

## Regulatory Impact Statement

### Prisoners' and Victims' Claims (2012 Expiry and Application Dates) Amendment Bill 2012

#### *Agency disclosure statement*

This Regulatory Impact Statement (RIS) was prepared by the Ministry of Justice.

It provides an analysis of options to prevent the sunset clauses in the Prisoners' and Victims' Claims Act 2005 (the PVC Act) from taking effect before the Government progresses its 2008 PVC Act election policy. The PVC Act's sunset clauses are due to take effect on 1 July 2012, and this Bill is designed to maintain the status quo by further extending the sunset clauses.

The Government has a policy to make the existing provisions of the PVC Act permanent, and to redirect compensation remaining after the victims' claims process to fund general services for victims from 1 July 2012 (the redirection policy) [CAB Min (10) 12/14 and CAB Min (11) 22/3]. A separate RIS was prepared and published at the time Cabinet approved that policy (see [www.justice.govt.nz](http://www.justice.govt.nz)), and therefore its impacts are not discussed again in this RIS.

The Prisoners' and Victims' Claims (Redirecting Prisoner Compensation) Amendment Bill was introduced in Parliament on 13 October 2011 to give effect to the redirection policy, but did not receive a first reading. There is now insufficient time to progress it through its Parliamentary stages before the sunset clauses take effect on 1 July 2012.

Due to this, the Ministry of Justice was asked to urgently consider alternative options to maintain the existing provisions of the PVC Act until the redirection policy can be given effect at a later date.

This RIS was prepared within a very short timeframe and accordingly no consultation was undertaken. However, the Ministry informed the Department of Corrections, the Crown Law Office, the Ministry of Foreign Affairs, the Treasury and the Department of the Prime Minister and Cabinet. The public is likely to have an opportunity to comment when a new Bill is referred to select committee after introduction.

Exact numbers of existing and potential claims by prisoners for compensation are not stated in this RIS because that information is legally sensitive. The numbers were available and were taken into account when the impacts of each option were assessed.

None of the options considered in this document are likely to have effects that the Government's Statement on Regulation has said will require a particularly strong case before regulation is considered.

Malcolm Luey, Acting General Manager, Crime Prevention and Criminal Justice



28 March 2012

## Status quo and problem definition

### The status quo

#### PRISONERS' AND VICTIMS' CLAIMS ACT 2005

1. The PVC Act has two main features. First, it restricts the circumstances in which the courts can award compensation to persons under the control or supervision of the State (prisoners) for breaches of their rights.<sup>1</sup> The court must first consider remedies other than compensation when dealing with a claim by a prisoner for a rights breach. The court must also consider whether the complainant has made reasonable use of the complaints procedures available to them. These restrictions are intended to ensure that compensation is reserved for exceptional cases and awarded only if, and only to the extent that, it is necessary to provide effective redress.
2. Secondly, the PVC Act contains a simplified process for victims of a prisoner to make claims against compensation payments before anything is paid to the prisoner (the victims' claims process). Compensation awarded by a court or paid pursuant to a settlement agreement must be paid into the victims' claims trust account following disbursements to pay legal aid debt, reparations owed by the prisoner or any previous awards to victims. Victims of the prisoner then have six months to file a claim against the prisoner under the victims' claims process.
3. The PVC Act was introduced following the early *Taunoa* proceedings. In *Taunoa*, five prisoners were awarded compensation for breaches of their human rights while they were subject to the Behaviour Management Regime (BMR) operating at Auckland Prison between 1998 and 2004. A large number of other prisoners also filed claims either before or after the *Taunoa* judgments. The PVC Act responded to community concerns that offenders should not receive financial compensation for wrongful treatment without first having to redress the harm they had caused to their victims.
4. The PVC Act contains two sunset clauses that are due to take effect on 1 July 2012. The first provides for the expiry of the restrictions on compensation. The second provides a cut-off date for compensation awarded to prisoners to be subject to the victims' claims process. The sunset clauses were originally due to come into effect on 1 July 2007. They have been extended twice since – in 2007 and again in 2010.

#### THE GOVERNMENT'S REDIRECTION POLICY

5. Cabinet has agreed to make the existing provisions of the PVC Act permanent, but redirect compensation remaining after the victims' claims process to fund general services for victims from 1 July 2012 (the redirection policy). This is in accordance with the National Party's 2008 Policy on Victims of Crime. A Regulatory Impact Statement was completed in relation to that policy and published on the Ministry of Justice's website. The impacts of that policy are therefore not discussed again here.

---

<sup>1</sup> The PVC Act defines a person under control or supervision as: a prisoner; a person subject to a community-based sentence, a person subject to home detention or serving a sentence of imprisonment on home detention; a person subject to conditions such as parole; or a person subject to an extended supervision order. The term also applies to persons held on remand (whether held in prison or in Police cells); a person arrested and detained under the Armed Forces Discipline Act 1971 pending release or trial; or a service detainee or a service prisoner. For the purposes of this document, the term "prisoners" is used as a short-hand term for all persons under the control or supervision of the State.

6. The Prisoners' and Victims' Claims (Redirection of Prisoner Compensation) Amendment Bill was introduced in Parliament on 13 October 2011 to give effect to that policy, but has not received its first reading. The Minister of Justice intends to progress the redirection policy at a later date, as there is insufficient time to progress it through its Parliamentary stages before the sunset clauses take effect on 1 July 2012.

### **The problem**

7. When the sunset clauses take effect on 1 July 2012, there will be no restrictions on the award of compensation to prisoners and no ability for victims to claim against compensation awarded. There will be a clear incentive for potential claimants to file their claims after this date.

### **Objectives**

8. The Government's objective is to maintain the current provisions of PVC Act until the redirection policy is progressed.

### **Regulatory Impact Analysis**

9. If the sunset clauses take effect and a claim is not subject to the victims' claims process, any compensation due to the prisoner would be paid directly to them. Victims would still have the option of taking civil action for compensation through the courts. However, the process of making a civil claim can be prolonged and expensive. It would also be necessary for the victim to obtain an interim "freezing" order to address the risk of a prisoner disposing of the money before the victim's claim be decided by the court.
10. An option to address the problem is to extend the PVC Act's sunset clauses for a further year, to take effect on 1 July 2013. It would be given effect by the introduction of a short, stand-alone amendment Bill, with priority to pass before 1 July 2012. This would allow the Government to progress its policy at a later date. Any claims for compensation made by prisoners before the Government's policy is implemented would be subject to the existing PVC Act regime.
11. This option maintains the current regime and therefore creates no new regulatory impacts beyond those that already exist. It also gives potential BMR claimants further opportunity and incentive to file their claims before the new, more restrictive redirection policy takes effect. This will help to ensure that the majority of BMR claims are resolved in the foreseeable future.
12. The PVC Act imposes limits on awards of compensation for breaches of prisoners' rights and therefore the right to an effective remedy under the New Zealand Bill of Rights Act 1990 (NZBORA) and various international human rights instruments. The Attorney-General's view in 2005 was that the PVC Act was consistent with the NZBORA. The PVC Act will continue to be consistent with NZBORA if it is extended, as there is no change to the substance of the regime.
13. The PVC Act is also compliant with New Zealand's obligation under the International Covenant on Civil and Political Rights to provide an effective remedy for the breach of an individual's human rights. This is because compensation remains available where it is the only effective remedy to the human rights breach suffered by the prisoner and they have met their financial obligations to the state and victims.

14. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) specifically requires that an individual subject to a human rights breach have an enforceable right to compensation. The PVC Act does not provide such a right. However, compensation may be awarded to torture victims at the discretion of the Attorney-General, and on ratifying the CAT New Zealand entered a reservation to this effect to Article 14.
15. Prison complaints and monitoring processes were enhanced following the enactment of the PVC Act. These continue to operate to ensure that prison conditions and the treatment of prisoners are at a sufficient standard to ensure that human rights breaches are avoided, and any breaches detected are addressed.

### **Consultation**

16. Due to time constraints, no consultation could be undertaken on this RIS. However, the Department of Corrections, the Ministry of Foreign Affairs and Trade, the Crown Law Office, the Treasury and the Department of the Prime Minister and Cabinet were informed.
17. Any change to the PVC Act can only be given effect by legislation. If a Bill to extend or repeal the sunset clauses is introduced and referred to select committee, the public will have an opportunity to comment on the proposals at that time.

### **Conclusion**

18. Extending the sunset clauses in the PVC Act meets the Government's objective of maintaining the PVC Act until the redirection policy is progressed. It is therefore the preferred option.

### **Implementation**

19. An amendment Bill giving effect to the preferred option will need to be passed prior to 1 July 2012 to avoid the risk that claims are filed in the period between when the sunset clauses take effect and when the Government's redirection policy is implemented
20. The Ministry of Justice's Tribunals Unit is responsible for ensuring the appropriate deductions are made from prisoners' compensation after it is awarded, and that any remaining money is paid into the victims' claims trust fund. The Tribunals Unit then coordinates the victims' claims process. The Tribunals Unit will continue to exercise these functions for as long as they are required.

### **Monitoring, evaluation and review**

21. The Tribunals Unit will continue to keep records of compensation awarded to prisoners, disbursements made, and amounts paid to victims through the victims' claims process.