or restriction on, monetary compensation

Some submissions called for the removal of all monetary compensation for prisoners. However we were advised that this would likely be inconsistent with New Zealand's international obligations. It could also be inconsistent with section 5 of the Crimes of Torture Act 1989, under which the Attorney-General has discretion to pay compensation to victims of torture. We also discussed separately whether the provision of non-monetary compensation would be sufficient to meet our international obligations, and we were advised that this would not meet the "effective remedy" test.

Diversion into a trust

We discussed amending the bill to require any compensation to be diverted into a trust for victims or a victims' organisation. We are advised that this would effectively remove compensation as a remedy, which would similarly offend international obligations.

Deducting costs

We discussed the introduction of a mechanism for automatically deducting legal aid from compensatory awards. We were advised that the current criminal legal aid legislation does not provide for this option as there is no debt created, as there can be with civil legal aid.

Monetary limits

We are advised that introducing monetary limits on the damages available to persons under control or supervision, or changing the law of exemplary damages to help victims to bring claims under the bill, would also probably be inconsistent with international obligations concerning effective remedy and equality before the law.

Fines

We are advised that any amendment to facilitate Crown access to damages awarded to an offender would be punitive and could put the Crown in breach of its international obligations. The purpose of paying money into a trust is to provide victims with a procedure for making claims, not to help the Crown to collect debts. Clause 16(4)

and (5) reiterate this point with respect to fines and other money owed to the Crown.

We recommend amendments aimed at minimising the chances of any money paid in compensation being dissipated prior to the collection of outstanding debts to the Crown. We felt that it was wrong to consider an offender had paid their debts to society or would be released for a fresh start if in fact fines and debts went unpaid after the offender had received enough money to pay them. The amendments are to clauses 20(1)(b) and 49, to require that notice of the onset and end of the payments process be given to chief executives of government departments that have an interest in the matter as well as being publicly notified.

Victims' orders

We considered recommending amendments to create a form of damages order separate to reparations, which could be made payable as part of the sentencing process, over and above provisions made in the bill. This system would require the sentencing Judge to make an order against the offender at the time of sentencing, and would be of a punitive rather than a restorative nature. We note that it would take some time to work through the range of sentencing policy matters involved. Accordingly, we decided to defer further consideration of victims' orders to an inquiry (see after) into further development of victims' rights.

Amendments to the interpretation clause

Most of us recommend a range of amendments to the definitions in clause 4.

“Accused”

All of us, except the Green member, recommend an amendment to insert a new definition of “accused” into the bill to cover a person charged with an offence who is not subsequently convicted. The term “offender” is used throughout the bill, but is defined in a way that is not appropriate in some cases, including the case where the prisoner receiving compensation was on remand, was not subsequently convicted, and has no previous convictions.

The bill applies to all persons under control or supervision, including persons on remand who may or may not subsequently be convicted of the alleged offence for which they are held in custody.

Even if a person on remand is not convicted of the charge for which he or she was on remand at the time the breach occurred, he or she may have previous victims who can use the claims procedure provided for in the bill. The Secretary for Justice will determine whether there are any victims of offences for which that person was convicted. If the person has no victims, the money will be released from the trust.

“Fine”

We recommend a definition of “fine” be included in the bill, so that it covers the same matters as the definition of “fine” in section 79 of the Summary Proceedings Act 1957. This is to clarify that references to the term include costs and enforcement fees and do not include reparation.

References to family members

We recommend that, in the definition of “immediate family”, the words “civil union partner” be added to subclauses (b)(i), b(ii), b(iii) and b(iv) after the term “spouse”. The Civil Union Act 2004 came into force on 26 April 2005, so the bill should make reference to “civil union partner”. Similarly, we recommend that for consistency with the Relationships (Statutory References) Act 2005, the definition of “parent” contained in the Children, Young Persons, and their Families Act 1989 as amended by that Act be added to clause 4.

Service detainees and prisoners

We recommend amendments in clause 4 and elsewhere in the bill to provide that the bill applies to persons arrested and detained pending release or trial, service detainees, and service prisoners under the Armed Forces Discipline Act 1971. We are advised that after the bill was introduced, it was decided that it should apply to persons sentenced to detention and imprisonment under the Armed Forces Discipline Act 1971. The bill as it stood applied to persons serving a sentence in prison following a court-martial. Our recommended amendments expand coverage to include those serving sentences of detention.

Guiding considerations for awarding compensation

The bill as introduced contained guiding considerations for awarding compensation to prisoners, however a number of submissions identified that there was no reference to the behaviour of the prisoner while under control or supervision even though there may have been considerable provocation involved. We recommend that “the relevant conduct of the plaintiff” be added to the matters that must be taken into account in determining whether compensation is required and if so, how much.

Confidentiality of victims' contact details

We recommend amendments to clauses 29 and 41 to ensure that no information that identifies the victim's address (for example, his or her physical address, postal address, e-mail address, fax number or phone number) be provided to the offender or any other person. The bill required that the offender be served a copy of a victim's claim. Our recommended amendment is to address concerns about the adverse effect this could have on victims.

Appeal to High Court

We recommend that the bill be amended to provide that if a relevant conviction has been set aside without an order for retrial or if any retrial ordered is not being proceeded with, did not result in a conviction, or has been stopped by a stay of proceedings, the person should not have to appeal to the High Court. Instead he or she should be able to file evidence with the Tribunal confirming that the conviction has been set aside, or that any retrial is not to proceed, did not result in a conviction, or has been stopped by a stay of proceedings. The Tribunal should then reverse its order with respect to the victims of the offence in question and direct recipients to repay an amount of money equivalent to what they received under the order plus interest.

We also recommend that the bill be amended to make it clear that if an appeal under clause 47(1)(a) is successful, the High Court can quash the Tribunal's determination, issue new orders, or remit it to the Tribunal for rehearing and may direct it to consider or determine specified matters.

The New Zealand Law Society asked why, if a person's conviction is quashed, that person has to appeal. It submitted that the person affected should be able to file the relevant stay or notice of result of

trial in the Tribunal, which should then reverse its order. The Society also noted that if an appeal on a matter of law is decided in favour of the person, there is no provision for the Court to quash a determination or remit it to the Tribunal for rehearing, or to order the return of money paid out by the Secretary for Justice. The Society recommended that the appeal process be set out by analogy with appeal provisions in, for example, the Summary Proceedings Act and District Courts Act 1947, and that tribunals be empowered to deal with cases where convictions are quashed.

Corrections facilities

Many submitters including the New Zealand Council for Civil Liberties and a number of individual victims expressed deep concern at the events which had led to the compensation claims being lodged. We note that the Corrections Act and its regulations, which together are intended to improve both the obligations and the accountability of the Department of Corrections with respect to complaints and procedures, are to take effect on 1 June 2005. We were briefed on a draft report of a Ministry of Justice review of prisoner complaints processes covering:

- Corrections' internal complaints procedures within prisons
- the prison inspectors, who are employed by the Department of Corrections but operate independently of it
- the Office of the Ombudsmen.

This report is due for imminent release. The Ombudsman is also conducting an own-motion inquiry into the prison system and is due to report at the end of this year.

Independent inspectorate

In 2002 the United Nations Human Rights Committee expressed concern that in New Zealand "there did not appear to be any effective day to day monitoring mechanisms to ensure that prisoners are treated with humanity and with respect for the inherent dignity of the human person" and recommended that it "should ensure that all persons deprived of their liberty are not deprived of the various rights guaranteed under article 10 of the International Covenant on Civil and Political Rights."

In 2004 the United Nations Committee Against Torture also expressed concern. The World Health Organisation established a "Health in Prisons Project" in Europe in 1996. In England and

Wales a broad notion of “healthy prisons” has been incorporated into the framework for improving and monitoring prison conditions. Part of the stated purpose of Her Majesty’s Inspectorate of Prisons for England and Wales is to promote “the concept of ‘healthy prisons’ in which staff work effectively to support prisoners and detainees to reduce re-offending or achieve other agreed outcomes.”

Although New Zealand does not have a “healthy prisons policy” as such, we are advised that the specified criteria for a healthy prison are consistent with the purposes and principles of the new Corrections Act 2004.

We think it is important to wait for the outcome of all the above reviews and an early assessment of the impact of the Corrections Act before final decisions are made. However on the basis of the evidence we received, we recommend that a scoping exercise be undertaken to assess the introduction of a standards-focused independent prison inspectorate.

Prison discipline

A number of the complaints which led to claims for compensation related to the operation of prison discipline systems. We support the view of a number of submitters that an in-house prison discipline system modelled on the United Kingdom concept be developed. We support the use of progressively stricter grades of discipline, supported by clearly-understood standards and processes by which progress is made between those grades.

The place of victims in the criminal justice system – the need for further inquiry

Many of the submissions focused on the effect on victims and their families of very serious violent crime. The focus of victims who submitted on this bill was largely on ensuring the outcome reflected the hurt done to them, which they argued was not necessarily achieved by monetary compensation. At the same time a number of submitters referred to overseas models of government-funded compensation that did not require the victims to take any direct action against the offender. We have concluded that further work needs to be done, and we consider it is appropriate to think about the next stage in the agenda that included the Victims’ Rights Act 2002. We intend to formally consider undertaking an inquiry into the place of

victims in the criminal justice system and will decide draft terms of reference shortly.

National minority view

National is opposed to this bill for a number of reasons. Whilst it accepts that where the State is a jailer, it has an obligation to protect prisoners and ensure their safe and reasonable treatment, it is quite another thing to provide a statutory regime for prisoners to sue.

Moreover, the legislation goes beyond what New Zealand has accepted as its international obligations. New Zealand is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It signed the Convention on 14 January 1986 and ratified it on 10 December 1989.

New Zealand entered a specific reservation in respect of the right to award compensation to torture victims referred to in Article 14 of the Convention "only at the discretion of the Attorney-General".

The regime proposes that damages will be awarded to victims. That creates major difficulties and uncertainties. Two illustrations highlight the problems:

- Where there are living victims, how will the damages be apportioned? In the case of the serial offender, will the damages be awarded to each victim equally, will the victim who suffered the most horrendous event receive more money, will the victim for whom the scarring of the event was the most traumatic receive more money?
- Where the victims are unknown or comprise a very large class, how will the damages be apportioned? One such example is the case of the offender who is a drug dealer. He or she may have sold drugs through a middleman to scores of people, how will the class of victim be established? If the class of victim cannot be established, is it appropriate that the offender retain the damages awarded?

National believes that there is a clear case for an independent prison inspector to comprehensively inspect and report on the state of our prisons. HM Inspectorate of Prisons for England and Wales established in 1981 is a good example of what is achievable. It has adopted a WHO model of "healthy prisons" as a basis of inspections.

Where prison abuse occurs, prisoners' complaints should be dealt with by an effective complaints process and disciplinary action against the jailers who have violated the human rights of the particular prisoner.

New Zealand First minority view

New Zealand First believes that any funds received by criminals as a result of a successful claim should be paid first to victims of the criminals receiving the compensation, and secondly the balance should be paid into a Victims Claims Rehabilitation Account.

No funds should be made available to criminals.

The Government should take appropriate action against prison officers and any other persons employed by the Corrections Department who have created a situation in which prisoners are entitled to make a claim. Remedies such as dismissal from the Corrections Department and prosecution should be utilised by the Government to ensure that any situations which would give rise to claims by criminals should not be repeated.

Green minority view

The Green member shares the concerns of several submitters, including the NZCCL, ACCL, NZ Council of Victim Support Groups and the Human Rights Commission that the bill breaches, or has the potential to breach, domestic and international human rights laws. While he supports the committee's recommendations for an independent prison inspectorate serious concerns remain about the current ability of the Department of Corrections to impartially and adequately investigate complaints of abuse by staff. He strongly supports the call for further work on the place of victims in the criminal justice system but does not believe that this bill contributes to that development.

ACT minority view

The ACT member considers that this bill insults victims of criminals by offering a spurious remedy. Submissions made the point that unlikely coincidence will be required to allow a successful victim claim to deprive an offended prisoner of any windfall compensation payment.

That is because prisoners get compensation under rights recently invented by Judges, for so-called breaches of human rights law, but

victim recovery from criminals is generally barred by the ACC scheme.

To lose a substantial payout the prisoner will need to confront one or more of the rare victims who find a way through the narrow exceptions to the barriers to recovery for criminal injury. Tai Hobson, the widower of a victim of the RSA murders, and his lawyer, bluntly emphasised how hard it is to pass that barrier.

The committee was made well aware of victims' priorities. Overwhelmingly they wanted to deprive offenders of windfall gains rather than to get money themselves. The committee diligently searched for ways to block payments or to deprive offenders of them. Each proposal was met by advice that it would embarrass New Zealand before the bodies that pronounce on international human rights law.

ACT does not accept that international law actually binding on New Zealand is as restrictive as claimed. Even if it is, ACT considers that subservience to the assertions of the United Nations Human Rights Committee is an intolerable derogation from New Zealand's sovereignty. ACT believes that the bill should simply instruct Judges to deal with prisoner abuse claims by disciplining those responsible, and override, to that extent, the law invented by Judges in Baigent's case to give punitive damages for human rights breaches.

The ACT member was not persuaded that the Behaviour Management Regime which led to the cases which prompted the bill was wrong or even a breach of genuine human rights. Court awards to criminals to punish the State for such conduct are misdirected, and lead to justified contempt for the law.

United Future minority view

United Future applauds the intent of the bill but considers its execution to achieve its aims as constrained by two limiting factors: the first being the assumed obligations to the dubious United Nations Human Rights concerns expressed in 2002 asserting the "inherent dignity of the human person" without any consideration of the relative merit of offenders deserving of such consideration in contrast to that of their victims. The intent of the bill is further inhibited by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment signed in 1986 and ratified in 1989. Whilst no country should ever sanction the use of torture or

cruel mistreatment of its inmates, the extension of a ban on punishments ought not to restrain individual nations from the right to ascertain for themselves the appropriate use of such remedies in concert with their overall criminal justice aims.

It is United Future's view that it is up to Parliament – not the United Nations – to determine what constitutes justice for our own people.

The second limiting aspect of the bill is the assertion that remedies to inmate treatment violations must necessarily include financial compensation. It is United Future's view that while no prison officer should act in such a manner as to violate the reasonable rights of inmates, there are sufficient modes of providing recompense for incurred breaches (for example medical or counselling treatments) that do not require a monetary component.

The bill proposes a regime where any compensations that may be payable to inmates will be made accessible to victims. While United Future acknowledges the inherent difficulties in awarding such monies, and on what basis, we do accept that the primary motivation is not to reward victims so much as deprive offenders from profiting. Nevertheless it is clearly undesirable to set up a perverse incentive for victims to “want” to see their offenders to be unfairly treated in the hopes of securing a financial windfall denied other victims.

It is clear from the number of submissions from victims and victims lobby groups that victims themselves overwhelmingly do not want either the money or an ongoing legal relationship with the offender. The primary purpose from their perspective is to ensure that offenders do not succeed in obtaining a pecuniary interest as a result of their crime.

United Future affirms the need for a truly independent prison inspectorate to maintain a vigilant watch over the state of our prisons and notes that the only prison to exceed the safety requirements has been the privately managed Auckland Remand Prison.

Whilst the bill has not achieved its overall intention to prevent one more cent of taxpayer money from reaching the pocket of prison inmates, United Future accepts that in the absence of a willingness to put aside spurious UN resolutions, or a willingness to restrict all remedies to those of a non-cash basis, this bill does the next best thing. United Future is strongly of the view that the rights of prison inmates must be of a lesser order than that of the victims and therefore should never be in a position to profit from a situation largely of their own choosing; namely from committing a crime in the first place.

Appendix A

Committee process

The Prisoners' and Victims' Claims Bill was referred to the committee on 14 December 2004. The closing date for submissions was 4 February 2005. We received and considered 44 submissions from interested groups and individuals. We heard 26 submissions, which included holding hearings by videoconference. Hearing of evidence took 11 hours and 44 minutes and consideration took 11 hours and 25 minutes.

All the reports received by the committee from the Ministry of Justice and the Department of Corrections are publicly available from the Parliamentary Library.

Committee membership

Tim Barnett, Chairperson (Labour)

Stephen Franks, Deputy Chairperson (ACT)

Lianne Dalziel (Labour)

Russell Fairbrother (Labour)

Dave Hereora (Labour)

Dail Jones (New Zealand First)

Moana Mackey (Labour)

Hon Clem Simich (National)

Murray Smith (United Future)

Nandor Tanczos (Green)

Richard Worth (National)

Marc Alexander replaced Murray Smith for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (majority)

Subject to this Act,

Text inserted by a majority

New (unanimous)

Subject to this Act,

Text inserted unanimously

<Subject to this Act,>

Words struck out by a majority

{Subject to this Act,}

Words struck out unanimously

<u>Subject to this Act,>

Words inserted by a majority

Subject to this Act,

Words inserted unanimously

Hon Phil Goff

Prisoners' and Victims' Claims Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Prisoners' and Victims' Claims Act **2004**.

2 Commencement

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

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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

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- 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 5
 - (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. 10
- (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 15
 - (c) amend the Victims' Rights Act 2002 to require the Secretary for Justice to request, for the purposes of a notice under **section 19** 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 20
 - (d) amend consequentially the Human Rights Act 1993, the Limitation Act 1950, and the Privacy Act 1993. 25

4 Interpretation

In this Act, unless the context otherwise requires,—

account means the victims' claims trust bank account established under **section 50**

New (majority)

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 30

action means any proceeding in a court or tribunal other than a criminal proceeding 35

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

New (majority)

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 5
- (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 10

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 15
- (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 20
- (c) includes an amount or award of interest related to compensation or damages in **paragraph (a) or (b)**; but 25
- (d) does not include an amount required or agreed to be paid as, or towards, the costs of making a claim

New (majority)

detention quarter means a building or part of a building set aside under the Armed Forces Discipline Act 1971 as a detention quarter 30

fine includes—

New (majority)

- | | |
|--|---|
| <p>(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:</p> <p>(b) any costs, expenses, or fees payable in respect of the enforcement of any fine as defined in paragraph (a)</p> | 5 |
|--|---|

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,—

- | | |
|--|----------------------|
| <p>(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</p> <p>(b) to avoid doubt, includes a person who is—</p> <p style="padding-left: 20px;">(i) the victim's spouse<, <u>civil union partner</u>,> or de facto partner; or</p> <p style="padding-left: 20px;">(ii) the victim's child or a child of a person who is, or was, the victim's spouse<, <u>civil union partner</u>,> or de facto partner; or</p> <p style="padding-left: 20px;">(iii) the victim's brother or sister or the child of a person who is, or was, the spouse<, <u>civil union partner</u>,> or de facto partner of a parent of the victim; or</p> <p style="padding-left: 20px;">(iv) a parent of the victim or a person who is, or was, the spouse<, <u>civil union partner</u>,> or de facto partner of a parent of the victim; or</p> <p style="padding-left: 20px;">(v) a grandparent of the victim</p> | 10
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incapable, in relation to a person,—

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| <p>(a) means that the person—</p> <p style="padding-left: 20px;">(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</p> <p style="padding-left: 20px;">(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</p> | 30
35 |
|---|----------|

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

5

New (majority)

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

10

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

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20

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

25

New (majority)

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—

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New (majority)

- | | |
|---|---|
| <ul style="list-style-type: none"> (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 | 5 |
|---|---|

person under control or supervision means—

- | | |
|---|----|
| <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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: | 10 |
| | 15 |

New (majority)

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|--|----|
| <ul style="list-style-type: none"> (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 | 20 |
|--|----|

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

prisoner means—

- | | |
|--|----|
| <ul style="list-style-type: none"> (a) a person (in section 7 called a 2004 Act prisoner) <u><who is not a service detainee or a service prisoner but who is></u> for the time being in the legal custody under the Corrections Act 2004 of either of the following persons: <ul style="list-style-type: none"> (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) <u><who is not a service detainee or a service prisoner but who is></u> for the time being in the legal custody of the Superintendent of a penal institution | 25 |
| | 30 |
| | 35 |

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

5

Struck out (majority)

sentence of imprisonment has the same meaning as in section 4(1) of the Sentencing Act 2002

New (majority)

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

10

(b) includes the following (as defined in section 4(1) of the Sentencing Act 2002):

15

(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—

20

(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

25

(b) in accordance with that Act, for the time being in or outside New Zealand—

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(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

New (majority)

- (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 5

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 10
- (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 15
- (ii) serving the sentence of imprisonment in a penal institution, service prison, detention quarter, or in other service custody 20

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 54**; and 25
- (b) in relation to a victim's claim filed under **section 26**, means the particular Victims' Special Claims Tribunal to which the claim has been referred under **section 28**

victim has the meaning given to it in **section 8** 30

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** 35
- (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 (*convicted*) 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— 5

- (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,— 10

- (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 15
 - (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 20 25
- (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 30
 - (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 35
 - (iii) in relation only to a matter that is not more properly within the jurisdiction of another authority, 40

- 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: 5
- (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 10
- (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 15
- (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 20
- (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 25

New (unanimous)

- (e) for a service detainee or service prisoner, the following mechanisms: 30
- (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. 35

- (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 5
 - (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— 10
 - (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. 15

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 20
 - (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 25
 - (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. 30

Struck out (unanimous)

- (2) If an offence is committed by a person, a **victim** does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,— 35

Struck out (unanimous)

- (a) that offence; or
- (b) an offence relating to the same incident or series of incidents as that crime or offence.

New (unanimous)

- (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 5
- (c) encourages timely mitigation of loss or damage by the plaintiff and the defendant if that is reasonably practicable; and 10
- (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. 15

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 20
 - (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— 25
 - (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— 30
 - (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 35
 - (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. 5
- 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,— 10
- (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— 15
- (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 20

New (unanimous)

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|---|--|
| (ba) the relevant conduct of the plaintiff; and | |
|---|--|
- (c) the consequences for the plaintiff of the breach of, or interference with, the right concerned; and
- (d) the freedoms, interests, liberties, principles, or values recognised and protected by the right concerned; and 25
- (e) any need to emphasise the importance of, or deter other breaches of or other interferences with, the right concerned; and
- (f) 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 30
- (g) 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**. 35

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.

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Subpart 2—Victims' claims

Payment of money into account and information about filing claims

16 Compensation of prisoners, etc, must be paid to Secretary

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(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; or

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(b) as, or as part of, an out-of-court final settlement of a specified claim.

(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

20

(b) 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.

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(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.

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(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.

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(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 53**.

- 17 Secretary deducts money for legal aid, reparation, and earlier orders, then pays surplus into account**
- (1) On receiving money under **section 16**, the Secretary must, as soon as practicable,— 5
- (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 10
- (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) secondly, pay out of that money any sum necessary to satisfy fully any amounts of reparation owed by the accused or the offender; and 15
- (c) thirdly, pay out of that money any sum necessary to satisfy fully any amounts due owed by the accused or the offender under any relevant order made under **section 43** *against the offender* following an earlier receipt of money under **section 16**; and 20
- (d) fourthly, pay any surplus remaining into the account.
- (2) In this section,—
- amounts of reparation** means— 25
- (a) an amount due under a sentence of reparation imposed *on the offender* under—
- (i) the Sentencing Act 2002; or
- (ii) the Criminal Justice Act 1985; and
- (b) an amount due under an order of reparation *made against the offender* 30
- 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 35
- (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: 5
- (a) whether the total amount of reparation to be paid *<by the offender>* 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: 10
- (c) if the amount is to be paid in instalments, the frequency and amounts of the instalments.
- 18 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 53**. 15
- (2) In particular, until paid out to the *<accused or the>* offender in accordance with this subpart or regulations made under **section 53**, that money is, even if the *<accused or the>* offender has a beneficial interest in it,— 20
- (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. 25
- (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. 30
- (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 *<VII>* *<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. 35

19 Secretary to give notice of payments into account, etc

- (1) After paying money into the account under **section 17(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 *<an> <the accused or the>* offender; and 5
 - (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 10
 - (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 53**; and 15
 - (c) give in the notice general information about how victims of the *<offender> <person for whom money is required to be held in trust>* might file a victim's claim under **section 26** and within the deadline fixed by **section 26(2)(c)**. 20
- (2) This section and **section 20** 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— 25
- (a) any report or account of the whole or any part of proceedings (including, without limitation, the evidence adduced or the submissions made); or 30
 - (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.

20 How and to whom notice, etc, given**Struck out (majority)**

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|-----|---|----|
| (1) | The notice required by section 19 must be given by being served on people (relevant individuals)— | 35 |
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Struck out (majority)

- (a) whom the Secretary reasonably believes to be victims of the offender; and
- (b) whose contact details are available to the Secretary.

New (majority)

- (1) The notice required by **section 19** must be given—
 - (a) by being served on people—
 - (i) who 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 19** is given <under subsection (1)> to <relevant individuals> <the people to whom it is required to be given> under <subsection (1)> <that subsection>, it may, if the Secretary thinks fit, also be given by 1 or more of the methods in **subsection (4)**. 5
- (3) However, if the notice required by **section 19** is not given <under subsection (1)> to <relevant individuals> <all the people to whom it is required to be given> under <subsection (1)> <that subsection>, it must be given by 1 or more of the methods in **subsection (4)**. 15
- (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. 20

New (majority)

(4A) The Secretary is not required by this section to give a person, by any method, the notice required by **section 19** 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.

5

(5) The Secretary must send the Secretary of the Tribunal a copy of every notice required by **section 19** and given in accordance with this section.

21 Single process for 2 or more payments in same period

If a notice required by **section 19** is to be given within 6 months after the sending date of any previous notice required by **section 19** in respect of the same <accused or> offender, the notice must—

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(a) be given as an addition to the previous notice; and

(b) indicate that, under **section 26(2)(c)**, the deadline for filing victims' claims under this subpart is the later of the following:

15

(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.

20

22 Sending date: what it means

In **sections 21 and 26**, **sending date**, in relation to a notice required by **section 19** notifying a payment into the account, means whichever is the earlier of the following dates:

25

(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 20**.

23 Secretary's duties for purposes of section 20

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(1) The Secretary must, for the purposes of **section 20**, take reasonable steps to identify, and ascertain the contact details of, people who <are> <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 *<victim>* *<person>*—
- (a) who *<is>* *<may be or is>* a victim of the *<accused or the>* offender; and 5
- (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— 10
- (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 15
- (b) are or may be relevant to that purpose.
- (4) Those court documents or records include the ones specified in **section 33(2)(a)** *<and (b)>* *<to (d)>*. 20

New (majority)

- (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

New (unanimous)

23A 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 33(2)(c) or (d)**, requested under **section 23(3)**, and that the Judge Advocate General considers, and has advised the Secretary, should not be disclosed for reasons of security. 30
- (2) The Secretary cannot access or search, inspect, and take or be issued with copies or extracts from, the document or record.

New (unanimous)

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| <p>(3) The Judge Advocate General may, if he or she thinks fit, perform the Secretary's duties under sections 19 to 23 so far as they relate to and arise from the document or record.</p> <p>(4) This section overrides sections 19 to 23.</p> | |
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24 Procedure if no victims of <accused or> offender

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| <p>(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—</p> <p>(a) has, under section 23, taken reasonable steps to identify, and ascertain the contact details of, people who <are> <may be or are> victims of the <accused or the> offender; but</p> <p>(b) is satisfied that there are no <people who may be or are> victims of the <accused or the> offender.</p> <p>(2) On an application under subsection (1), the Tribunal must,—</p> <p>(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 19 and 20 but must pay to the <accused or the> offender promptly all money held in the account for the <accused or the> offender;</p> <p>(b) in every other case, order that the Secretary is required to give notice under sections 19 and 20.</p> <p>(3) The Secretary must comply with the order of the Tribunal.</p> <p>(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 <an> <the accused or the> offender and used to satisfy <the offender's> outstanding fines <of the accused or the offender>.</p> | <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
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25 Service of notices

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| <p>(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—</p> <p>(a) delivered personally to the person; or</p> <p>(b) delivered to the person at the person's usual or last known place of residence or business; or</p> | <p>35</p> |
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- (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. 5
- (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. 10
- (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. 15

Procedure for making and determination of victims' claims

26 Filing of claims 20

Struck out (majority)

- (1) A victim's claim may be filed by or on behalf of a person if a notice is given under **section 19** notifying a payment into the account of money paid to the Crown in trust for an offender and the person is a victim of the offender and has not obtained, and is not seeking, a judgment— 25
- (a) in respect of the conduct on which the claim is based; and
- (b) in civil proceedings against the offender in a District Court or the High Court.

New (majority)

- (1) A victim's claim may be filed by or on behalf of a person if— 30

New (majority)

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| <p>(a) a notice is given under section 19 notifying a payment into the account of money paid to the Crown in trust for an accused or an offender; and</p> <p>(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 19 but before the filing of the person's claim under this section, in relation to the offence charged); and</p> <p>(c) the person is a victim of the offender and has not obtained, and is not seeking, a judgment—</p> <p style="padding-left: 2em;">(i) in respect of the conduct on which the claim is based; and</p> <p style="padding-left: 2em;">(ii) in civil proceedings against the offender in a District Court or the High Court.</p> | <p>5</p> <p>10</p> <p>15</p> |
| <p>(2) The claim must be—</p> <p style="padding-left: 2em;">(a) in a form approved for the purpose by the Secretary; and</p> <p style="padding-left: 2em;">(b) filed with the Secretary of the Tribunal; and</p> <p style="padding-left: 2em;">(c) filed before the deadline specified in subsection (3).</p> <p>(3) The deadline referred to in subsections (2), (4), and (5) is,—</p> <p style="padding-left: 2em;">(a) if the notice is, under section 21, given as an addition to a previous notice, the later of the following:</p> <p style="padding-left: 4em;">(i) the close of the day that is 6 months after the sending date of the previous notice; and</p> <p style="padding-left: 4em;">(ii) the close of the day that is 2 months after the sending date of the notice; and</p> <p style="padding-left: 2em;">(b) in every other case, the close of the day that is 6 months after the sending date of the notice.</p> <p>(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.</p> <p>(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.</p> | <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

- 27 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.
- 28 Secretary of Tribunal to refer claims filed to Tribunal** 5
- (1) The Secretary of the Tribunal must, as soon as practicable after a claim or application is filed under **section 26**, 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— 10
- (a) a notice required by **section 19** (the **notice**); or
- (b) a notice that, under **section 21**, is given as an addition to the notice. 15
- (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 26**.
- (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. 20
- New (unanimous)**
- (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. 25
- 29 Offender to be given copy of claim and reasonable opportunity to make written submission on it** 30
- (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. 35

- (2) A copy of the claim must be served on the offender as soon as practicable after it is filed under **section 26**.

New (unanimous)

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| (2A) | 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. | 5 |
| (3) | 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— | 10 |
| | (a) within 60 days after the expiry of the periods specified in section 31(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. | 15 |
| (4) | In determining under subsection (3)(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. | 20 |
| (5) | 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. | |
| 30 Procedure if no claims filed | | |
| (1) | If, at the expiry of the periods specified in section 31(a) , no claims have been filed under section 26 ,— | 25 |
| | (a) the Secretary of the Tribunal must advise the Secretary of that fact; and | |
| | (b) the Secretary must pay to the <u><accused or the></u> offender promptly all amounts of money held in the account for the <u><accused or the></u> offender. | 30 |
| (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 <u><an></u> <u><the accused or the></u> offender and used to satisfy the <u><accused's or the></u> offender's outstanding fines. | 35 |

- 31 Period to allow all claims, offender's submissions, etc**
- The Tribunal cannot determine a victim's claim filed under **section 26** until—
- (a) the 6-month period in **section 26(3)**, and any further periods allowed under **section 26(4)**, have expired; and 5
 - (b) the offender has been given the reasonable opportunity to make written submissions referred to in **section 29**; and
 - (c) any oral submissions the Tribunal has agreed to hear under **section 35** have been heard. 10
- 32 Claims determined on papers**
- (1) Unless the Tribunal determines under **section 35** 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 15
 - (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.
- 33 Access to relevant court documents or records** 20
- (1) To help to determine a claim filed under **section 26**, 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— 25
 - (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 30
 - (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— 35
 - (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 5
 - (ii) a file, or part of a file, or document relating to a criminal proceeding; and

New (unanimous)

- (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 10
- (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. 15

33A 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 33(2)(c) or (d)**, requested under **section 33(1)**, and that the Judge Advocate General considers, and has advised the Secretary, should not be disclosed for reasons of security. 20
- (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 33(1)**, except with the permission of, and in accordance with any conditions specified by, the Judge Advocate General. 25
- (3) The Tribunal must comply with, and take all reasonably practicable steps to ensure others comply with, conditions specified by the Judge Advocate General. 30
- (4) This section overrides **section 33**.

- 34 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 26** if the finding— 5
- (a) is recorded in a court document or record referred to in, and accessed under, **section 33(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— 10
- (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. 15
- (3) This section does not affect rights of appeal under **section 47**.
- 35 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. 20
- (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 25
- (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— 30
- (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.
- 36 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 26**, the Tribunal may, by written notice served on a person (for example, a party to the claim), require that person— 35

- (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 5
- (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. 10
- (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 15
- (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. 20
- (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— 25
- (a) the making available of information or documents sought by, or sought by questions asked under, a notice under **subsection (1)**; or 30
- (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. 35
- 37 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 40

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

38 Power to restrict publication of proceedings, etc

- (1) If a victim's claim is filed under **section 26**, the Tribunal may, if satisfied that it is desirable to do so, make or give 1 or more of the following orders or directions: 5
- (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: 10
 - (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: 15
 - (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: 20
 - (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. 25
- (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. 30
- (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. 35
- (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 39**; and
- (c) if it is made or given permanently, may be reviewed by the Tribunal at any time under **section 39**.

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Compare: 1997 No 92 s 39

39 Application for renewal or review of order or direction under section 38

- (1) If an order or direction is made or given under **section 38(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.

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Compare: 1997 No 92 s 40

40 Contravention of orders or directions under section 38

- (1) Every person commits an offence who breaches an order or direction made or given under **section 38(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.

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Compare: 1997 No 92 s 41

41 Availability of documents filed in connection with claims

- (1) The availability of documents filed with the Secretary of the Tribunal, ~~(or) filed~~ in the Tribunal, or accessed under section 33 by the Tribunal, in connection with a victim's claim

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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. 5

New (unanimous)

- (3) Nothing in this section applies to a document or record to which **section 29(2A)** or **section 33A** applies.

42 Other aspects of procedure

Subject to **sections 26 to 41, 43, 55, and 56**, the Tribunal may regulate the procedure for determining victims' claims in any manner it thinks fit. 10

43 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 26** in response to— 15
- (a) a notice required by **section 19** (the **notice**); or
 - (b) a notice that, under **section 21**, 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— 20
- (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 25
 - (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. 30
- (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 35

- (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 26** must be recorded in a single written order that specifies the entitlements (if any) of all victims concerned. 5
- 44 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 43(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. 10
- (3) The Tribunal may, if it thinks fit, include in the amount ordered to be paid to a victim under **section 43(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. 15
- (4) However, the Tribunal cannot give interest upon interest.
- (5) In this section and in **section 46A**, the **prescribed rate** means the prescribed rate as defined in section 62B(4) of the District Courts Act 1947. 20
- (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. 25
- 45 Implementation of order**
- (1) The Secretary must implement promptly an order under **section 43**—

Struck out (unanimous)

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| <p>(a) if no appeals against the order have been filed within the time allowed by or under section 47(3)(b); or</p> <p>(b) once all appeals of that kind are withdrawn or finally determined.</p> | 30 |
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New (unanimous)

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| <p>(a) if, at the expiry of the 20-working day period in section 47(3)(b) (the period), no appeals against the order (appeals), or applications for further time for filing appeals (applications), have been filed; or</p> <p>(b) if every application filed within the period has been withdrawn, or has been finally determined and declined; or</p> <p>(c) if, at the expiry of all further time allowed under section 47(3)(b) in response to applications filed within the period, no appeals have been filed; or</p> <p>(d) once all appeals filed within the period, or filed within further time allowed under section 47(3)(b) in response to an application within the period, have been withdrawn or finally determined.</p> <p>(1A) 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.</p> | <p>5</p> <p>10</p> <p>15</p> |
| <p>(2) 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.</p> <p>(3) 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.</p> <p>(4) Implementation of an order in part, under subsection (3), 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—</p> <p>(a) by way of a deduction, under section 17(1)(c), from any money received later under section 16; or</p> <p>(b) under subsection (5) of this section, as if it were a judgment of the District Court.</p> | <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

- (5) A copy of a partially implemented order under **section 43** or an order under **section 46A(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. 5
- 46 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 45(2) or (3)** 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. 10
- (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. 15
- (3) This section overrides **section 45**.

New (unanimous)

- 46A Order under section 43 must be varied in certain circumstances** 20
- (1) This section applies if, after an order is made under **section 43**, 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— 25
- (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)**. 30
- (3) If the Tribunal is satisfied, on receiving any record or other official document under **subsection (2)**, that this section applies, the Tribunal must— 35

New (unanimous)

- (a) vary the relevant order made under **section 43** 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.

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47 Appeal to High Court**Struck out (unanimous)**

- (1) A party to a claim determined under **section 43** may appeal to the High Court against the order concerned only—
 - (a) on a question of law; or
 - (b) on the grounds that the relevant conviction of the offender has, after the making of that order, been set aside without an order for retrial, or with a retrial being ordered but—
 - (i) not being proceeded with; or
 - (ii) not resulting in a conviction; or
 - (iii) being stopped by a stay of proceedings.

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New (unanimous)

- (1) A party to a claim determined under **section 43** 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 43(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.

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Struck out (unanimous)

- (4) Without limiting **subsection (3)(b)**, a High Court Judge may allow further time for the filing of an appeal under that paragraph if the relevant conviction of the offender has, after the making of an order under **section 43**, been set aside without an order for retrial, or with a retrial being ordered but—
- (a) not being proceeded with; or
 - (b) not resulting in a conviction; or
 - (c) being stopped by a stay of proceedings.

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New (unanimous)

- (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.

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- (5) The relevant order under **section 43** is suspended until an appeal under this section is withdrawn or finally determined.

48 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 43** has been implemented fully under **section 45(2)**.

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- (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.

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49 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—

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- (a) paid the money into the account under **section 17(1)(d)**;
and
 - (b) gave the notice of the payment of the money required
by **section 19** using a method in **section 20(4)**; and
 - (c) has, under a section specified in **subsection (2)**, paid out 5
all or the last of the money.
- (2) The sections referred to in **subsection (1)(c)** are—
- (a) **section 30** (procedure if no claims filed); or
 - (b) **section 45(2) or (3)** (implementation of order); or
 - (c) **section 46(2)** (procedure if victim or others entitled can- 10
not be found); or
 - (d) **section 48** (release of surplus money to offender); or
 - (e) **section 52** (procedure if offender or others entitled can-
not be found).
- (3) The notice in the *Gazette* required by **subsection (1)** must identi- 15
fy the sum of money by reference only to the notice referred
to in **subsection (1)(b)**.

New (unanimous)

- (4) A copy of every notice required by **subsection (1)** must be sent
by the Secretary to the chief executive of each Government 20
department that the Secretary believes may have an interest in
the matter.

Victims' claims trust bank account

50 Secretary must establish account

- (1) The Secretary must, for the purposes of this subpart, establish
at a bank a victims' claims trust bank account. 25
- (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 30
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 35
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
- (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 53**. 10
- 51 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 53**. 15
- 52 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. 20
- (2) Money to which **subsection (1)** applies—
- (a) must, along with interest (if any) added to it under **section 50(3)**, be treated as public money; and 25
- (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 30
- (b) the person claims the money and establishes that claim to the satisfaction of the Treasury.
- Compare: 1989 No 44 s 70
- 53 Regulations on operation and auditing of account** 35
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: 5
- (c) providing for the manner and timing of the auditing of the account.

Victims' Special Claims Tribunals

54 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. 10
- (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. 15
- (4) The function of a Tribunal is to determine, in accordance with this subpart, victims' claims filed under this subpart.

55 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. 20

56 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— 25
 - (a) the victims concerned; and
 - (b) the ⟨accused or the⟩ offender; and 30
 - (c) the Secretary.
- (2) This section does not limit a Tribunal's duty under **section 43** to record in a single written order its determination of a group of victims' claims filed under **section 26**.

- 57 Proceedings of Tribunal not invalid for want of form**
 Proceedings before a Tribunal must not be held invalid for want of form.
- 58 Services for Tribunal**
 The Ministry of Justice must provide any secretarial, recording, and clerical services necessary to enable a Tribunal to discharge its function. 5
- Subpart 3—Suspension of limitation periods for certain claims by victims
- 59 Application** 10
- (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. 15
- (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. 20
- (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. 25
- 60 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 (*or a prison*), prison, or service prison. 30
- (2) In this section, **“serving a sentence of imprisonment in a penal institution (*or a prison*), prison, or service prison”**—
- (a) means serving in a penal institution (*or a prison*), prison, or service prison— 35

- (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 5
- (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. 10

Part 3

Amendments to other Acts 15

Amendment to Human Rights Act 1993

61 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 2004**”.

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Amendments to Legal Services Act 2000

62 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”. 25
- (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)**.” 30

63 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 2004** in respect of 1 or more victims' claims under that subpart.”

64 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: 5

“(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)).”

65 Conditions on grant of legal aid

Section 15 of the Legal Services Act 2000 is amended by inserting, after subsection (3), the following subsection: 10

“(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)— 15

“(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.” 20

66 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.” 25

67 Application for amendment to grant of legal aid

Section 24 of the Legal Services Act 2000 is amended by adding the following subsections: 30

“(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 35

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: 5
- “(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.” 10

68 Regulations

Section 113(1) of the Legal Services Act 2000 is amended by repealing paragraph (b), and substituting the following paragraphs: 15

- “(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)): 20
- “(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 25

69 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 2004**”. 30

Amendments to Privacy Act 1993

70 Damages

Section 88 of the Privacy Act 1993 is consequentially amended by inserting, after subsection (1), the following subsection: 35

- “(1A) Subsection (1) applies subject to **subpart 1 of Part 2** of the **Prisoners’ and Victims’ Claims Act 2004**.”

- 71 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 2004**; or”; and 5
- (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 2004**”. 10
- Amendments to Victims’ Rights Act 2002* 15
- 72 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 19 of the Prisoners’ and Victims’ Claims Act 2004**”. 20
- 73 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 2004** 25
- “(1) If the Secretary is required by **section 19 of the Prisoners’ and Victims’ Claims Act 2004** 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,— 30
- “(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 <victim of the> <person who is or may be a victim of the accused or the> offender to the Secretary if that address— 35
- “(i) has been given or forwarded to the specified person under section 31 or section 33; and

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- “(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. 5
- “(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: 10
- “(c) the Director-General of Health.”

Legislative history

14 December 2004

Introduction, first reading and referral to Justice and Electoral Committee (Bill 241-1)
