

Prisoners' and Victims' Claims (Continuation and Reform) 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 2013. This Bill makes the restrictions on awards of compensation and the victims' claims process permanent. This Bill also makes amendments related to unlawful detention. They ensure that a person under control or supervision, for the

Act's purposes, includes (and has from the Act's commencement on 4 June 2005 always included) a person detained unlawfully—

- immediately after, or because of recall or other return to custody after, ceasing to be a prisoner or other person specified in the definition (in section 4 of the Act) of that term; and
- in the same manner as if he or she were a prisoner or other person specified in that definition; and
- by or on behalf of the Crown (for example, because of a sentence calculation error).

A related amendment also makes it clear that a specified claim (as defined in section 6 of the Act) includes (and has from the Act's commencement on 4 June 2005 always included) a claim by a person of that kind arising from, even if based solely on, that detention. These retrospective amendments do not, however, generally affect proceedings commenced before 3 December 2012, which is the date on which this Bill was introduced.

The Bill also implements aspects of the Government's 2008 general election policy on victims of crime by providing that, for any compensation awarded in respect of prisoners' claims for compensation made on or after 1 July 2013, 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. This Bill replaces the Prisoners' and Victims' Claims (Redirecting Prisoner Compensation) Amendment Bill (328—1), introduced on 13 October 2011.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 7 November 2012 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/regulatory-impact-statements>

- <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 2013**.

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

Purpose of Part

Clause 4 states the *Part's* purpose. That 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 2013** (*clause 8*):
- 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 2013** (*clause 9*):
- make it clear that certain persons unlawfully detained by or on behalf of the Crown are, and have always been, for the principal Act's purposes and the period of their unlawful detention, persons under control or supervision (*clause 6*):
- make it clear that specified claims include (and have always included) claims by those persons arising from, even if based solely on, that detention (*clause 7*):
- extend subpart 3 of Part 2 so that, for actions based on claims made on or after **1 July 2013** 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 2013**, it also suspends the running of limitation periods until the standard deadline for the filing of a vic-

tim's claim in the victims' claims process under the principal Act (*clauses 11 to 13*, 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 14 states the *Part's* purpose.

Saving for specified claims made before 1 July 2013, related compensation, and related victims' claims

Clause 15 adds a *new subpart 4 of Part 2*, which ensures that the principal Act as in force immediately before **1 July 2013** will generally continue to apply to specified claims made before **1 July 2013**, related compensation, and related victims' claims. (*See also* the related *new sections 3(4) and 12(1)* inserted by *clauses 5(2) and 8*, respectively.) *New section 64C(2)*, however, states an exception: the unlawful detention amendments made by *clauses 6 and 7* have effect (subject to the saving for existing proceedings in *new section 64C(3)*) as from the principal Act's commencement, on 4 June 2005. *New section 64C(3)* ensures that those amendments do not apply to proceedings commenced before the date (3 December 2012) on which this Bill was introduced except insofar as those proceedings are on or after that date amended to challenge a matter—

- made clear by those amendments; and
- not challenged expressly in those proceedings before that date.

Repeal of spent provisions amending other Acts

Clause 16 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(1)*).

Hon Judith Collins

**Prisoners' and Victims' Claims
(Continuation and Reform)
Amendment Bill**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act **2012**.
- 2 Commencement** 5
This Act comes into force on **1 July 2013**.

- 3 Principal Act**
This Act amends the Prisoners' and Victims' Claims Act 2005 (the **principal Act**).

Part 1

Main amendments to principal Act 5

Purpose of Part

- 4 Purpose of Part**
The 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 2013**: 10
 - (b) extend the victims' claims process in subpart 2 of Part 2 of the principal Act to money to be paid as compensation in respect of specified claims made on or after **1 July 2013**: 15
 - (c) make it clear that certain persons unlawfully detained by or on behalf of the Crown are, and have always been, for the principal Act's purposes and the period of their unlawful detention, persons under control or supervision: 20
 - (d) make it clear that specified claims include (and have always included) claims by those persons arising from, even if based solely on, that detention:
 - (e) extend subpart 3 of Part 2 of the principal Act so that, for actions based on claims made on or after **1 July 2013** 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 2013**, 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. 25 30

Purpose of principal Act

- 5 Section 3 amended (Purpose of this Act)** 35
(1) After section 3(2), insert:

- “(2A) Subpart 2 of Part 2 must be read with the following related enactments:
- “(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 5
 - “(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
- (2) Replace section 3(4) with:
- “(4) The purpose of **subpart 4 of Part 2** is to ensure that after **30 June 2013** generally only the following provisions apply or continue to apply to specified claims made before **1 July 2013**, money to be paid as compensation in respect of claims of that kind, and victims’ claims against money of that kind: 20
- “(a) the provisions of this Act as in force immediately before **1 July 2013**; 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 2013** by the **Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Act 2012**.” 25
- Persons unlawfully detained by or on behalf of
the Crown* 30
- 6 Section 4 amended (Interpretation)**
- In section 4, definition of **person under control or supervision**, after paragraph (g), insert (as from the principal Act’s commencement, on 4 June 2005):
- “(h) a person who is detained unlawfully— 35

- “(i) immediately after, or because of recall or other return to custody after, ceasing to be a person to whom any of paragraphs (a) to (g) applied; and
- “(ii) in the same manner as if he or she were a person to whom any of paragraphs (a) to (g) applies; and 5
- “(iii) by or on behalf of the Crown (as defined in section 6(2))”.

7 Specified claim

In section 6(1)(a)(ii), after “affecting the person as”, insert (as from the principal Act’s commencement, on 4 June 2005) “(including, without limitation, by making the person)” 10

Application of principal Act

8 Section 12 amended (Application)

Replace section 12(1) with:

- “(1) This subpart applies only to proceedings— 15
 - “(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 2013**.”

Preventing expiry of prisoner compensation restrictions and guidance 20

9 Section 16 repealed (Expiry of subpart)

Repeal section 16.

Extending victims' claims process

10 Section 17 amended (Compensation of prisoners, etc, must be paid to Secretary) 25

- (1) In section 17(1)(a)(i), delete “made before 1 July 2013”.
- (2) In section 17(1)(a)(ii), delete “, and either before, on, or after 1 July 2013”.
- (3) In section 17(1)(b)(i), delete “made before 1 July 2013”.
- (4) In section 17(1)(b)(ii), delete “, and either before, on, or after 1 July 2013”. 30

*Suspending limitation periods
for victims' claims*

11 Section 63 amended (Application)

- (1) Replace the heading to section 63 with: “**Limitation periods to which section 64 applies**”. 5
- (2) In section 63(1), replace “This subpart” with “Section 64”.
- (3) In section 63(1)(c), after “the commencement”, insert “, on 4 June 2005,”.
- (4) In section 63(2), replace “This subpart” with “Section 64”.
- (5) In section 63(2)(a), after “the commencement”, insert “, on 4 June 2005,”. 10
- (6) In section 63(2)(b), after “the commencement”, insert “, on 4 June 2005,”.
- (7) In section 63(3), replace “this subpart” with “section 64”.
- (8) In section 63(3)(a), after “the commencement”, insert “, on 4 June 2005,”. 15

12 Section 64 amended (Limitation periods suspended)

- (1) In the heading to section 64, after “suspended”, insert “while offender serving sentence of imprisonment”.
- (2) In section 64(1), replace “subpart” with “section”. 20

13 New sections 64A and 64B inserted

After section 64, insert:

“64A Limitation periods to which section 64B applies

Section 64B applies to every applicable limitation period for an action based on a claim— 25

- “(a) made by or on behalf of a victim after the commencement, on **1 July 2013**, 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 2013**; and 30
- “(c) based on acts done or omitted to be done (whether before or after the commencement, on **1 July 2013**, of **section 64B**) by the offender in committing the offence. 35

“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.”

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Part 2
Saving and repeal amendments to principal Act

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Amendments to effect saving and repeal

14 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 2013** continue to apply to specified claims made before **1 July 2013**, money to be paid as compensation in respect of claims of that kind, and victims’ claims against money of that kind;
- (b) repeal Part 3 because it contains only spent provisions amending other Acts.

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Saving for specified claims made before 1 July 2013, related compensation, and related victims’ claims

15 New subpart 4 of Part 2 inserted

After subpart 3 of Part 2, insert:

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“Subpart 4—Specified claims made before 1 July 2013, related compensation, and related victims’ claims

“64C Pre-1 July 2013 Act generally continues to apply

“(1) After **30 June 2013**, the following provisions apply or continue to apply to specified claims made before **1 July 2013**, money to be paid as compensation in respect of claims of that kind, and victims’ claims against money of that kind:

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- “(a) the provisions of this Act as in force immediately before **1 July 2013**; and

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- “(b) **section 3(4)** and this subpart as inserted or substituted, but nothing else in this Act after it is amended, on **1 July 2013** by the **Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2012**.
- “(2) Despite **subsection (1)**, the amendments made by **sections 6 and 7** of the **Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2012** have effect (subject to the saving in **subsection (3)**) as from this Act's commencement, on 4 June 2005. 5
- “(3) The amendments made by **sections 6 and 7** of the **Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2012** do not apply to proceedings commenced before **3 December 2012** except insofar as those proceedings are on or after that date amended to challenge a matter— 10
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- “(a) made clear by those amendments; and
- “(b) not challenged expressly in those proceedings before that date.”

Repeal of spent provisions amending other Acts

- 16 Part 3 repealed** 20
Repeal Part 3.
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