



1 June 2010

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The Honourable Iain Evans MP
State Member for Davenport
Box 445
BLACKWOOD SA 5051

Dear Iain

Correctional Services (Prisoner Compensation Quarantine Funds) Amendment Bill 2010

I refer to your letter of 22 April 2010 and thank you for referring the above Bill to the Society. The Bill has been considered by the Society's Criminal Law Committee, and accordingly I provide the following comments.

General

This Bill gives rise to significant privacy & civil libertarian issues. There are significant discriminating elements. Should a citizen have his/her money withheld and details of his/her successful claim against the Government published merely because he/she is wronged by the State while serving a sentence of imprisonment? Those funds are used to satisfy existing & **potential** debts to others in circumstances where there is no relationship between the prisoner's successful civil action against the State & the existing debt to a creditor or potential debt to a victim.

We suggest that it would be most unfair for the above to occur unless, at the very least, (1) a victim's compensable injuries are greater than the applicable limit under the *Victim of Crimes Act*; (2) the victim's claim against the prisoner is for the amount due to the victim for the injury less the maximum paid/to be paid under the *Victim of Crimes Act*; and (3) the prisoner's civil wrong arises from his/her incarceration from the offence(s) that gives rise to the victim's claim against the prisoner.

Otherwise, the prisoner should be treated in the same way as any other citizen in relation to civil claims against him/her.

Notwithstanding the above, we make the following comments on the Bill:

The relationship between the *Victims of Crime Act* & this Bill needs to be fully explored to ensure there is no doubling up of compensation and that the prisoner's privacy is not unnecessarily breached. For example, if a victim recovers from the Government under the *Victims of Crime Act* within \$10,000 of the amount due to the victim, he/she should not be entitled to benefit from the provisions of this Bill. It would then be a matter for the Government, with a right of subrogation, to recover from the prisoner.

Section 78

The definition of "*prisoner*" should not exclude a remand prisoner where that prisoner is ultimately convicted of the offence(s) for which he/she is on remand for. This will legitimately capture a greater share of funds that might be able to be accessed by victims/creditors in line with the purposes of the Bill.

The definition of "*victim*" is inappropriate. The Bill should enable a next of kin who is acting on behalf of a deceased or incapacitated victim to make a claim. The current definition does not consider this.

Otherwise, if the intention is to enable someone close to a victim who dies or is incapacitated as a result of the criminal act to make a claim, then the current definition doesn't cover it. Someone other than an "*immediate*" family member may be directly affected by the loss (eg, a more distant relative who has the care of the victim or a de facto spouse). At the same time, an immediate family member who is not otherwise concerned in the matter may inappropriately have access to information. This causes problems with a strict application of the legislation to a wider class of victim who may not be acting on behalf of the direct victim & may not be a victim in the wider sense (eg, s81E(4)(b), s81F(1), s81F(2), s81F(3)(a)).

The term "*court*" should be defined (as it is not in the principal Act). It should be limited to the Supreme or District Court – given that Criminal Injuries Compensation claims are brought in the District Court.

Section 80

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Section 81B(1)

It would appear practically impossible for the amount to be paid "*immediately*". A time limit of 28 days may be appropriate.

Section 81D(1)

As currently framed, s81D(1) enables someone who is a victim "*in relation to*" a criminal act to make an application. A victim "*in relation to*" a criminal act appears to capture a greater group than if the clause applied to a victim "*of*" a criminal act. This is possibly deliberate – so as to include close relatives etc who might be victims in the wider sense. If this is so, then for the current definition of "*victim*" in s78 to include immediate family members is arguably unnecessary.

Section 81E(1)

The notice should be published as soon as possible after an *award* of damages rather than after the damages are *paid*. In line with the purposes of the Bill, the principal issue for the victim is the fact there's been an award of damages. The fact that the State is the payer should provide comfort that ultimately the payment will be made. Notification after an *award* of damages will be earlier than after damages are *paid*.

Section 81F(2)(d)

Great care should be taken in relation to the release of information. Generally speaking, it should be strictly controlled – to minimise the prospect of abuse. Section 81F(2)(d) appears too wide. It should be confined. The information in paras (a) – (c) may be the only information the victim should be given. The Bill is concerned with notification to the victim of the prisoner's funds and the period the funds will be held for. Ordinarily, that should be sufficient for the purposes of the proposed legislation. Perhaps the

only other information should be the number of applications for information from other victims or creditors (if creditors are left in the Bill). Rather than have a general provision allowing disclosure, s81F(2) should specify each item of information to control disclosure.

Section 81I(1)

Limiting the disclosure of information to "*the purposes of, or in connection with, the taking and determination of legal proceedings*" is too narrow. It should be broadened to include a decision whether to commence legal proceedings.

Section 81J(1)

The phrase "*in respect of a criminal act by the prisoner against the victim*" in s81J(1) may not cover an indirect victim (eg, a family member who might have a claim against the prisoner).

Section 81K

As per the general comments above, it would appear to be unfair for commercial creditors to have priority access to private information of a citizen and that citizen's funds merely because the citizen is wronged by the State during incarceration.

I trust these comments are of assistance to you.

Yours sincerely



Richard Mellows
PRESIDENT