

Prisoners' and Victims' Claims (Redirecting Prisoner Compensation) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Prisoners' and Victims' Claims Act 2005 (the **Act**)—

- restricts and guides awards of compensation sought by specified human rights claims made by a person (in this statement called a **prisoner**) under the State's control or supervision; and
- provides a simplified process (in this statement called the **victims' claims process**) for the making and determination of claims that a victim of a prisoner may make against compensation required to be paid in respect of specified human rights or tort claims made by the prisoner.

The restrictions on the awarding of compensation expire on, and the victims' claims process applies only to compensation in respect of claims made before, 1 July 2012. This Bill makes the restrictions on awards of compensation and the victims' claims process permanent. The Bill also implements aspects of the Government's 2008 general election policy on victims of crime by providing that, for any com-

pensation awarded in respect of prisoners' claims for compensation made on or after 1 July 2012,—

- compensation remaining after the victims' claims process is to be redirected to a Crown Bank Account, namely the victims' services bank account established by the Sentencing (Offender Levy) Amendment Act 2009, and used to fund services and entitlements for victims of crime generally; and
- the civil limitation period is to be suspended when the compensation is paid to the Secretary of Justice, and to recommence following the deadline for victims to file a claim through the victims' claims process. This suspension is intended to ensure that delays in assessing the quantum of deductions to be made from the compensation do not prevent victims of the prisoner from being able to make civil claims through the victims' claims process.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 26 March 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/policy-and-consultation/regulatoryimpactstatements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Bill as enacted is to come into force on **1 July 2012**.

Clause 3 identifies the principal Act amended: the Prisoners' and Victims' Claims Act 2005. A reference in this analysis to a provision is, unless the context otherwise requires, a reference to a provision of that Act.

Part 1

Main amendments to principal Act

Amendments to redirect prisoner compensation and for other purposes

Clause 4(1) states the Part's main purpose, which is to amend the principal Act so that, for a specified claim made on or after **1 July 2012** by or on behalf of a plaintiff who is or was a person under control or supervision, the principal Act—

- restricts effective redress for the plaintiff in relation to the act or omission (by or on behalf of the Crown, and affecting the plaintiff as a person under control or supervision) on which the claim is based by redirecting away from the plaintiff all money that a person becomes liable to pay as compensation and in satisfaction of a court's or tribunal's final judgment on, or as, or as part of, an out-of-court final settlement of, the claim (*clauses 5(2), 6, 16, 17, 19, and 20*):
- ensures that its restricting effective redress by redirecting compensation away from the plaintiff does not make any person, or result in any person being, liable to pay to, or for the benefit of, the plaintiff compensation in respect of the claim (*clauses 5(1), 7(1), and 9*):
- requires a court or tribunal to determine whether and, if so, to what extent, to award compensation in respect of the claim as if the principal Act did not redirect away from the plaintiff all money of that kind (*clauses 7(3) and 12*):
- redirects away from the plaintiff all money of that kind by ensuring that any money that is related to the claim and that is not paid out of the victims' claims trust bank account under the principal Act before, during, or at the end of, the victims' claims process in subpart 2 of Part 2 is forwarded to the victims' services bank account (*clauses 5(2), 6, 16, 17, 19, and 20*):
- requires money related to the claim and forwarded to the victims' services bank account to be paid to the plaintiff if the claim is based on an act or omission affecting the plaintiff as a person under control or supervision that arose solely from an event or a series of events that results in no guilty plea or finding of guilt, or in a conviction that is set aside—

- without an order for retrial; or
- with a retrial being ordered that is not proceeded with, does not result in a conviction, or is ended by a stay of proceedings (*new section 52A inserted by clause 21*).

*Expiry of prisoner compensation restrictions
and guidance, and process and limitation
periods for victims' claims*

Clause 4(2) states the Part's other purpose. That other purpose is to amend the principal Act to—

- prevent subpart 1 of Part 2 (which restricts and guides the awarding of compensation sought by specified claims) from expiring on, or at a stated time after, the close of **30 June 2012** (*clause 13*):
- extend the victims' claims process in subpart 2 of Part 2 to money to be paid as compensation in respect of specified claims made on or after **1 July 2012** (*clause 14*):
- extend subpart 3 of Part 2 so that, for actions based on claims made on or after **1 July 2012** by or on behalf of victims and against money received under section 17 that is compensation in respect of a specified claim of the offender made after **30 June 2012**, it also suspends the running of limitation periods until the standard deadline for the filing of a victim's claim in the victims' claims process under the principal Act (*clauses 22 to 24, amending sections 63 and 64, and inserting new sections 64A and 64B*).

Part 2
**Saving and repeal amendments
to principal Act**

Amendments to effect saving and repeal

Clause 25 states the Part's purpose.

*Saving for specified claims made before
1 July 2012, related compensation, and
related victims' claims*

*Clause 26 adds a new subpart 4 of Part 2, which ensures that the principal Act as in force immediately before **1 July 2012** will generally continue to apply to specified claims made before **1 July 2012**, related compensation, and related victims' claims. (See also the related new sections 3(4) and 12(1) that are substituted by clauses 5(4) and 8 respectively.)*

Repeal of spent provisions amending other Acts

Clause 27 repeals Part 3 which, when the principal Act came into force on 4 June 2005, made related amendments to other Acts. The repeal of Part 3 (as section 17(1)(d) of the Interpretation Act 1999 provides) does not affect the amendments made by Part 3, but removes amending provisions now spent. Other enactments related to, and to be read with, the principal Act are to be identified by new section 3(2A) (to be inserted by clause 5(3)).

Hon Simon Power

**Prisoners' and Victims'
Claims (Redirecting Prisoner
Compensation) Amendment Bill**

Government Bill

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Part 2

Saving and repeal amendments to principal Act

Amendments to effect saving and repeal

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Prisoners' and Victims' Claims (Redirecting
Prisoner Compensation) Amendment Act **2011**.
- 2 Commencement** 5
This Act comes into force on **1 July 2012**.
- 3 Principal Act amended**
This Act amends the Prisoners' and Victims' Claims Act 2005.

Part 1

Main amendments to principal Act 10

*Amendments to redirect prisoner compensation
and for other purposes*

- 4 Purposes of Part**
Redirecting prisoner compensation
 - (1) The main purpose of this Part is to amend the principal Act so 15
that, for a specified claim made on or after **1 July 2012** by or
on behalf of a plaintiff who is or was a person under control or
supervision, the principal Act—
 - (a) restricts effective redress for the plaintiff in relation to 20
the act or omission (by or on behalf of the Crown, and
affecting the plaintiff as a person under control or super-
vision) on which the claim is based by redirecting away
from the plaintiff all money that a person becomes liable
to pay as compensation and in satisfaction of a court's

- or tribunal's final judgment on, or as, or as part of, an out-of-court final settlement of, the claim:
- (b) ensures that its restricting effective redress by redirecting compensation away from the plaintiff does not make any person, or result in any person being, liable to pay to, or for the benefit of, the plaintiff compensation in respect of the claim: 5
 - (c) requires a court or tribunal to determine whether and, if so, to what extent, to award compensation in respect of the claim as if the principal Act did not redirect away from the plaintiff all money of that kind: 10
 - (d) redirects away from the plaintiff all money of that kind by ensuring that any money that is related to the claim and that is not paid out of the victims' claims trust bank account under the principal Act before, during, or at the end of, the victims' claims process in subpart 2 of Part 2 of the principal Act is forwarded to the victims' services bank account: 15
 - (e) requires money related to the claim and forwarded to the victims' services bank account to be paid to the plaintiff if the claim is based on an act or omission affecting the plaintiff as a person under control or supervision that arose solely from an event or a series of events that results in no guilty plea or finding of guilt, or in a conviction that is set aside— 25
 - (i) without an order for retrial; or
 - (ii) with a retrial being ordered that is not proceeded with, does not result in a conviction, or is ended by a stay of proceedings.
- Expiry of prisoner compensation restrictions and guidance, and process and limitation periods for victims' claims* 30
- (2) The other purpose of this Part is to amend the principal Act to—
- (a) prevent subpart 1 of Part 2 of the principal Act (which restricts and guides the awarding of compensation sought by specified claims) from expiring on, or at a stated time after, the close of **30 June 2012**: 35
 - (b) extend the victims' claims process in subpart 2 of Part 2 of the principal Act to money to be paid as compen-

sation in respect of specified claims made on or after
1 July 2012:

- (c) extend subpart 3 of Part 2 of the principal Act so that, for actions based on claims made on or after **1 July 2012** by or on behalf of victims and against money received under section 17 of the principal Act that is compensation in respect of a specified claim of the offender made after **30 June 2012**, it also suspends the running of limitation periods until the standard deadline for the filing of a victim's claim in the victims' claims process under the principal Act.

Redirecting prisoner compensation

5 Purpose of this Act

- (1) Section 3 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The purpose of subpart 1 of Part 2 is to restrict and guide the awarding of compensation sought by specified claims in order to—
- “(a) ensure that this Act's restricting effective redress by redirecting compensation away from the plaintiff does not make any person, or result in any person being, liable to pay to, or for the benefit of, the plaintiff compensation in respect of those claims; and
- “(b) 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 compensation that, if this Act did not redirect it away from the plaintiff, would (by itself, or in combination with all other remedies, if any, awarded) be effective redress.”
- (2) Section 3(2) is amended by adding “; and” and also by adding the following paragraph:
- “(c) redirect away from the plaintiff all money to be paid as compensation in respect of a specified claim made on or after **1 July 2012** by ensuring that, if it is not paid out of the victims' claims trust bank account under this Act before, during, or at the end of, that victims' claims

procedure, it is forwarded to the victims' services bank account."

(3) Section 3 is amended by inserting the following subsection after subsection (2):

"(2A) Subpart 2 of Part 2 must be read with the following related enactments: 5

"(a) the Legal Services Act 2011, which facilitates the granting of legal aid in respect of victims' claims proceedings under subpart 2 of Part 2 of this Act; and

"(b) the Privacy Act 1993, which enables 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 10

"(c) the Victims' Rights Act 2002, which requires the Secretary for Justice to request, for the purposes of a notice under section 20 of this Act, the current address (including the full name) of a victim who has asked for notice of certain matters under that Act." 15

(4) Section 3 is amended by repealing subsection (4) and substituting the following subsection: 20

"(4) The purpose of **subpart 4 of Part 2** is to ensure that after **30 June 2012** the following provisions apply or continue to apply to specified claims made before **1 July 2012**, money to be paid as compensation in respect of claims of that kind, and victims' claims against money of that kind: 25

"(a) the provisions of this Act as in force immediately before **1 July 2012**; and

"(b) this subsection and **subpart 4 of Part 2** as inserted or substituted, but nothing else in this Act after it is amended, on **1 July 2012** by the **Prisoners' and Victims' Claims (Redirecting Prisoner Compensation) Amendment Act 2011**." 30

6 Interpretation

Section 4 is amended by inserting the following definitions in their appropriate alphabetical order: 35

“**prescribed rate** means the prescribed rate as defined in section 62B(4) of the District Courts Act 1947

“**victims’ services bank account** means the bank account established under section 105G, and operated in accordance with sections 105H to 105J, of the Sentencing Act 2002”.

5

7 Overview of this subpart

(1) Section 11 is amended by inserting the following paragraph before paragraph (a):

“(aa) ensures that this Act’s restricting effective redress by redirecting compensation away from the plaintiff does not make any person, or result in any person being, liable to pay to, or for the benefit of, the plaintiff compensation in respect of the claim; and”.

10

(2) Section 11(d) is amended by adding “that, if this Act did not redirect it away from the plaintiff, would (by itself, or in combination with all other remedies, if any, awarded) be effective redress”.

15

(3) Section 11 is amended by adding “; and” and also by adding the following paragraph:

“(e) requires the court or tribunal to determine whether and, if so, to what extent, to award compensation in respect of the claim as if this Act did not redirect away from the plaintiff all money required to be paid as compensation in respect of the claim.”

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8 Application

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Section 12 is amended by repealing subsection (1) and substituting the following subsection:

“(1) This subpart applies only to proceedings—

“(a) in or before a court or tribunal; and

“(b) in which 1 or more specified claims are made; and

“(c) commenced on or after **1 July 2012**.”

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9 New section 12A inserted

The following section is inserted after section 12:

“12A Prohibition on awarding compensation because, or as result, of Act’s restricting effective redress by redirecting compensation away from plaintiff

No person is, or may be held, liable to pay compensation to or for the benefit of the plaintiff because, or as a result, of this Act’s restricting effective redress by redirecting away from the plaintiff compensation awarded or to be awarded in respect of a specified claim.” 5

10 Restriction on awarding of compensation

Section 13(1) is amended by adding “; and” and also by adding the following paragraph: 10

“(c) the compensation (by itself, or in combination with all other remedies, if any, awarded) would, if this Act did not redirect it away from the plaintiff, be effective redress.” 15

11 Guiding considerations for awarding of compensation

(1) Section 14(1)(a) is amended by inserting “redress that, if this Act did not redirect compensation away from the plaintiff, would be” before “effective redress”.

(2) Section 14(1)(b) is amended by inserting “redress that, if this Act did not redirect compensation away from the plaintiff, would be” before “effective redress”. 20

(3) Section 14(2)(g) is amended by inserting “redress that, if this Act did not redirect compensation away from the plaintiff, would be” before “effective redress”. 25

12 New section 14A inserted

The following section is inserted after section 14:

“14A Compensation to be determined as if Act did not redirect it away from plaintiff

“(1) This section applies to a court or tribunal determining, in proceedings to which this subpart applies, whether and, if so, to what extent compensation is required to provide redress that, if this Act did not redirect compensation away from the plaintiff, would be effective redress in respect of a specified claim. 30

- “(2) The court or tribunal must make those determinations as if this Act did not redirect away from the plaintiff all money required to be paid as compensation in respect of the claim.”

*Preventing expiry of prisoner compensation
restrictions and guidance*

5

- 13 Section 16 repealed**
Section 16 is repealed.

Extending victims' claims process

- 14 Compensation of prisoners, etc, must be paid to Secretary**
- (1) Section 17(1)(a)(i) is amended by omitting “made before 1 July 2012”.
- (2) Section 17(1)(b)(i) is amended by omitting “made before 1 July 2012”.

Redirecting prisoner compensation

- 15 Status of money paid to Secretary or into account**
- (1) Section 19(2) is amended by inserting “(for example, under **section 52A**)” after “until paid out to the accused or the offender in accordance with this subpart or regulations made under section 57”.
- (2) Section 19(4) is amended by inserting “(until paid out of the account in accordance with this subpart or regulations made under section 57)” after “is”.
- 16 Procedure if no victims of accused or offender**
- (1) Section 26(1) is amended by omitting “be paid to the accused or the offender” and substituting “be paid to the victims' services bank account”.
- (2) Section 26(2)(a) is amended by omitting “must pay to the accused or the offender” and substituting “must pay to the victims' services bank account”.

- 17 Procedure if no claims filed**
Section 32(1)(b) is amended by omitting “must pay to the accused or the offender” and substituting “must pay to the victims’ services bank account”.
- 18 Further provisions on determination of claims received** 5
Section 47(5) is repealed.
- 19 Procedure if victim or others entitled cannot be found**
Section 49(1) is amended by omitting “must pay the money to the offender” and substituting “must pay the money to the victims’ services bank account”. 10
- 20 Release of surplus money to offender**
- (1) Section 52 is amended by omitting the heading and substituting the following heading: “**Forwarding of surplus money from account to victims’ services bank account**”.
- (2) Section 52(1) is amended by omitting “must pay to the offender” and substituting “must pay to the victims’ services bank account”. 15
- 21 New section 52A inserted**
The following section is inserted after section 52:
- “52A Repayment of money if specified claim relates to control or supervision that arose solely from event or series of events that results in no plea or finding of guilt, or in conviction being set aside without accused being retried** 20
- “(1) This section applies if money related to a specified claim and held in the account for the accused or the offender is forwarded to the victims’ services bank account under section 26, 32(1)(b), 49(1), or 52(1), and— 25
- “(a) the specified claim is based on an act or omission affecting the accused or the offender as a person under control or supervision; and 30
- “(b) that control or supervision arose solely from an event or a series of events; and
- “(c) that event or series of events results in 1 of the following outcomes:

- “(i) the accused or the offender does not before or during a trial for an offence plead guilty to an offence, and is not found guilty of an offence as a result of a trial for an offence (for example, because any such trial is not proceeded with, or is ended by a stay of proceedings, without an order for retrial): 5
- “(ii) a conviction for an offence is entered against the accused or the offender but is set aside in a way specified in **subsection (2)**. 10
- “(2) A conviction of a person is set aside in a way to which **subsection (1)(c)(ii)** applies only if it is set aside without an order for retrial, or it is set aside with a retrial being ordered but that retrial—
- “(a) is not proceeded with; or 15
- “(b) does not result in a conviction; or
- “(c) is ended by a stay of proceedings.
- “(3) If this section applies, the person who has not pleaded guilty to, or been found guilty of, an offence, or whose conviction was set aside, may file with the Secretary any court record or other official document that records any or all of the matters referred to in **subsection (1)**. 20
- “(4) If satisfied, on receiving any record or other official document under **subsection (3)**, that this section applies, the Secretary must repay to the person who has not pleaded guilty to, or been found guilty of, an offence, or whose conviction was set aside, a sum equal to the money from the specified claim that was forwarded, together with interest on that sum at the prescribed rate.” 25
- Suspending limitation periods
for victims' claims* 30
- 22 Application**
- (1) Section 63 is amended by omitting the heading and substituting the following heading: “**Limitation periods to which section 64 applies**”. 35
- (2) Section 63(1) is amended by omitting “This subpart” and substituting “Section 64”.

- (3) Section 63(1)(c) is amended by inserting “, on 4 June 2005,” after “the commencement”.
- (4) Section 63(2) is amended by omitting “This subpart” and substituting “Section 64”.
- (5) Section 63(2)(a) is amended by inserting “, on 4 June 2005,” after “the commencement” 5
- (6) Section 63(2)(b) is amended by inserting “, on 4 June 2005,” after “the commencement”.
- (7) Section 63(3) is amended by omitting “this subpart” and substituting “section 64”. 10
- (8) Section 63(3)(a) is amended by inserting “, on 4 June 2005,” after “the commencement”.

23 Limitation periods suspended

- (1) The heading to section 64 is amended by adding “**while offender serving sentence of imprisonment**”. 15
- (2) Section 64(1) is amended by omitting “subpart” and substituting “section”.

24 New sections 64A and 64B inserted

The following sections are inserted after section 64:

- “**64A Limitation periods to which section 64B applies** 20
Section 64B applies to every applicable limitation period for an action based on a claim—
 - “(a) made by or on behalf of a victim after the commencement, on **1 July 2012**, of **section 64B**; and
 - “(b) made against an offender and against money received under section 17 that is compensation in respect of a specified claim of the offender made after **30 June 2012**; and
 - “(c) based on acts done or omitted to be done (whether before or after the commencement, on **1 July 2012**, of **section 64B**) by the offender in committing the offence. 30

“64B Limitation periods suspended until standard deadline for filing of victims’ claims under this Act

The limitation periods to which this section applies cease to run for the action against the offender and the money received under section 17 until the standard deadline (specified in section 28(3)) for the filing of a victim’s claim in the victims’ claims process under subpart 2.” 5

Part 2
Saving and repeal amendments to principal Act

10

Amendments to effect saving and repeal

25 Purpose of Part

The purpose of this Part is to amend the principal Act to—

- (a) ensure that generally only its provisions as in force immediately before **1 July 2012** continue to apply to specified claims made before **1 July 2012**, money to be paid as compensation in respect of claims of that kind, and victims’ claims against money of that kind: 15
- (b) repeal Part 3 because it contains only spent provisions amending other Acts. 20

Saving for specified claims made before 1 July 2012, related compensation, and related victims’ claims

26 New subpart 4 of Part 2 added

Part 2 is amended by adding the following subpart: 25

“Subpart 4—Specified claims made before 1 July 2012, related compensation, and related victims’ claims

“64C Pre-1 July 2012 Act generally continues to apply

After **30 June 2012**, the following provisions apply or continue to apply to specified claims made before **1 July 2012**, money to be paid as compensation in respect of claims of that kind, and victims’ claims against money of that kind: 30

- “(a) the provisions of this Act as in force immediately before **1 July 2012**; and 35

“(b) **section 3(4)** and this subpart as inserted or substituted, but nothing else in this Act after it is amended, on **1 July 2012** by the **Prisoners' and Victims' Claims (Redirecting Prisoner Compensation) Amendment Act 2011**.”

5

Repeal of spent provisions amending other Acts

27 Part 3 repealed
Part 3 is repealed.
