



LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

Report
on the Inquiry into the
**The Victims of Crime
(Financial Assistance)
(Amendment) Bill 1998**

**Report No.2 of the
Standing Committee on Justice and Community Safety**

June 1999

Resolution of Appointment

That—

The following general purpose standing committees be established to inquire into and report on matters referred by the Assembly or, matters that are considered by the committee to be of concern to the community...

...a Standing Committee on Justice and Community Safety to examine matters related to administration of justice, legal policy and services, registrar and regulatory services, electoral services, consumer affairs, corrective, emergency and police services and fair trading and any other matter under the responsibility of the portfolio minister.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.2, 28 April 1998, p 15.

Terms of Reference

Inquire into and report on the Victims of Crime (Financial Assistance)
(Amendment) Bill 1998 by the last sitting day of June 1999.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.32, 8 December 1998, p 273.

Committee Membership

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EXECUTIVE SUMMARY

The committee consulted widely on this Bill and found a high degree of community dissatisfaction with much of its contents. While the large majority of witnesses and submitters supported the concept of the ACT establishing a Victims Services Scheme, there were strong objections to some of the specific reforms proposed for the current criminal injuries compensation scheme, particularly the removal of financial compensation for pain and suffering.

The committee acknowledges the Government's aim of reducing the overall costs of the scheme and supports to the introduction of a Victims Services Scheme. However the committee recommends significant amendments to the legislation so that victims eligible for financial compensation under the current system do not have to bear the full costs of reform.

The Government's proposed legislation if implemented would result in very few victims of crime having access to financial payments. The committee rejects the need to slash access to financial payments to the extent proposed by the Government because the arguments in favour of this were not substantiated by evidence put before the committee. The committee has instead developed a more balanced approach which accommodates the need for a Victims Services Scheme to cater for more victims than under the current system but which still allows for targeted financial payments to victims who have suffered psychological trauma.

Chapter 1 sets out the context for the inquiry and describes the objectives and main elements of the Victims of Crime (Financial Assistance) Amendment Bill 1998.

Chapter 2 provides statistical information on ACT crime rates, applications and payments made under the criminal injuries compensation scheme.

Chapter 3 provides the committee's analysis of financial issues. Three key financial issues are identified: the removal of lump sum financial compensation for pain and suffering; the eligibility for 'special assistance'; and the provision for reimbursement of expenses.

The committee accepts that in some cases, lump sum financial payments for pain and suffering should be removed but has serious concerns with the effects of the removal of financial payments for victims of very serious injuries (including sexual assault, murder and some workplace injuries). The committee does not accept that 'special assistance' will reach all those deserving of it and argues for an expansion of the provision for reimbursement of expenses to include expenses likely to be incurred and to include expenses associated with recovery from the injury. The committee argues for a better balance between financial support and other forms of support, such as counselling, for victims of crime.

This chapter also identifies the need for primary research to be conducted on the needs of ACT victims and their responses to financial payments.

Chapter 4 contains the committee's comments on the proposed Victims Services Scheme. The committee acknowledges the high level of community support for the concept of a victims assistance service and supports the establishment of this new service in principle. The committee highlights the need for more detailed information on the new service before it is finalised.

The committee also calls for the Government to defer finalising the details of the victims support scheme until the results of the evaluation of the Victorian scheme have been analysed.

Chapter 5 contains further suggestions for changes to the Bill including the removal of the requirement for compulsory counselling for some categories of victims, removal of the requirement to report to the police for some categories of victims and removal of the retrospective provision of the legislation.

Chapter 6 sets out alternative cost saving measures suggested by the committee to replace the cost-saving measures underpinning the Bill. The committee acknowledges the need to keep control of the costs of the criminal injuries compensation scheme. However, the committee does not accept that victims should have to bear the costs of inefficiencies under the current system. It therefore suggests alternative means of making this more efficient including more responsibility for employers, cost recovery from perpetrators, an increase in the criminal injury levy and a reduction in payments to lawyers.

Chapter 7 provides the committee's conclusions.

RECOMMENDATIONS

The following summary of recommendations is drawn from the text of this report. References relate to the paragraph numbers of the recommendations in the body of the report.

Recommendation 1

3.45. The committee recommends that the special assistance provision in Section 11 is amended so that all references to ‘permanent’ are removed.

Recommendation 2

3.46. The committee recommends that the Government consult directly with relevant community organisations representing seriously injured victims of crime to devise mutually acceptable wording which will:

- (i) provide financial assistance for victims of sexual assault and domestic violence; and
- (ii) ensure that victims of these crimes are not disadvantaged by the introduction of this legislation compared with the current system.

Recommendation 3

3.57. The committee recommends that the Government ensure that the Bill’s provision for reimbursement of expenses is flexible and reasonable and provides for:

- (i) ‘expenses likely to be incurred’; and
- (ii) assistance for victims’ recovery from the injury in addition to costs directly associated with the injury.

Recommendation 4

3.62. The committee recommends that, until the provision for ‘special assistance’ has been revised so it adequately targets those most seriously injured, (see Recommendation 2) the option of accessing the current system of lump sum compensation payments for pain and suffering be maintained for a small target group of seriously injured victims of crime such as :

- primary and secondary victims of sexual assault;
- secondary victims of murder; and
- workers seriously injured in the workplace (including AFP officers).

Recommendation 5

3.65. The committee recommends that the Bill require that detailed data be tabled in the Assembly about financial payments under the new legislation including;

- (i) descriptions of cases similar to the current CIC annual report;
- (ii) breakdowns of financial payments by gender, category of crime, employment status and location of crime.

Recommendation 6

3.68. The committee recommends that the Government initiate and fund primary research on the needs of ACT victims of crime, in particular, their use of financial payments and its relationship to their recovery.

Recommendation 7

4.11. The committee recommends that the draft regulations for the establishment of the Victims Support Scheme be referred to the Standing Committee on Justice and Community Safety to allow for review by the committee and further community consultation if necessary.

Recommendation 8

4.16. The committee recommends that, the Government, in implementing reforms which would establish a new ACT Victims Services Scheme based on the Victorian model, take into account the results of the evaluation of the Victorian Assistance and Referral Service.

Recommendation 9

4.23. The committee recommends that funds be set aside to monitor and evaluate the effects of the changes proposed in the Bill. An evaluation should be done by an independent consultant within two years of the reforms being passed by the Assembly. The evaluation should include the impact on victims on the removal of financial lump sum payments and the usefulness of the Victims Services Scheme.

Recommendation 10

5.9. The committee recommends that the Bill be amended so that:

- (i) involvement in the Victims Services Scheme be voluntary, and not a precondition to access to financial payments and other services; and
- (ii) within the Victims Services Scheme, victims are able to choose their own support provider.

Recommendation 11

5.13. The committee recommends that section 10 of the Bill be amended to explicitly state that financial assistance may be given in relation to a primary victim's inability to continue to perform unpaid domestic work and child care activities.

Recommendation 12

5.15. The committee recommends that section 10 of the Bill be amended to explicitly state that financial assistance will be given so that primary and secondary victims are reimbursed for financial costs for attending the trials of offenders.

Recommendation 13

5.21. The committee recommends that the police reporting requirement in section 12 of the Bill be amended so that victims of sexual assault and domestic violence are not required to report to the police as a precondition for receiving assistance.

Recommendation 14

5.23. The committee recommends that the Government explore alternative ways of encouraging victims of sexual assault and domestic violence to report to police which are not based on punitive requirements.

Recommendation 15

5.25. The committee recommends that section 16 of the Bill be amended to explicitly provide for financial assistance for funeral expenses.

Recommendation 16

5.34. The committee recommends that the Bill be amended regarding restitution hearings and appeals to guarantee that victims receive the same protection during any restitution hearings as are currently afforded to them in the Magistrates and Supreme Courts, and that offenders are not given access to private information about the victim.

Recommendation 17

5.38. The committee recommends that the Bill be amended so that the Territory is not given a general right of appearance in application proceedings. If the Government considers on reasonable grounds that an application has been falsely or fraudulently made, or is exaggerated, or if the application raises a question of law or general importance, the Territory should have the right to seek to be heard in respect of that application.

Recommendation 18

5.46. The committee recommends that the Bill be amended to remove the retrospective provisions. The provisions in the Bill should apply from the date the legislation is passed by the Assembly.

Recommendation 19

6.8. The committee recommends that the Government amend the Workers Compensation legislation to include eligibility for payments for psychological effects of injuries experienced in the workplace due to violent criminal acts.

Recommendation 20

6.9. The committee recommends that the Government ensure the Bill requires workers to exhaust all rights under Workers Compensation before being eligible for financial assistance under the new legislation.

Recommendation 21

6.14. The committee recommends that the ACT Government:

- (i) explore alternative ways of compensating police for serious injuries sustained in their work due to violent crime;
- (ii) maintain access to the ACT criminal injuries compensation scheme for AFP officers until it has either achieved a commitment from the AFP to be responsible for these payments or has established a new scheme designed specifically for police.

Recommendation 22

6.19. The committee recommends that the Government increase the amount collected under the criminal injuries levy and use it as a source of funds for the Criminal Injuries Compensation Scheme.

Recommendation 23

6.25. The committee recommends that the ACT Government take a more active role in recovering assets and funds from perpetrators of crime.

Recommendation 24

6.31. The committee recommends that the Government:

- (i) regulate legal fees so that lawyers can only receive a set fee; and
- (ii) require that the individual and total annual payments to lawyers of financial compensation money is documented in the relevant annual report.

1. INTRODUCTION

1.1. During the early 1970s, the way in which the criminal justice system has isolated and ‘forgotten’ victims began to be acknowledged. The concern for the plight of victims led to the introduction of State-funded schemes such as criminal injuries compensation and victim support services. These schemes were introduced in many jurisdictions (including the ACT), as a way of compensating victims for the State’s failure to protect them from crime, and as an attempt to assist victims to overcome the consequences of their victimisation.

1.2. Now, approximately 25 years after various jurisdictions began implementing victim compensation schemes, Governments and community groups are taking a step back and evaluating their success.

Background to the legislation

1.3. Against this background, the ACT Government announced its intention in 1997 to reform the ACT victims criminal injuries compensation scheme (CICS). In justification of this, the Government pointed to the apparent failure of the scheme to deliver adequate support to victims, and escalating costs involved in maintaining such a scheme.

1.4. In 1997, the Government released a Discussion Paper relating to the operation of the *Criminal Injuries Compensation Act 1983*.¹ This Paper was produced as a result of the Government’s concern that the criminal injuries compensation scheme was placing an unsustainable financial burden upon the Territory. The Discussion Paper canvassed various options for reform of the existing system.

1.5. In response to the proposals for reform made in the Discussion Paper, the ACT Victims of Crime Coordinator convened and chaired a Working Party to discuss issues surrounding the establishment of a comprehensive victim support service.

1.6. The Working Party produced a report which asserted that:

¹ Attorney General’s Department ‘*Reform of the Australian Capital Territory Criminal Injuries Compensation Scheme - Discussion Paper*’, July 1997.

*'the current allocation of Government and community resources to crime victims is seriously distorted and overly focussed on individualised financial packages with little or no regard to whether the trauma of criminal victimisation is actually alleviated.'*²

1.7. The Working Party proposed a program of victim support aimed at delivering a better and more effective application of current resources to numerically more crime victims, than the one currently in existence.

1.8. On 26 November 1998, the ACT Government introduced the Victims of Crime (Financial Assistance) Amendment Bill 1998. The bill includes reforms to the criminal injuries compensation scheme which are expected to result in a large reduction in lump sum compensation payments to victims and a legislative framework for the establishment of a specialist victims assistance and support agency.

Conduct of the Inquiry

1.9. On 8 December 1998, the Assembly referred the Victims of Crime (Financial Assistance)(Amendment Bill) 1998 to the committee for inquiry and report to the Assembly by the last sitting day in June 1998.

1.10. The committee advertised the inquiry in *The Canberra Times* and *The Chronicle* in January 1999 and wrote to organisations representing victims of crime inviting submissions on the Bill.

1.11. The committee received 18 submissions, and these are listed in Appendix A and summarised at Appendix B.

1.12. A public hearing was held on 13 April 1999. A list of persons who appeared as witnesses at the public hearing is at Appendix A.

1.13. The committee also held a private briefing with Ms Judith Dixon, Director of the Victorian Victims Referral and Assistance Scheme.

² Report of the Victim Support Working Party *'Victim Support in the ACT. Options for a Comprehensive Response'*, May 1998.

The Victims of Crime (Financial Assistance)(Amendment) Bill 1998

Objectives of the bill

1.14. The key objectives of the Bill are twofold: (i) to increase equity and access to support for victims of crimes; and (ii) to reduce the costs to the Territory of providing this support.

1.15. The Government explains the objectives as:

Given the high and increasing costs of the current scheme...and the large areas of unmet victims' needs as identified in the Working Party's Report, it is reasonable to conclude that the Territory is not getting 'value for money' from the scheme in the Criminal Injuries Compensation Act 1983. The fundamental challenge for the Government and the Assembly is to deliver a scheme which contains costs at an affordable level while providing better assistance to a greater number of crime victims each year.³

1.16. The Government expects that the amendments set out in the Bill will result in a decrease in payments of financial assistance in the order of \$2-3 million per annum, offset by the costs of the new Victims Services Scheme. The Government expects the net savings to the Territory from the Bill will be approximately \$1-1.5 million per annum.⁴

Contents of the bill

1.17. The Victims of Crime (Financial Assistance)(Amendment) Bill 1998 ('the Bill') contains significant amendments to the *Criminal Injuries Compensation Act 1983* and the *Victims of Crime Act 1994*. It also makes consequential amendments to the *Magistrates Court Act 1930*, the *Evidence (Closed Circuit Television) Act 1991* and the *Supreme Court Act 1933*.

1.18. The Bill, substantially alters the current Criminal Injuries Compensation Scheme, operating under the *Criminal Injuries Compensation Act 1983*.

1.19. Under the Bill, financial aid for victims of violent crimes (up to a maximum of \$50,000) is available to primary victims, related victims and eligible property

³ Submission 16

⁴ Explanatory memorandum

owners. A primary victim is a person who was injured as a direct result of a violent crime committed against them. A related victim is a close relative of a primary victim who dies as the result of a violent crime committed against them. An eligible property owner is a person whose property was damaged whilst assisting police.

1.20. Victims of crime may apply for two components of compensation:

- reimbursement of expenses reasonably incurred as a consequence of the injury and of pecuniary loss suffered as a consequence of inability to work; and
- ‘special assistance’.

1.21. In effect, the ‘pain and suffering’ provision in the existing legislation is replaced in the Bill with the ‘special assistance’ component.

1.22. A victim is only entitled to special assistance if he/she has suffered an ‘extremely serious injury’ and has obtained such assistance as is reasonably available from the victims’ services scheme.

1.23. In order to have suffered an ‘extremely serious injury’, a victim must have sustained an extremely serious and permanent impairment, loss, disfigurement, disturbance or disorder which results in a great and permanent reduction in the victim’s quality of life. The component for special assistance is set at \$30,000.

1.24. The amount awarded for financial assistance may be set off against any damages awards the victim has received, Medicare entitlements, compensation payments from other sources, and the behaviour of the victim at the time the injury was sustained. The Territory may recover any financial assistance awarded to victims if the victim subsequently receives assistance from another source.

1.25. The Bill also amends the *Victims of Crime Act 1994*, so as to provide for the establishment of a new Victims Services Scheme. The Bill enables regulations to be made which set out the funding for the scheme, eligibility and entitlements of different types of victim, the role of the Victims of Crime Coordinator and the establishment of a Victims Assistance Board. There are also provisions dealing with annual reports on the operation of the scheme, and ensuring that the services provided will be subject to the confidentiality provisions in the *Health Records (Privacy and Access) Act 1997*.

1.26. Exclusive jurisdiction to decide financial assistance applications is granted to the Magistrates Court. The Territory may apply to the Registrar of the Magistrates Court for restitution from the offender (the offender has a right of appeal against any restitution order).

1.27. The Bill amends section 437 of the *Crimes Act 1900*, allowing a victim who has suffered loss or damage to apply to the court for a reparation order against the offender before sentencing takes place.

2. CRIME IN THE ACT AND THE CURRENT SCHEME

Crime in the ACT

2.1. Compared with many other cities, Canberra is a relatively safe place. It has the lowest rate of murder, attempted murder and sexual assault in Australia, but ranks fourth highest in Australia for armed robbery and assault.⁵

Table 1: Comparison of recorded crime rate per 100,000⁶

Offence/State	ACT	NSW	SA	WA
Murder	1.29	1.75	1.55	1.67
Attempted murder	0.65	1.59	2.23	1.28
Assault	540.36	892.49	927.69	763.91
Sexual assault	31.63	74.32	82.31	88.98
Armed robbery	36.15	79.34	25.27	58.89
Unarmed robbery	37.44	121.00	57.37	59.28

2.2. In 1997/98 in the ACT, there were:

⁵ Victim Support Working Party, *Victim Support in the ACT: Options for a Comprehensive Response*, May 1998, p11.

⁶ Source: Submission 16, p4

- 351 sexual assaults reported to police
- 6 homicides and 1860 assaults (excluding sexual assaults)
- 234 robberies including 87 armed robberies
- 24,278 theft offences including 4824 burglaries.⁷

2.3. In a twelve-month period it is estimated that 8 per cent of the population experience a burglary or attempted burglary, 8,500 people experience assault and 1400 people experience sexual assault.⁸ It is estimated that only 20-30 per cent of the physical assaults are reported to police⁹ and only 10-20 per cent of sexual assaults are reported to the police.¹⁰

The Criminal Injuries Compensation Act 1983

2.4. The existing victims Criminal Injuries Compensation Scheme is set up by the *Criminal Compensation Act 1983*. Under this Act, the court may award compensation to or for the benefit of a victim with a prescribed injury, to any person who is (or was, if the victim has died) responsible for the maintenance of the victim, to any dependent of a deceased victim, or to any person who sustains prescribed property damage.

2.5. Compensation awards are made up of the following components:

- expense reasonably incurred by the injured person as a result of the injury (including costs – other than legal costs of making application)
- pecuniary loss suffered by the injured person as a consequence of total or partial incapacity for work due to the injury
- an amount that will reasonably compensate the injured person for pain or suffering resulting from the injury

2.6. Applications may be lodged with the Registrar of the Supreme Court of the Registrar of the Magistrates Court, within 12 months of sustaining the injury.

⁷ AFP *Annual Report 1997/98*, p58-60

⁸ Victim Support Working Party, op cit

⁹ ibid

¹⁰ Submission 12, p3.

Applications are determined by the Supreme Court, the Magistrates Court or the Registrar of the Supreme Court.

2.7. The Territory has a right of appearance in any proceedings on a compensation application. This is usually exercised by an appearance by the ACT Government Solicitors Office.

2.8. The current ACT scheme costs about \$15.36 per capita compared with \$13.35 per capita for New South Wales, \$2.30 per capita for Western Australia and \$7.60 per capita for South Australia.¹¹ According to the ACT Government the Territory could expect to pay out \$9.426m for the current backlog of 729 claims.¹²

Victim assistance under the current scheme

2.9. In 1997/98:

- 601 applications were made for criminal injuries compensation compared with 428 in the previous year;
- 714 applications were still outstanding at the end of the year;
- 374 compensation awards for criminal injury were made, compared with 339 in 1996/97, an increase of 10 per cent; and
- the total amount awarded was \$4,986,651¹³

2.10. The Government provided the committee with 1996/97 compensation data detailing payments by location, occupation, and type of crime and the tables on the following page are based on an extraction of this information.¹⁴ The committee analysed this information closely to when considering how financial assistance should be targeted to different groups of victims.

Table 2: 1996/97 Financial Awards by Crime

¹¹ Submission 16, p3

¹² Submission 16, p5.

¹³ ACT Government, *ACT Criminal Injuries Compensation Act 1983 Annual Report 1997/98*, pp14-15.

¹⁴ The Government claimed the 1996/97 data was more valid than the 1997/98 data because the 1997/98 data was skewed because of the large number of applications received due to the announcement that the Government would close the scheme.

Crime	Number of awards	Pain and suffering	Total award	P&S as % of total award	Average award
Armed robbery	32	\$413,000	\$429,811	96%	\$13,432
Assault	236	\$2,513,340	\$2,951,926	85%	\$12,508
Assault and robbery	13	\$115,500	\$138,483	83%	\$10,653
Assault (secondary victim)	12	\$139,500	\$155,672	90%	\$12,973
Sexual assault	21	\$597,779	\$678,745	88%	\$32,321
Burglary	6	\$67,500	\$76,246	89%	\$12,708
Other	22	\$187,500	\$229,280	82%	\$10,422
Total	342	\$4,034,119	\$4,660,163	87%	\$13,626

Table 3: 1996/97 Financial Awards by Occupation

Occupation	Number of awards	Pain and suffering	Total award	P&S as % of total award	Average award
Police officer	23	\$260,750	\$282,980	92%	\$12,303
Bar and club staff	6	\$81,000	\$91,157	89%	\$15,192
Shop assistant or shop-owner	20	\$194,500	\$215,880	90%	\$10,794
Bank staff	6	\$117,000	\$121,538	96%	\$20,256
Taxi driver	7	\$48,600	\$81,360	60%	\$11,622
Other and unknown	180	\$3,332,269	\$3,867,248	71%	\$18,512
Total	342	\$4,034,119	\$4,660,163	87%	\$11,795

Table 4: 1996/97 Financial Awards by Location

Location	Number	Average award	Total awards
Work	86	\$11,740	\$1,009,708
Club	49	\$15,082	\$739,055
Home	74	\$17,318	\$1,281,597
Street	73	\$10,715	\$782,221
School	8	\$14,622	\$116,976
Other	52	\$14,050	\$730,606
Total	342	\$13,626	\$4,660,163

Table 5: 1996/97 Financial Awards by Award Size

Award size	Number	Total paid \$\$\$
Under \$5000	46	\$181,012
\$5000-\$9,999	105	\$738,156
\$10,000-\$19,999	127	\$1,798,592
\$20,000-\$30,000	32	\$762,795
Above \$30,000	28	\$1,219,014

3. FINANCIAL PAYMENTS TO VICTIMS OF CRIME

3.1. The main financial elements of this Bill are:

- the elimination of lump sum compensation payments for pain and suffering;
- targeting of special assistance (in form of lump sum financial payments) to a small group of those most seriously injured; and
- reimbursement of expenses associated with the injury as set out in Section 10.

(1) Abolition of lump sum compensation for ‘pain and suffering’

3.2. The Government’s proposed reforms are predicated on the removal of most of the financial assistance currently paid to victims of crime because, under the new legislation, payments will no longer be made for pain and suffering and these payments comprise the bulk of financial payments made to victims.

3.3. For the financial year 1996-1997, out of a total award payout of \$4,699,571, compensation for ‘pain and suffering’ amounted to \$4,079,119, that is 87 per cent of total financial payments.¹⁵

3.4. The Government’s proposal to eliminate the pain and suffering component and replace it with ‘special assistance’, will greatly reduce the size of compensation awards. The Committee heard evidence that at least 90 per cent of victims will be ineligible to claim special assistance.¹⁶

3.5. The Government justified its removal of financial payments for pain and suffering on the grounds of:

- escalating and unsustainable costs of the current scheme;
- failure to meet the needs of most of the victim population;
- failure to meet the needs of the victims who do receive awards;
- does not address criminal justice system deficiencies; and
- is susceptible to misuse.¹⁷

¹⁵ Submission 16.

¹⁶ Transcript, p52 (ACT Bar Association)

¹⁷ Submission 9

Containing Costs

3.6. The committee heard that the costs of the Criminal Injuries Compensation Scheme are increasing, as a function of an increasing number of applications. In the 1998 calendar year, 729 applications were lodged, compared with 456 in 1997 and 333 in 1995. The 1996-1997 financial year saw \$4,699,571 awarded in relation to 342 applications. This figure increased to \$4,986,651 in the 1997-1998 financial year, awarded in relation to 374 applications.¹⁸

3.7. The committee accepts the need to contain the escalating costs of the current scheme and to target payments to those most in need. The recommendations in this report reflect this acceptance.

Access and equity

3.8. The access and equity argument also has a lot of merit and the committee supports the need to provide assistance to a greater number of victims of crime. Only a small proportion of the total number of victims of crime are benefiting under the current system and additional measures are needed to meet needs of other victims including non-financial needs of victims.

3.9. However, this laudable objective should be carefully balanced with effective targeting of those most seriously injured. The ACT Law Society has drawn attention to the dangers of spreading the benefits 'too widely and thinly' and 'not reaching the real victims of crime.'¹⁹ The committee urges caution when attempting to apply equity principles to a category of people which includes such a diversity of experiences and needs.

The needs of current award recipients

3.10. The Government has made strong claims, in support of its Bill, that the needs of current recipients of awards are not being met.

3.11. The question of whether lump sum financial payments assist victims recover is critical. It is also controversial. The committee could not help but notice the strong contradiction between the Government's claims about financial assistance and statements from witnesses representing lawyers, victims support groups and community groups. Every witness who appeared before the committee with the exception of Government representatives and the Victims of Crime Coordinator rejected the Government's arguments justifying the removal of substantial amounts of financial compensation from victims.

¹⁸ 1997-1998 Annual Report for the Criminal Injuries Compensation Act 1993

¹⁹ Submission 8

3.12. The Government quoted psychiatrists who were sceptical about the benefits of financial compensation.²⁰ The committee also heard conflicting evidence from Dr Bruce Stevens, a clinical and forensic psychologist in private practice in the ACT. Dr Stevens agreed with the suggestion, put to him by the Chair, that cash payments, in conjunction with other forms of support, can play an important role in the recovery of a victim.²¹

3.13. One of the arguments put in support of maintaining pain and suffering payments is that victims feel they have received official recognition that they have suffered. The Committee heard that lump sum payments, especially the component for pain and suffering, have an important symbolic value to many victims of crime. To many victims, the payment represents recognition that they were wronged by a member of society through no fault of their own, and that society acknowledges their trauma. This acknowledgment is often the first step in the process of closure and recovery.²²

3.14. The committee found there was no conclusive research which clarifies whether it is the experience of hearing a judge make an award, or the official nature of the compensation payment, which gives the victims the feeling that the State has acknowledged the victim's experience.

3.15. The issue of 'pain and suffering' compensation is of particular significance for victims of sexual assault (and especially survivors of child sexual assault) and domestic violence.²³ For the relatively small number of sexual assault victims who are able to overcome their trauma enough to enable them to participate in the Criminal Injuries Compensation Scheme, pain and suffering compensation represents acknowledgment by the State of the horrendous violation which these victims have suffered.

3.16. The committee also heard that the removal of lump sum financial payments will impact negatively on the poorer and under-privileged members of our society. Legal Aid informed the committee that the reforms:

*effectively deprives many economically and socially disadvantaged
Canberrans from compensation for injuries arising from criminal acts by
shifting the community response from financial assistance to service
delivery or disentitlement.*²⁴

3.17. The committee found some of the arguments used by the Government to justify removal of financial payments contained logical flaws. The Government informed the

²⁰ Submission 9

²¹ Transcript, p41

²² eg Submission 12

²³ Transcript and Submissions 8, 11, 12 and 14

²⁴ Submission 3, p2

committee that in 1996/97 only 18 out of the 342 awards made went to victims who had been raped but in the same period 1500 contacts were made with Canberra Rape Crisis.²⁵ And only 17 awards were made to victims of spousal abuse while the Domestic Violence Crisis Service had some 6000 calls and 1300 face to face contacts with victims.²⁶ The Government claims that ‘these figures prove that the vast majority of these types of victims of violence prefer to use treatment and assistance services where they are available rather than applying for money.’²⁷ The committee does not accept that this information proves the Government’s hypothesis. It may be that these victims feel they would not be entitled to compensation, or they are too emotionally scarred or they may be unaware of the compensation scheme.

3.18. The committee had difficulty accepting the Government’s claim that financial payments are not justifiable because victims who use compensation schemes are in general less satisfied than victims who do not. This claim was based on research by Professor Fattah. The committee examined the research which Fattah referred to and found the following reasons for victim dissatisfaction with Criminal Injuries Compensation Schemes. These were delays, inconveniences, poor information, inability to participate, and restrictive eligibility requirements. Fattah concludes:

While paying lip service to the victims’ cause, politicians show no genuine commitment to the schemes, are reluctant to allocate sufficient funds to them and allow them to operate only within a strictly preset budget.²⁸

3.19. The committee concluded there was no evidence to link victim dissatisfaction with the availability and receipt of financial payments. Victim dissatisfaction appears to be linked, instead, with inadequacies in the compensation schemes.

Criminal justice system deficiencies

3.20. Anecdotal evidence given by Dr Freckelton and the Law Society claimed that lump sum compensation payments encourage victims to report crimes and cooperate with police. Dr Freckelton suggested that lump sum compensation acts as a ‘hook’ which draws victims into the system, exposing them to financial and non financial options for rehabilitation.²⁹

3.21. The AFPA also drew attention to the link between the availability of financial compensation payments for sexual assault victims (both male and female) and their willingness to make complaints to the police and give evidence in court. The AFPA

²⁵ Submission 16, p7.

²⁶ *ibid*

²⁷ *ibid*

²⁸ Fattah E, ‘from a Handful of dollars to tea and sympathy: the sad history of victim assistance, p5.

²⁹ Submission 8

predicted fewer sexual assault victims would go ahead with police complaints about paedophiles under the proposed legislation.³⁰

Misuse of the system

3.22. The committee heard evidence that there is a common perception that the Criminal Injuries Compensation Scheme is vulnerable to vexatious and frivolous claims.

3.23. Various submitters addressed this issue, denying that there is undue, systemic rorting of the system. Both Dr Freckelton and the Women's Legal Centre asserted that there is no clear evidence that the system is routinely rorted.³¹ What are sometimes seen as excessive compensation payments for psychological trauma are in fact appropriate payments for injuries which are often all pervasive and indirect. The way in which victim's injuries and award payments are depicted in the media is not necessarily an accurate reflection of victims' experiences.

3.24. The committee agreed with the witnesses who pointed out that the characterisation of the 'burning front mat' case as a rort indicates a distortion of the facts designed to justify cost-cutting of the scheme.³² It indicates a lack of understanding of how criminal behaviour which appears minor can lead to severe psychological trauma.

3.25. The Government gave evidence that at least 90 per cent of Criminal Injuries Compensation Scheme claims are settled between the Government Solicitor and the applicant's legal representative out of court. The committee assumes that if the Government Solicitor has agreed to a compensation sum, presumably they have established that the sum is appropriate under the circumstances.

3.26. The committee also heard rebuttal of claims that police 'double dip', receiving compensation from both Comcare (or workers' compensation schemes) and the Criminal Injuries Compensation Scheme. The AFP Association strongly denied that this occurs, claiming that police officers only access the Criminal Injuries Compensation Scheme if they cannot receive assistance elsewhere.³³

3.27. The committee did not find any evidence of rorting of the system and does not accept this is a justification for cutting financial payments.

3.28. In summary, the committee accepts the Government's proposal to remove the provision of compensation payments for pain and suffering for the **majority** of

³⁰ Transcript, p17.

³¹ Transcript p48

³² Transcript , p24-5 and p 48.

³³ Submission 4

victims eligible under the current system. This proposal is justified on the grounds of cost-effectiveness, to improve access and equity, and to facilitate the rehabilitation of victims of crime. It is not justifiable on the other grounds put forward by the Government.

(2) Eligibility for ‘special assistance’

3.29. In order to qualify for special assistance, a victim must be suffering from an ‘extremely serious injury’, as defined by section 11 of the Bill. The essence of the definition is that the injury must result in an extremely serious and permanent impairment, loss, disfigurement, disturbance or disorder which results in a great and permanent reduction in the victim’s quality of life.

3.30. It is unclear exactly how this circular definition will operate in practice. There are no objective criteria set out in the legislation for judging whether or not a victim’s injury is extremely serious. The only non-subjective word is permanent. Even so, it is not readily apparent on what grounds a court is to find that someone will experience a permanent reduction in ‘quality of life’.

3.31. The legislation is silent on who will assess victims. Will this be done by a medical expert, or by the court on the basis of medical reports? If it is done by a medical expert, will this be the same court appointed official in each case, or can victims select their own professional to evaluate the permanency of their injury and its effect on their quality of life?

3.32. The committee received numerous objections to the requirement that victims demonstrate their injury is ‘permanent’ before being eligible for financial assistance.³⁴

3.33. In giving evidence to the Committee, Dr Frecklton suggested that:

it would be a very rare mental health practitioner...who would be say properly to you (sic), ‘This person is profoundly damaged right now. They’re unable to work. They’re not functioning in the community. They’re not even functioning properly in their home and it is always going to be so.’ It is a gloomy prospect indeed for any mental health practitioner to say, ‘Whatever we do, this is going to be permanent’, and so what this essentially means, as you have suggested, is that a person with a genuine disabling condition, having a profound impact on every aspect of their functioning, will not get in through that category, so there will not be money at all.’³⁵

³⁴ Those who objected to the definition of ‘extremely serious injury’ included the Bar Association, ACT Legal Aid, Australian Federal Police Association (ACT Branch), the Women’s Legal Centre, Canberra Rape Crisis, VOCAL and the Domestic Violence Crisis Service.

³⁵ Transcript, p40

3.34. All of the sexual assault victims compensated in 1996-1997 suffered from psychological injuries. The very nature of sexual assault means that, in the majority of cases, the physical trauma experienced may be minimal, or temporary. Sexual assault strikes at the psychological and emotional wellbeing of victims. The after affects of a sexual assault may be extremely traumatic, intense and pervasive in a victims life. However, they are not necessarily 'permanent'.

3.35. There was a general consensus from groups giving evidence at the public hearing, that the vast majority (perhaps all) of sexual assault victims will NOT qualify for special assistance. If this is true, it means that the size of awards to victims of sexual assault will be very small. With the abolition of payment for 'pain and suffering', sexual assault victims (and all other victims) can only be compensated for direct financial expenses which occur as the result of their injury. These expenses must be proven, or it must be possible to anticipate at the time of the hearing reasonable future expenses which may be incurred. There is no provision for a lump sum payment which acts either as recognition of the suffering of the victim, or serves as a resource with which to face future repercussions of the sexual assault.

3.36. This may exacerbate the perception amongst victims that the financial assistance given is not enough to justify the process of reporting the sexual assault to the police, or applying for a compensation award. As mentioned earlier, for sexual assault victims, lump sum payment represent something other than money with which to pay medical bills associated with their injury. The committee heard that lump sum compensation is a symbol of the Territory's acknowledgment of the violation which the victim has experienced and the way in which it has impacted upon the victim's life. This impact may not necessarily take the form of a permanent mental disturbance or disorder, but it may be extremely negative, intrusive and ongoing all the same.

3.37. The Government claims that:

The Committee should note that the majority of awards under the current scheme of \$30,000 or more are for victims of sexual assault who have sustained severe psychological injuries. The Government specifically had in mind the victims currently at the high end of the scale when developing the 'extremely serious permanent injury' test.³⁶

3.38. The committee does not understand how the Government can claim that this provision is designed for victims of murder (secondary victims) and sexual assault when the permanency aspect so clearly excludes many of these victims.

3.39. The committee could not reconcile the Government's stated objective of targeting financial assistance to sexual assault victims with the wording of the legislation providing for special assistance. The Government appears to recognise

³⁶ Submission 16

that that while the Victims of Crime (Financial Assistance) Amendment Bill 1998 is aimed at facilitating rehabilitation for victims of crime, the inclusion of 'permanent injury' as a means of meeting the needs of sexual assault victims recognises that some of these victims may not attain full rehabilitation. But it also excludes eligibility for financial payments by some victims of sexual assault who cannot prove permanent injury.

3.40. The Government explained that the wording of the special assistance eligibility conditions was based on a provision in the Victorian accident compensation legislation aimed at focussing payments to target groups. The Government looked at Victorian case law which showed that "in order to limit the special assistance payment of \$30,000 to the 'target cases', the proposed legislation must be absolutely specific as to the seriousness of the injury, the duration of its effects and its impact on the victim."³⁷

3.41. The committee also has reservations about the inflexibility in amounts of financial assistance available to victims of serious injury with the legislation prescribing a standard \$30,000 payment. The current system includes more flexibility for the court to decide the amount to be paid. In 1996/97 payments for sexual assault ranged from \$15,000 to \$80,142.³⁸ The Government may be better advised to retain the flexibility of the current scheme and allow for some victims to be paid more than \$30,000 and some to be paid less.

3.42. The committee is strongly of the view that the requirement in the Bill that victims must demonstrate 'permanent' psychological damage to be eligible for financial assistance should be removed.

3.43. The committee also suggests the Government consult directly with relevant organisations (such as VOCAL, Canberra Rape Crisis, the Domestic Violence Crisis Service and Women's Legal Service) to devise mutually acceptable wording which will cater properly for seriously injured victims of crime including victims of sexual assault and domestic violence. While most awards for sexual assault under the current system are at the high end of the scale, clearly indicating the seriousness of the injuries sustained, the awards for domestic violence range from around \$5,000 to around \$45,000.³⁹ The committee believes the most serious cases of domestic violence should be identified as eligible for special assistance.

3.44. The committee accepts the Government's objective to target financial payments to those suffering the most extreme injuries but does not accept the way it has chosen to achieve this.

³⁷ *ibid*

³⁸ *ibid*

³⁹ ACT Criminal Injuries Compensation Act 1983, Annual report 1996/97.

Recommendation 1

3.45. The committee recommends that the special assistance provision in Section 11 is amended so that all references to ‘permanent’ are removed.

Recommendation 2

3.46. The committee recommends that the Government consult directly with relevant community organisations representing seriously injured victims of crime to devise mutually acceptable wording which will:

- (i) provide financial assistance for victims of sexual assault and domestic violence; and**
- (ii) ensure that victims of these crimes are not disadvantaged by the introduction of this legislation compared with the current system.**

(3) Reimbursement of expenses associated with the injury

3.47. The Government has included a provision in the Bill for reimbursement of expenses:

10 (1) On application by a primary victim who has sustained a criminal injury, the court may, by order, award financial assistance to the victim in an amount equal to the sum of the following amounts:

- (a) the expense reasonably incurred by or on behalf of the victim as a consequence of the injury*
- (b) the pecuniary loss suffered by the victim as a consequence of total or partial incapacity to work due to the injury;*
- (c) the expense incurred in making the application for financial assistance, other than by way of fees paid to a legal practitioner;*
- (d) if the victim is entitled to special assistance for or on behalf of the victim in an amount of \$30,000.*

3.48. The committee considered this provision has the potential to provide for appropriate levels of financial assistance for victims to cover costs associated with their injuries including their recovery from the injuries but it appears to be too restrictive as it is currently worded.

3.49. The committee's first area of concern relates to whether it will cover future costs. While the Government has indicated "the concept of 'reasonable expenses' is also not limited to past expenses but can cover future expenses as well"⁴⁰ the wording in the legislation and the explanatory memorandum clearly states 'reimbursement incurred'.⁴¹ The committee notes that the Victorian legislation explicitly refers to expenses 'likely to be incurred.'

3.50. The committee's second area of concern relates to uncertainty about what items will be covered by the provision. The explanatory memorandum gives examples of medical expenses not covered by Medicare, travelling expenses to medical appointments, and relocation expenses.⁴² The Government submission adds examples such as the cost of installing a security system and retraining "if a person's injury requires them to retrain for another position".⁴³

3.51. The committee envisages this provision should be flexible enough to encompass financial payments of a much broader range of items/services which will assist the victim's recovery. It should not be narrowly limited to costs incurred due the injury. For example, would a 25 year old male who had endured 10 years of sexual and physical abuse by a family member as a child who had suffered psychological injuries for years afterward affecting his ability to study for professional qualifications, be entitled to financial assistance for tertiary fees for a law degree? Would a middle-aged woman who had experienced years of domestic violence be given financial assistance to buy a red coat if that was what she believed would help her recover? Are people entitled to reimbursement for counselling fees incurred for counselling received outside the Victims Services Scheme?

3.52. The Victorian provision is:

8(3)In exceptional circumstances, there may also be included in the amount awarded to a primary victim within the limit set by sub-section (1) an amount for other expenses actually and reasonably likely to be incurred, by the primary victim to assist his or her recovery from an act of violence.

3.53. The Victorian provision is limiting in that it specifies 'exceptional circumstances' but it appears to be broader than the ACT legislation in that it includes expenses 'likely to be incurred' and relates these payments to 'recovery' from an act of violence.

⁴⁰ Submission 16, p11

⁴¹ Victims of Crime (Financial Assistance) Amendment Bill 1998 Section 10(1) (a) and Explanatory memorandum p8.

⁴² Explanatory memorandum, p8

⁴³ Submission 16, p11

3.54. The committee heard anecdotal examples of how this provision has been used in Victoria⁴⁴ but was unable to obtain information on the public record about the numbers of people who have benefited from this provision and the total amount paid out because the Victorian Government does not publish this information. Despite this limited information, the committee was impressed with the potential flexibility of this provision.

3.55. The committee strongly recommends that the ACT's new scheme should be less restrictive than the Victorian system, by not confining this form of assistance to 'exceptional circumstances'. It should also explicitly recognise expenses 'reasonably likely to be incurred' in addition to those reasonably incurred and link assistance to 'recovery from the injury' in **addition** to costs directly related to the injury.

3.56. The committee has accepted the removal of lump sum financial payments for pain and suffering for most categories of victims of crime with the understanding that section 10(1) would provide a flexible means of targeting financial assistance to assist the recovery of different victims of crime. Evidence provided to the committee indicates that different victims will have very different needs and some of these may be difficult to identify with. It is imperative that the legislation provides a flexible means of accommodating diverse and unusual requests. In the committee's view, this provision should be designed to be used, not just limited to extraordinary circumstances.

Recommendation 3

3.57. The committee recommends that the Government ensure that the Bill's provision for reimbursement of expenses is flexible and reasonable and provides for:

(i) 'expenses likely to be incurred'; and

(ii) assistance for victims' recovery from the injury in addition to costs directly associated with the injury.

A better balance between financial payments and other assistance

3.58. The committee found that financial payments are beneficial for some victims of crime on symbolic, therapeutic and practical grounds. The committee therefore does not support reductions in the availability of financial payments to victims of crime to

⁴⁴ Private briefing with Judith Dixon, 17/5/99

the extent proposed by the Government. To date, there is no objective, conclusive research supporting such a radical reduction and anecdotal evidence from a range of witnesses, including victims of crime, demonstrated that financial payments can be of therapeutic value to many victims who have received them.

3.59. The committee would like to see a better balance between financial payments and other forms of assistance. The committee believes that financial payments for psychological suffering should still be available under the new system but should be better targeted.

3.60. The Government has targeted ‘the most seriously injured victims and relatives of deceased victims’ in its Bill by allowing them access to ‘special assistance’. But these victims may only access special assistance if their injury is permanent and they have little chance of recovery. The committee agrees that financial assistance should be targeted to the most seriously injured. The committee does not agree that financial assistance should be limited only to the most seriously injured who will not recover. This means that a small category of seriously injured victims who may need financial assistance for their recovery will not have access to the financial assistance and will not recover.

3.61. The committee has identified a small category of seriously injured victims of crime who would be adversely affected by the narrow eligibility criteria to qualify for special assistance. To alleviate this adverse impact, the committee proposes that victims of sexual assault, murder and violent crimes in the workplace continue to have access to lump sum financial payments for pain and suffering as they do under the current system.

Recommendation 4

3.62. The committee recommends that, until the provision for ‘special assistance’ has been revised so it adequately targets those most seriously injured, (see Recommendation 2) the option of accessing the current system of lump sum compensation payments for pain and suffering be maintained for a small target group of seriously injured victims of crime such as :

- **primary and secondary victims of sexual assault;**
- **secondary victims of murder; and**
- **workers seriously injured in the workplace (including AFP officers).**

Transparency of financial payments

3.63. The committee made good use of the data on financial payments under the current scheme. This data includes descriptions of cases of all financial awards made under the CIC in the *Criminal Injuries Compensation Act 1983* annual reports and data on financial payments which categorised payments by type of crime, location, employment status etc.⁴⁵ However, the committee encountered difficulties obtaining similar information on financial payments made in Victoria. The Victims Assistance and Referral Service is yet to produce an annual report and the Victorian Victims Crime Assistance Tribunal's annual report does not provide breakdowns of data by category of crime or by financial payments made under section 8(3) of the Victorian legislation.

3.64. The committee would like to see stronger provisions in the ACT legislation relating to transparency of financial payments. This will enable the Assembly to track any adverse impact of changes contained in the Bill.

Recommendation 5

3.65. The committee recommends that the Bill require that detailed data be tabled in the Assembly about financial payments under the new legislation including;

- (i) descriptions of cases similar to the current CIC annual report;**
- (ii) breakdowns of financial payments by gender, category of crime, employment status and location of crime.**

Need for further research

3.66. The committee has some concerns that the needs of victims in the ACT have not been properly identified through ACT-specific research. International research on victims' needs does not provide clear-cut evidence. This is especially the case in relation to the efficacy of financial payments. The Government made claims that financial payments do not assist victims recover but these claims were not substantiated by hard evidence.

⁴⁵ Submission 16

3.67. The Victorian Government has conducted some research on victims needs using surveys of victims who reported crimes to the police and a phone-in for victims.⁴⁶ The committee would like to see similar research conducted in the ACT before legislation changing the entitlements for victims is enacted. ACT-specific research is needed because:

- ACT victims may have different characteristics, needs and preferences to victims from other jurisdictions- (for example we already know they apply for the criminal injuries compensation at a higher rate than other jurisdictions but other factors may also distinguish them); and
- victim organisations cannot be presumed to always represent the views of all victims and it is therefore important to try to seek the views of individual victims.

Recommendation 6

3.68. The committee recommends that the Government initiate and fund primary research on the needs of ACT victims of crime, in particular, their use of financial payments and its relationship to their recovery.

⁴⁶ Victorian Community Council Against Violence, *Victims of Crime: Inquiry into Services*, November 1994.

4. THE VICTIMS SERVICES SCHEME

4.1. The Bill provides for the establishment of a 'Victims Services Scheme'. The details of this scheme will be contained in regulations, which being drafted by a Steering Committee, which is also developing the tender specifications for the new agency. Membership of the Steering Committee is made up of representatives from the Courts, the Australian Federal Police, the Department of Health and Community Care, the Workplace Injury Prevention and Management Unit, the Victims of Crime Coordinator and Dr Sandi Plummer.⁴⁷

4.2. The Victims of Crime Coordinator gave evidence to the committee on the inadequacy of the current system to adequately assist the majority of crime victims in the ACT. Referring to the findings of the Victim Support Working Party, Ms Holder encouraged the Committee to emphasise the desirability of looking at wide reaching policies and programs to address the needs of victims.⁴⁸

4.3. The Victims of Crime Coordinator claims that the 'current system is also inequitable and inaccessible in that it appears blind to those sections of the population that research repeatedly shows to be the most victimised by crime'. Those sections are children and young people, indigenous people, men aged 16-24 years, and people on low incomes, especially single-adult households.⁴⁹

4.4. There are 35,000 incidents of crime reported to police every year in the ACT. These break down to approximately 32,000 property offences and 2,200 person offences. This number would be substantially increased by the numbers of unreported crimes. Only about 25 per cent of the total potential pool of crime victims access non-government support agencies each year.⁵⁰ In 1996-97, only 342 victims received direct assistance (in the form of a Criminal Injuries Compensation Scheme award) from the Government. The aim of the Victims Services Scheme is to assist those victims who are currently isolated from the system.

4.5. The committee acknowledges the unmet need for ACT victims of crime. This includes the non-financial needs of victims who have received financial payments as well as the broad range of needs of that large group of victims who have received no assistance under the current scheme.

⁴⁷ Submission 16

⁴⁸ Victim Support Working Party, *Victim Support in the ACT - options for a comprehensive response* (May 1998).

⁴⁹ Submission 17

⁵⁰ *ibid*

4.6. Some witnesses appearing before the committee indicated strong support for the scheme, although they did not support its introduction being linked with reductions in financial payments and the elimination of lump sum compensation for pain and suffering.⁵¹

4.7. However, many community representatives expressed concern about the lack of detail available about the service.⁵² The following questions, raised in various submissions, remain unanswered by the Government:

- How will the Board be established, what will its powers be, who will be on it?
- How will the scheme work? (eg, will it be a voucher system, as exists in Victoria)?
- How will the scheme be funded?
- How will there be the flexibility for victims to choose their own support/medical practitioners?
- Can victims receive alternative therapies including massage, acupuncture, naturopathy etc?
- Will there be limits on how much counselling and other services one victim can obtain and what will these limits be?
- How will existing services be affected by the new scheme? Will funding to community groups and existing services be dependent on involvement in the scheme?
- What are the accountability and appeal mechanisms?

4.8. One major issue of concern for those providing evidence to the committee is what the limit will be for counselling/rehabilitation services provided by the Victims Services Scheme. The limit in Victoria is for 5 sessions. The committee envisages that a small number of victims suffering very serious psychological effects in the aftermath of a violent crime may require 20 or 30 sessions. The committee received evidence from the Australian College of Clinical Psychologists that a maximum of 20 hours treatment as proposed under the ACT legislation would be inadequate for a person suffering Post Traumatic Stress Disorder.⁵³ The committee is of the view that some flexibility should be retained so treatment hours are not strictly limited for those suffering extremely serious psychological injuries.

⁵¹ eg VOCAL, Canberra Rape Crisis

⁵² eg ALP Status of Women Committee.

⁵³ Submission 5, attached letter from Leigh Nomchong, Director, National Executive, Australian College of Clinical Psychologists.

4.9. The Government has assured the Committee that there will be consultation with victims groups about the draft regulations and draft tender specifications once they are completed.

4.10. Because the committee has witnessed such strong community objections to the Government proposals in the Bill, the committee would like to maintain an ongoing role in monitoring the development and implementation of the Victims Services Scheme to ensure full community consultation on the details of the victims support scheme. The committee could undertake to complete this work within a short time frame, for example one month, so as not to cause undue delay in the implementation of the Government's reforms.

Recommendation 7

4.11. The committee recommends that the draft regulations for the establishment of the Victims Support Scheme be referred to the Standing Committee on Justice and Community Safety to allow for review by the committee and further community consultation if necessary.

Incorporate Evaluation of Victorian Model in ACT planning

4.12. The committee understands that the legislation being proposed for the ACT is based on the Victorian model. Victoria has pioneered the abolition of pain and suffering payments and established a similar scheme to that proposed for the ACT. The Victorian Government has been able to reduce expenditure on victims of crime from \$40million to \$9million since it introduced new legislation.⁵⁴

4.13. The Victorian Victims Assistance and Referral Scheme is currently being evaluated and initial results are expected to be released in August or September 1999.⁵⁵ This evaluation is expected to include the views of victims on the removal of lump sum compensation for pain and suffering and their responses to the new Victims Assistance and Referral Scheme. The evaluation should enable information on the number of victims receiving assistance under section 8(3) and the total amount received to be made public.

⁵⁴ Private briefing with Ms Judith Dixon, Director of the Victorian Victims Assistance and Referral Scheme, Monday 17 May 1999.

⁵⁵ *ibid*

4.14. While the committee received strong positive evidence from the CEO of the Victorian Assistance and Referral Service it also received some negative comments about the changes in Victoria from witnesses.⁵⁶

4.15. The committee strongly suggests that the ACT Government take into account the results of this evaluation before making changes to entitlements and services for ACT victims of crime based on the Victorian model. In the committee's view, it would be better to wait a few months and implement a new and improved model rather than insist on pushing through a model based on limited and anecdotal information.

Recommendation 8

4.16. The committee recommends that, the Government, in implementing reforms which would establish a new ACT Victims Services Scheme based on the Victorian model, take into account the results of the evaluation of the Victorian Assistance and Referral Service.

Funding of the Victims Services Scheme

4.17. The committee questions some of the financial assumptions made by the Government in relation to this Bill.

4.18. The Government has estimated that the new victim's services scheme will cost around \$1 million annually, calculated with reference to usage rates for similar schemes in other Australian and overseas jurisdictions. The Committee questions the basis on which the Government anticipates that the ACT will experience the same or similar usage rates as these other jurisdictions. Considering the ACT's 'take-up rate' for the current compensation scheme in 1997 was 38 per cent, compared to 13-17 per cent in NSW,⁵⁷ it seems perfectly feasible that the take up rate for the new Victims Services Scheme may also be greater in the ACT than in other jurisdictions. Therefore, the Victims Services Scheme may in fact cost more than anticipated.

4.19. What will happen to the compensation scheme if the Victims Services Scheme fails to provide an adequate level of support? The Government has indicated the service will be tendered out so presumably this will be linked with a finite amount of funding. In this scenario, the amount of financial assistance available will have been

⁵⁶ eg negative comments received from ACT Law Society, ACT Bar Association, Australian Society of Labor Lawyers, Women's Legal Centre, Australian Plaintiff Lawyers Association and Dr Ian Freckelton.

⁵⁷ Submission 9

reduced and the alternative support is inadequate, which means that victims in the ACT could be worse off than under the current scheme.

4.20. The committee was reassured to some extent by the evidence given to the Committee by the Attorney General, Mr Gary Humphries, that the Victims Services Scheme would be funded on a needs basis but remains to be totally convinced how this will be implemented.⁵⁸

4.21. In the committee's view, the Government's aim of achieving net savings of \$1m-\$1.5m may be unrealistic, especially in the short term. The committee considers that all of the recommendations in this report could be implemented with a cost-neutral outcome. We could have some rationalisation of the Government expenditure on direct financial payments to victims of crime together with the establishment of the Victims Service Scheme at approximately the same expenditure under the current system.

Evaluation of the Victims Services Scheme

4.22. The committee accepts the recommendation of the Victims of Crime Coordinator that the system should be monitored and evaluated to ensure it is meeting the needs of victims. Obviously funds will need to be set aside for this purpose.

Recommendation 9

4.23. The committee recommends that funds be set aside to monitor and evaluate the effects of the changes proposed in the Bill. An evaluation should be done by an independent consultant within two years of the reforms being passed by the Assembly. The evaluation should include the impact on victims on the removal of financial lump sum payments and the usefulness of the Victims Services Scheme.

⁵⁸ Transcript, p76.

5. FURTHER SUGGESTED CHANGES TO BILL

5.1. This chapter highlights the specific parts of the legislation which will need amendment. Each issue is considered in the order in which it appears in the bill, rather than the order of importance.

Section 10-Compulsory use of Victims service

5.2. The committee received many representations from witnesses and submitters objecting to what they interpreted as the compulsory counselling requirement set out in section 10.⁵⁹ This specifies that:

10(2) Special assistance for a primary victim may only be awarded by the court if-

- *the criminal injury is an extremely serious injury; and*
- *the victim has obtained such assistance from the victims services scheme as is reasonably available unless the person is physically incapable of benefiting from the scheme.*⁶⁰

5.3. The AFPA advised that they already have access to services such as medical expenses and counselling so would not access the new service.⁶¹

5.4. This requirement is especially inappropriate for victims of sexual assault. Firstly they already have access to excellent counselling services. Secondly, whilst it is commonly accepted that counselling can be highly beneficial for a large number of crime victims, it is by no means conclusively proven that counselling is the appropriate, or only, means of rehabilitating every victim of sexual assault.

5.5. The provision of counselling is to be applauded and supported, but not if it is compulsory, and not if it is the expense of other, possibly just as valid, means of rehabilitating the victims.

5.6. Of considerable concern to the committee is the lack of research into the necessity and effectiveness of providing counselling to all victims of crime, including sexual assault victims. The Government has quoted Fattah's criticisms of the compensation system but the committee notes that Fattah has also expressed some hesitation in giving wholehearted support to victim assistance programs. According

⁵⁹ eg AFPA, Canberra Rape Crisis, ALP Status of Women Committee

⁶⁰ Victims of Crime (Financial Assistance) Amendment Bill 1998

⁶¹ Submission 4, p2

to Fattah, research has shown little indication that counselling of any sort is effective in reducing post crime trauma, primarily because little research has been done to establish which forms of treatment do and do not work. What has been shown is that if intervention is not done properly, it can actually prolong the trauma of victimisation.⁶²

‘Telling victims of incest, rape, sexual assault, or other types of victimisation, that the effects are disastrous, nefarious, too serious, too traumatic, long lasting, etc, and telling them that they can not cope on their own, without the help of professionals can become a self fulfilling prophecy’⁶³ Intervention with victims, victim therapy, widely regarded as being in their best interest, as necessary, beneficial and commendable can too have adverse, unanticipated ill effects. This is perhaps the saddest aspect of victim support, the possibility that those who are genuinely trying to help victims may inadvertently end up by hurting them.’⁶⁴

5.7. The Victims of Crime Coordinator also recommended that counselling should not be compulsory.⁶⁵ However the Victims of Crime Coordinator referred to research emerging from the United States which indicates that a support and rehabilitation response to crime victims is effective in assisting recovery in the vast majority of cases. This research indicates that the following treatment and support approaches are beneficial to victim recovery:

- practical and supportive early interventions;
- protective and security/safety oriented assistance;
- short-term counselling that emphasises cognitive behavioural therapy;
- interventions that acknowledge an individual’s personal and social networks; and
- specific therapeutic treatment for on-going PTSD and depression disorders for the specific proportion of crime victims suffering such effects over the longer term.

5.8. In light of these conflicting opinions, the Committee is reluctant to support section 10(2)(b) of the Bill, which states that victims may seek special assistance only if they have obtained reasonable assistance from the Victims Services Scheme. The Committee is concerned that there will be an element of coercion if all victims of crime are referred to the Victims Services Scheme when seeking financial assistance. If the Victims Services Scheme provides a good service to victims of crime and establishes a good reputation then victims will seek assistance from the service on a voluntary basis and will not need to be coerced to do so. The Victims Services

⁶² Freckelton, I, ‘Compensating the sexually assaulted’ in Easta, P., *Balancing the Scales*

⁶³ E. Fattah, ‘From a Handful of Dollars to Tea and Sympathy: the sad history of victims assistance’, p16

⁶⁴ *ibid*, p 17

⁶⁵ Submission 15

Scheme should ensure it provides a wide choice of providers so that victims are encouraged to access the service and likely to be more positive about the experience.

Recommendation 10

5.9. The committee recommends that the Bill be amended so that:

- (i) involvement in the Victims Services Scheme be voluntary, and not a precondition to access to financial payments and other services; and**
- (ii) within the Victims Services Scheme, victims are able to choose their own support provider.**

Section 10-Reimbursement of expenses

5.10. Under section 10 of the Bill, victims may be reimbursed for expenses reasonably incurred as a consequence of the injury, and for pecuniary loss suffered as a consequence of *the victim's inability to work*.

5.11. The Women's Legal Centre suggested that compensation for income lost as a result of an inability to work should cover unpaid domestic work and child care. Family law now recognises that these activities have a monetary value, particularly as a contribution to household incomes, as they are often undertaken so as to allow a partner to pursue paid work. The inability to continue unpaid domestic work or child care, as a result of criminal victimisation, will in many cases lead to a pecuniary loss, as victims will have to pay to have these services provided.

5.12. The committee considers this is a reasonable suggestion and supports the amendment of the legislation.

Recommendation 11

5.13. The committee recommends that section 10 of the Bill be amended to explicitly state that financial assistance may be given in relation to a primary victim's inability to continue to perform unpaid domestic work and child care activities.

5.14. The Australian Institute of Criminology claimed that it was not clear if the Bill covers reimbursement of costs to primary and related victims which are associated

with attending the trial of the offender. The Institute suggested this should be provided to alleviate financial hardship by victims who wish to participate in the criminal justice process.⁶⁶ The committee supports this suggestion.

Recommendation 12

5.15. The committee recommends that section 10 of the Bill be amended to explicitly state that financial assistance will be given so that primary and secondary victims are reimbursed for financial costs for attending the trials of offenders.

Compulsory reporting

5.16. Section 12 (1)(c) of the Bill makes reporting the crime to a police officer a pre requisite to an award of financial assistance. The Bill does not stipulate any period within which the report must be made, although the Government submission suggests that it must be made at some point prior to the Court making an award.

5.17. Legal Aid, the Canberra Rape Crisis Centre, the Australian Plaintiff Lawyers Association, the Women's Legal Centre, the Victims of Crime Coordinator and the Domestic Violence Crisis Service Inc expressed concern over this requirement.

5.18. Only about 10-20 per cent of victims of sexual assault report to the police. There are many reasons for this failure to report, including a fear of reprisal from the offender, and a belief that the response of the criminal justice system is inappropriate. Victims of domestic violence and sexual assault may be further deterred from seeking assistance from the Criminal Injuries Compensation Scheme if they are required to report to the police. Legal Aid informed the committee that mandatory reporting would impact unfairly on victims of childhood sexual assault.⁶⁷

5.19. VOCAL suggested to the Committee that, if there is to be a reporting requirement, that victims of sexual assault be allowed to report to other individuals or organisations as well as to the police. Possible recipients of reports are priests, school counsellors, teachers, psychologists, social workers, doctors, rape crisis centres, community groups such as VOCAL. The committee understands that one of the rationales for this reporting requirement is to improve police information on crime and

⁶⁶ Submission 1

⁶⁷ Submission 3

to increase the clear-up rate. The Government informed the committee that the drafting took into account the concerns of sexual assault victims by allowing them to report to the police at any time.⁶⁸ The committee acknowledges this attempt but believes some victims of sexual assault and domestic violence will be unable to report to the police and miss out on assistance. And these victims may be the ones most in need of assistance.

5.20. The committee strongly suggests that the legislation be amended to make an exception for victims of sexual assault and domestic violence regarding the requirement to report to the police. The Government should explore alternative ways of encouraging victims of these crimes to report to police which are not based on punitive requirements.

Recommendation 13

5.21. The committee recommends that the police reporting requirement in section 12 of the Bill be amended so that victims of sexual assault and domestic violence are not required to report to the police as a precondition for receiving assistance.

5.22. The committee accepts the Government's underlying objective of trying to encourage more victims of crime to report to the police but believes this would be better achieved through positive encouragement and improved police responses to victims, especially to victims of sexual assault and domestic violence. The committee has not investigated the quality of police response to these categories of victims but is aware that victims have a certain perception of how they will be treated by the police. If this perception is not borne out in reality in the ACT, then community education is needed to promote a different perception. This could be a job for the Victims of Crime Coordinator or the new service.

Recommendation 14

5.23. The committee recommends that the Government explore alternative ways of encouraging victims of sexual assault and domestic violence to report to police which are not based on punitive requirements.

⁶⁸ Submission 9

Section 16-Financial assistance for victims

5.24. The Victims of Crime Coordinator recommended to the committee that there should be an explicit inclusion of funeral expenses in section 16, which refers to financial assistance for related victims. The committee considers this is clearly one of the direct expenses related victims will incur, and one of the most traumatic for them to endure and supports this suggestion.

Recommendation 15

5.25. The committee recommends that section 16 of the Bill be amended to explicitly provide for financial assistance for funeral expenses.

Section 11-Reparation orders/hearings

5.26. At the public hearing, the Government emphasised the proposed amendment to section 437 of the *Crimes Act 1900*, which allows for a victim to apply to the Court for a reparation order to be made against the offender before the offender is sentenced. This section is intended to give victims an avenue for seeking compensation directly from the offender.

5.27. Whilst this is an admirable intention, the practical effect of such an amendment is questionable. A similar provision exists in Victoria. Less than 24 applications for reparation from the offender have been made since this legislation came into force.

5.28. One possible reason for this is the failure of the criminal justice system to adequately cater for and involve victims. Non-involvement with the trial of the offender and dissatisfaction with the way they are treated during the trial often leads to victims being unhappy with their experience, and reluctant or unable to become actively involved in the criminal justice process.

5.29. Facing an offender in court presents particular problems for victims of sexual assault and domestic violence. Women are particularly reluctant to face perpetrators of violent and sexual crimes against them, making it unlikely that they will be able to avail themselves of the opportunity to seek recompense directly from the offender. In addition, it is rare that sexual assault cases end up with the conviction of a perpetrator. In fact, it is the sad reality that with criminal activity in general, not all offenders are identified, let alone convicted at trial.

5.30. The committee is of the view that, whilst the reparation provision is a positive measure, it should not be considered as an alternative to the payment of compensation to victims by the state. It is inequitable that some victims will be able to face an offender for reparation, whilst some will not.

5.31. Other potential limits to the practical effect of the provision are the financial resources of the offender and the willingness of the court to make a substantial reparation order. The Government's submission pointed to the problems associated with the Territory attempting to reclaim from offenders compensation paid out to victims. These problems are just as relevant to victims attempting to seek restitution.

5.32. The Territory may apply to the Magistrates Court for restitution from the offender. The offender has a right of appeal against any restitution order which is made. The Women's Legal Centre and the Canberra Rape Crisis Centre have raised questions about the nature of any appeal or hearing which the offender is a party to. Will offenders receive copies of medical reports, or personal information about the victim when contesting a restitution order? Will the offender be able to compel the victim to give evidence and be cross examined at these hearings? The answers to these questions are of particular concern to victims of violent crimes, especially those which involved sexual assault or domestic violence. Compelling these victims to face offenders, or giving offenders details of about the victims may not only traumatise the victim unduly, but could also place them in danger.

5.33. The Victims of Crime Coordinator has suggested that the details of restitution hearings need to be set out in the legislation. The committee supports this suggestion.

Recommendation 16

5.34. The committee recommends that the Bill be amended regarding restitution hearings and appeals to guarantee that victims receive the same protection during any restitution hearings as are currently afforded to them in the Magistrates and Supreme Courts, and that offenders are not given access to private information about the victim.

Section 27-The Territory as a party to the proceedings

5.35. The Women's Legal Centre expressed concern over section 27 of the Bill, which gives the Territory a right of appearance in all proceedings. Once the Territory has made an appearance, it becomes a party to the application.

5.36. The presence of the Territory at any hearing could introduce an adversarial atmosphere into the proceedings, which could potentially distress many victims of crime, especially those who have already been through a traumatic experience with the criminal justice system. Further, if the Territory is present at all hearings, how will it handle potential conflicts between ensuring fairness for all victims, and the Government's interest in reducing the financial burden of the criminal injuries compensation system?

5.37. The Women's Legal Centre submitted that a more suitable approach was recommended in Report No 6, Victims of Crime, Community Law Reform Committee of the ACT. If the government considers on reasonable grounds that an application has been falsely or fraudulently made, or is exaggerated, or if the application raises a question of law or general importance, the Territory should have the right to seek to be heard in respect of the application.

Recommendation 17

5.38. The committee recommends that the Bill be amended so that the Territory is not given a general right of appearance in application proceedings. If the Government considers on reasonable grounds that an application has been falsely or fraudulently made, or is exaggerated, or if the application raises a question of law or general importance, the Territory should have the right to seek to be heard in respect of that application.

Retrospectivity

5.39. Part VI of the Bill provides for the transition from the old Criminal Injuries Compensation Scheme to the new scheme. The Bill gives the new scheme a retrospective operation with respect to the abolition of compensation for pain and suffering. The Government has chosen 23 June 1998 (the date when the proposed amendments were announced) as the date from which the pain and suffering component will cease to exist.

5.40. This retrospectivity means that it is possible that the legislation could impact differently upon victims injured on the same day. Anyone injured before 23 June 1998 who also lodged their application before that date, will remain entitled to claim for pain and suffering. In comparison, anyone injured before 23 June 1998 who (for whatever reason) did not lodge a claim until after that date, will not be entitled to claim for pain and suffering.

5.41. According to the Government, compensation is a welfare measure, not a common law right. Therefore, the entitlements under the scheme can be adjusted or removed by legislative amendments. As the proposed changes are part of the Government's budgetary program, precedent supports the proposed retrospective application of the Bill.

5.42. The Government has consistently stated that one of the main incentives behind the amendments is economic efficiency and cost cutting. However, to view the proposed changes as purely a budgetary measure ignores the fact that what the Bill effectively does is to alter the legislative rights of victims of crime. There is an undeniable social aspect to the amendments.

5.43. Whilst it is true that victims do not have a common law right to criminal injuries compensation, it is arguable that the welfare role which Criminal Injuries Compensation Scheme fulfils arises from the responsibility of the government to members of the community. The money which is paid to victims may be viewed as compensation for the Territory's failure to protect individuals from the consequences of criminal activity. The Government itself justifies the changes which it is making in terms of the needs of victims and the role of the Government to provide the most wide ranging and effective service to these victims as is possible.

5.44. The overwhelming consensus from submitters was that the retrospective aspect of the proposed legislation is unfair, unjust and should be removed. Those objecting to the retrospectivity included the ACT Bar Association, Legal Aid (ACT), the Australian Federal Police Association (ACT Branch), the Australian Plaintiff Lawyers Association, the Australian Society of Labor Lawyers, the Law Society of the ACT, the Women's Legal Centre, Canberra Rape Crisis and VOCAL.

5.45. The committee concurs with this majority community view and strongly supports the removal of the retrospective provision. The committee recognises that this will affect the Government's projected budget savings but draws attention to alternative options for making savings in the next chapter.

Recommendation 18

5.46. The committee recommends that the Bill be amended to remove the retrospective provisions. The provisions in the Bill should apply from the date the legislation is passed by the Assembly.

6. ALTERNATIVE COST SAVING MEASURES

6.1. The committee accepts the Government's position that there is scope for rationalising the costs of the current criminal injuries compensation scheme and there is a need to contain projected escalating costs of the current scheme. However the committee does not accept the particular cost-cutting measures proposed by the Government and suggests alternative measures which are fairer to victims and which reflect the evidence presented to the committee by a wide range of community groups and victim advocates.

Shifting responsibility to employers for victims of crime injured at work

6.2. In 1996/97, of the 342 awards made under the Criminal Injuries Compensation Scheme, 86 were for injuries sustained by victims whilst at work. This amounted to \$1,009,708 (or 21 per cent) out of a total of \$4,699,571 awarded by the Courts.

6.3. Under the existing Criminal Injuries Compensation Scheme, compensation awards are supposed to be set off against payments received by victims from other sources. It is unclear whether or not applicants who were injured whilst at work were asked by the Court to prove that they had not received any workers' compensation.

6.4. The Bill attempts to tighten the set off provisions of the Criminal Injuries Compensation Scheme, through section 34 of the Bill, which provides that the amount of compensation awarded is to be set off against, inter alia, amounts payable under another law, or under a contract of insurance.

6.5. The Committee heard that part of the Territory's dissatisfaction with the existing Criminal Injuries Compensation Scheme is that the Territory now bears the liability of an offender for the damages which would be payable to the victim in a civil action.⁶⁹

6.6. Arguably, the Territory is also bearing the liability of employers who do not fulfil their duty to ensure that employees are not injured at work. If employers have failed to provide a safe working environment for their employees, the employer should bear the burden of compensating employees for the consequences of this failure. It is inappropriate that the State is effectively picking up the tab for employers, when there is an established system of workers' compensation which should more appropriately be responsible for victims injured at the workplace. If

⁶⁹ Submission 9, p 3

workers' compensation schemes are not catering for employees injured at work as the result of the commission of a crime, then there is an obvious need for the Government to review the workers' compensation system and legislation, particularly regarding its capacity to compensate workers for psychological injuries.⁷⁰

6.7. The committee was strongly of the view that the Government should devise strategies and implement necessary legislative changes to ensure that employers are required to pay victims compensation payments made to their employees. The committee considers that the current review of workers compensation legislation provides a good opportunity to transfer responsibility from Government to employers.

Recommendation 19

6.8. The committee recommends that the Government amend the Workers Compensation legislation to include eligibility for payments for psychological effects of injuries experienced in the workplace due to violent criminal acts.

Recommendation 20

6.9. The committee recommends that the Government ensure the Bill requires workers to exhaust all rights under Workers Compensation before being eligible for financial assistance under the new legislation.

Make AFP responsible for payment of compensation for police injured at work

6.10. In 1996-97, 28 police officers received awards from the Criminal Injuries Compensation Scheme totalling \$282,980.⁷¹ These officers accessed the criminal injuries compensation scheme because they did not qualify for Comcare. In order to qualify for Comcare compensation, an officer must experience a 10 per cent permanent disability.

6.11. The AFP Association has expressed concern about the way the proposed changes may negatively affect those officers who do not receive financial

⁷⁰ Support for reforming the workers' compensation system came from the Australian Plaintiff Lawyers Association and the Australian Society of Labor Lawyers.

⁷¹ Submission 16

compensation through Comcare. The AFP Association has assumed that, as these officers' injuries are not serious enough to qualify under the Comcare 10 per cent permanent disability test, they will not qualify for 'special assistance' under the proposed changes to the Criminal Injuries Compensation Scheme. As these officers have access to counselling and medical treatment through alternative sources, the AFP Association's concern is that they will not receive any compensation at all.

6.12. The AFPA also informed the committee that police officers may not be inclined as they currently are to intervene in potentially violent situations out of fear they will not be meaningfully supported/compensated by the Territory or the AFP Commissioner.⁷² There is an undeniable public interest in allowing police officers access to compensation for injuries sustained in the line of duty.⁷³ However, ideally police should not be compensated under the criminal injuries scheme for what is essentially a workers' compensation matter. Whilst it appears that there is an issue with respect to the coverage supplied to police officers by Comcare, in light of the Government's objective of decreasing the costs of the Criminal Injuries Compensation (CIC) it is inappropriate that the CIC continues to pick up the short fall for Comcare.

6.13. The committee believes the payment of financial compensation to police officers should be the responsibility of the AFP. This matter should be addressed in the next contract negotiation with the Commonwealth. If the Commonwealth will not agree to accept this responsibility, the ACT Government should establish a new scheme designed specifically for AFP officers. The ACT Government should also ensure that the ACT is not liable for payments to police officers on Commonwealth duties.

Recommendation 21

6.14. The committee recommends that the ACT Government:

- (i) explore alternative ways of compensating police for serious injuries sustained in their work due to violent crime;**
- (ii) maintain access to the ACT criminal injuries compensation scheme for AFP officers until it has either achieved a commitment from the AFP to be responsible for these payments or has established a new scheme designed specifically for police.**

⁷² Submission 4, p2.

⁷³ Supported by the Women's Legal Centre in oral evidence given to the inquiry.

Criminal injuries levy

6.15. The Australian Plaintiff Lawyers Association and the Australian Society of Labor Lawyers raised the possibility that funding for the Criminal Injuries Compensation Scheme could come directly from the criminal injuries compensation levy which is currently placed upon convicted offenders. At the moment, these finds go into consolidated revenue.

6.16. The budget papers or annual reports do not currently document the total amount collected through this levy.

6.17. In South Australia, their equivalent levy comprises 30 per cent of the cost of their criminal injuries compensation scheme.⁷⁴ They collect the levy from all law-breakers.

6.18. The Committee sees potential for the criminal injuries compensation levy to contribute a greater proportion of funding for the Criminal Injuries Compensation Scheme. The ACT should consider increasing the levy although the levy should not be so high as to have an adverse impact on the families of offenders.

Recommendation 22

6.19. The committee recommends that the Government increase the amount collected under the criminal injuries levy and use it as a source of funds for the Criminal Injuries Compensation Scheme.

Cost recovery from perpetrators

6.20. Some submissions suggested the Government should make stronger attempts to retrieve money from perpetrators of crime.⁷⁵

6.21. It is a difficult task and can only be attempted with those who have been convicted of crimes.

⁷⁴ NSW Joint Select Committee on Victims Compensation, *First Interim Report: Alternative methods of providing for the Needs of Victims of Crime (Financial Assistance) Amendment Bill 1998 Crime*, May 1997

⁷⁵ eg Submissions 5 and 8

6.22. Although it is conventional wisdom that perpetrators of most crimes are generally from lower socioeconomic backgrounds and do not have financial assets, the committee believes that the ACT Government could achieve a better rate of recovery from perpetrators by applying a more strategic and concerted approach to this problem. The Plaintiff Lawyers Association has suggested the Director of Public prosecutions and the ACT Government Solicitor would have to be properly resourced to carry out this work.⁷⁶ Such an approach would need to recognise that families of perpetrators may also be victims of crime and should not be doubly disadvantaged.

6.23. The committee understands that some perpetrators of particular categories of crime (such as sexual assault) may be more likely to have assets than other categories and these should be targeted by the Government although only a small proportion of this category are convicted of crimes.

6.24. The committee heard that recent changes to asset recovery in Victoria have been successful and believes the ACT Government should model some of these strategies.

Recommendation 23

6.25. The committee recommends that the ACT Government take a more active role in recovering assets and funds from perpetrators of crime.

Payment and role of lawyers

6.26. As with the existing legislation, the proposed amendments stipulate that financial assistance awards will not reimburse legal fees.

6.27. Under current ACT legislation, legal fees for representing an applicant are unregulated. It is therefore difficult to estimate the proportion of compensation awards which constitute payment to lawyers. However, the Public Trustee has advised the Government that legal fees usually amount to 25 per cent of the total award. This means that, for the average compensation award of \$13,000, the legal fee would be \$3,300. The Government has submitted that, for contested criminal injuries matters involving counsel, legal fees may amount to \$20,000 or more (based on fees charged for contested workers' compensation matters and transport accident compensation matters). Based on these figures, the Government estimates that more

⁷⁶ Submission 5

than \$1.25 million of the nearly \$5 million in awards in 1996-1997 was paid as legal fees.

6.28. The Committee heard evidence from the Women's Legal Centre that that legal service does not charge for criminal injuries compensation applications. Other legal associations giving evidence to the inquiry claimed that many lawyers charge on a non-win-no-fee basis, and that criminal injuries compensation claims are a minimal part of most law firm's income. However, the Government has expressed some concern that, given the 97 per cent success rate of claims, 'victims compensation matters are likely to be viewed by the legal profession as a reliable source of income'.⁷⁷

6.29. Other jurisdictions have chosen to regulate the amount which lawyers can charge. In Victoria, lawyers are usually engaged for applications to the Victorian Victim's Assistance Tribunal. The Tribunal pays these fees, which average around \$750. Under the NSW scheme, victims may make an application without a solicitor, have legal representation, or have a support person act on their behalf. The Victims of Crime Bureau provides names of solicitors in the local area who regularly assist with filling in application forms. In most cases, solicitors fees and costs are paid for by the Tribunal, over and above compensation awards. A scale of costs is prescribed by the rules of the Tribunal, and a solicitor can not charge more than the amount awarded for costs. A similar system exists in South Australia, where a ceiling on costs deters unnecessary solicitor involvement.

6.30. The committee believes there is scope to reduce the costs of the current scheme by reducing the proportion paid out as legal fees. However the Government may have gone too far in not providing any reimbursement of legal fees under section 10(1). This could adversely impact on the socioeconomically disadvantaged. The committee suggests that the legislation be amended so that reimbursement of a set maximum amount is allowed for legal fees. Amounts paid in legal fees should also be made transparent.

⁷⁷ Submission 16, p 9

Recommendation 24

6.31. The committee recommends that the Government:

- (i) regulate legal fees so that lawyers can only receive a set fee; and**
- (ii) require that the individual and total annual payments to lawyers of financial compensation money is documented in the relevant annual report.**

7.. CONCLUSIONS

7.1. The committee has examined this legislation very closely and is concerned at the prospect of potential negative impacts on some victims of crime if the Bill is implemented in its current form.

7.2. The committee did not just accept the views from community and legal groups uncritically and acknowledges that vested interests play a role in some of the information provided to the committee. But just as lawyer groups can be accused of vested interests in preferring certain arrangements for victims of crime so can the Government be accused of vested interests in supporting other types of arrangements which limit the Government's financial liability.

7.3. The Government would be unwise to dismiss all the community input as worthless because of the vested interests of some groups. The committee was convinced that the arguments put forward by witnesses and submitters were based mainly on genuine concern for victims of crime and a genuine wish to contribute to the development of a legislative framework for victim assistance which meets the real needs of victims. Submitters also showed an appreciation of funding limitations with many offering suggestions for alternative funding sources.

7.4. The committee supports the establishment of a new Victims Services Scheme. But it should not be at the expense of financial payments to alleviate psychological suffering. Financial assistance should continue to be available, but in a more targeted manner. Some of this financial assistance could be distributed through a less restrictive serious injury provision and some through a system based on an expanded and more flexible provision for reimbursement of expenses.

7.5. The committee was particularly disturbed by the potential negative impacts of some of the legislative changes on victims of sexual assault and domestic violence and urges the Government to engage in detailed consultations with representatives of these groups before finalising new legislation.

7.6. The Government is also urged to conduct ACT-specific research into the needs of local victims of crime and to take account of the imminent evaluation results of the Victorian service before finalising the details of the ACT service.

7.7. The Government's underlying dual objectives of making budget savings and improving services (in quality and reach) for victims of crime has left it open to criticism and cynical interpretations of some of the mooted changes. This committee has attempted to disentangle the positive aspects of the bill from the negative ones and hopes the Government will not use the criticisms of the negative aspects to justify not implementing the positive elements.

7.8. The committee found the opportunity to examine this bill closely a very informative experience and urges the Government to take the recommendations seriously.

Paul Osborne MLA

Chair

29 June 1999

8. DISSENTING REPORT- MR HAROLD HIRD MLA

The majority of the Committee has grasped the fundamental principle that the present system of simply paying large sums of money to victims of crime is, for the most part, not actually having any positive or rehabilitative effect on those victims. But after recognising this problem, the majority of the Committee has pandered to many sectional and vested interests which appeared before it in a sense of what it may call 'compromise'. The unfortunate thing is that the 'compromises' proposed in the recommendations will have the effect of neutering the effects of the change.

The piecemeal recommendations of the Committee seem only to modify the Bill to appease those particular sectional interest groups. It is disappointing to see the majority of the Committee has apparently adopted the view that the harder you lobby, the more they'll water down the recommendations to appease those views.

The Criminal Injuries Compensation scheme was established as a way of providing some form of compensation - not equivalent to the common law compensation schemes, such as workers compensation and damages - to victims of crime, particularly to recompense those victims for the cost of rehabilitation from the effects of the crime.

Recommendations 1, 10 and 19 reinforce the focus on monetary assistance and undermine one of the primary rationales of the proposed scheme: the promotion of rehabilitation of victims of crime where this is possible.

Recommendations 1, 2, 3, 4, 8, 9, 11, 12 and 19 could potentially (and almost certainly would) increase the cost the scheme.

For example, recommendation 1 talks about the removal of 'permanence' from the definition of 'extremely serious injury'. The majority of Committee has failed to grasp that special assistance is intended to apply only where rehabilitation is not possible - that is, where the injury and its effects are *permanent*.

Making compensation available for temporary injuries (the vast majority of injuries for which claims are currently made under the existing scheme) simply reinforces the notion which already exists - that monetary compensation is available for most criminal injuries, no matter how serious.

Recommendation 4 simply panders to the interests of the lobby groups - particularly the legal profession - which appeared before the Committee. It seeks to deliberately create a loophole for giant trucks to drive through - a system of creating opportunities for victims of crimes about which the community may feel strongly, but ignoring the effects on victims of other crimes, which may be more serious. This recommendation, in fact, seeks to create two classes of victim with a very unclear divide, seeking to divide them by crime rather than by effect.

Recommendation 5 ignores the work already undertaken by the Victims Support Working Party, and so well explained to the Committee by the Victims of Crime Co-ordinator who headed that Working Party. That research indicated that financial assistance is not the primary need for victims of crime and it recommended a shift away from lump-sum payments to effective, accessible and comprehensive support and rehabilitation services. Why then is there a proposal for another study? Is it because the majority simply did not agree with the results of the first one?

I am very concerned about the financial consequences of the Committee majority's recommendations. They have not been costed, even though the majority seems to believe in some notion that the new scheme will be cost-neutral.

But what is cost-neutral? Is it the cost of the current scheme, which continues to rise exponentially each year? Is it the cost next year? If the majority of the Committee believes the new scheme is to be cost-neutral, against what benchmark is it compared?

In its report⁷⁸, the majority of the Committee characterises the new scheme as a counselling scheme instead of recognising that it is intended to provide a range of services (of which counselling is but one) which were identified by the Victim Support Working Party as being either non-existent or limited in the ACT.

In making recommendation 10⁷⁹, the Committee majority seems to overlook the information provided by the Government in its submission as to the proposed operation of the scheme about the range of services which will be available.

The Committee majority has mistakenly assumed that the fact that most claims are settled means that the Government feels most are valid. I got the distinct impression, from listening to evidence presented by the officers of the Department of Justice and Community Safety, that settlement offers are based not on the assessment by the Department of the merits of

⁷⁸ See Chapter 4

⁷⁹ at point 2

the case but an assessment by the Department on the likely view of the Court toward the merits of case, based on similar cases and precedents.

The consequent Recommendation 17 (that the Territory be denied a right of appearance in most cases) defies logic. This would leave the Government, as the representative of the party expected to pay the compensation - the taxpayer - without any form of substantive representation to present any argument which may be in the interests of the taxpayer. I am also concerned that the implications of this proposal were not discussed with witnesses who presented themselves to the Committee.

The capacity of the Territory to challenge fraudulent, vexatious or exaggerated claims would be severely limited.

The sentiment of Recommendation 13 is appreciated, however, I am concerned that there may exist further potential for fraudulent claims, particularly if the Territory is denied representation in proceedings to cross-examine.

Recommendation 18 would come at a considerable cost to ACT taxpayers. I am concerned that the cost is not specified in the report. I see little opportunity for the savings specified in Chapter 6 to exceed the cost of this recommendation⁸⁰. For example, Recommendation 22 calls for an increase of the amount levied on convicted offenders under the Victims Levy. That levy currently operates at \$30 per conviction, or \$30 per offender if multiple convictions apply and the judge or magistrate consents to the levying of a single amount of \$30. That scheme only raises a small fraction of what it costs to provide compensation payments currently.

While a comparison is made with the SA scheme, where 30% of its cost is funded by a levy on offenders, there is no recognition by the Committee majority that the compensation scheme in SA is far more restrictive for payments to be made. For example, applicants must prove the relevant offence and injury beyond a reasonable doubt, which in practice, restricts availability of compensation to cases where the offender has been convicted.

Recommendation 19 may well have merit, but the consequences of changes to Workers Compensation laws were outside the terms of reference of this inquiry and may warrant further consideration.

⁸⁰ see paragraph 5.47

Recommendation 23 ignores the fact that efforts are made to recover compensation payments from offenders, but payments are generally well outside the repayable capacity of offenders, particularly those on low incomes or who are unemployed. That is, if an offender is identified at all! The experience in the ACT and NSW is that the vast majority of people convicted have few, if any, resources to pay, or assets to recover, so such proposals do not yield much revenue. And it is also apparent that, in a large number of cases, no offender is identified to proceed against.

Recommendation 24 is laudable in principle, but the administration of the proposal to require payments to lawyers is declared may have significant administrative burdens. Nevertheless, the recommendation may contain some ideas for curtailing the burgeoning cost of this area of law to the clients of lawyers involved.

Finally, the Committee majority had a real opportunity here to shape the new Victims' Assistance Scheme. I am disappointed that it has felt the necessity to shape a package to the extent that it pleases no-one. While I am sure that the Government could examine realistic options for compromise, the majority of the Committee has sought compromise to every part of the proposal and the extent would be a scheme which, even if workable, would be more costly and open to challenge by the legal profession in much the same way as the existing scheme.

Appendix A: Submissions and Witnesses

Submissions

1. Australian Institute of Criminology
2. The ACT Bar Association
3. Legal Aid Office (ACT)
4. Australian Federal Police Association, ACT Police Branch
5. Australian Plaintiff Lawyers Association
6. Status of Women Policy Committee
7. Australian Society of Labor Lawyers (ACT Branch)
8. The Law Society of the ACT
9. ACT Government
10. Mr Hugh Collis
11. Women's Legal Centre (ACT & Region) Inc
12. Canberra Rape Crisis Centre
13. Victims of Crime Assistance League (ACT) Inc
14. Domestic Violence Crisis Service Inc
15. Victims of Crime Coordinator
16. ACT Government (supplementary)
17. Victims of Crime Coordinator (supplementary)
18. Women's Legal Service (supplementary)

Witnesses

Public hearing-Tuesday 13 April 1999

Victims of Crime Assistance League (ACT) Inc (VOCAL)

★Ms Judy Simpson

★Ms Rita Cameron

Australian Federal Police Association, ACT Police Branch

★Mr Jason Byrnes, Secretary

★Mr Ian Bradfield

Australian Society of Labor Lawyers

★Mr Walter Hawkins, President

★Ms Sarah Todd

Australian Plaintiff Lawyers Association (APLA)

★Mr Richard Faulks, ACT President

★Mr John Little

ACT Law Society

★Mr Larry King, Executive Director

★Mr Richard Faulks

★Mr Ian Freckelton

★Mr Mel Barnett

ACT Bar Association

★Mr John Purnell SC, President

★Mr David Mossop

ALP Status of Women Policy Committee

★Ms Karen Mow, Convenor

★Ms Ann Wentworth

Women's Legal Centre

★Ms Kirsty Windeyer, Principal Solicitor

ACT Government

★Mr Gary Humphries

★Ms Karen Greenland

★Ms Amanda Casimir

Canberra Rape Crisis Centre

★Ms Di Lucas, Coordinator

★Ms Ruth Christie

★Dr Patricia Easteal

Victims of Crime Coordinator

★Ms Robyn Holder

Private briefing-Monday 17 May 1999

★Ms Judith Dixon-Director (Victorian Victims referral and Assistance Service)

★Ms Robyn Holder (Victims of Crime Coordinator)

Appendix B: Summary of Submissions

1. AUSTRALIAN INSTITUTE OF CRIMINOLOGY

- Notes that the Bill is the result of considerable consultation with persons who work closely with victims of crime.
- It is not clear if the Bill covers reimbursement of costs to primary and related victims which are associated with attending the trial of the offender. Although the provision of such assistance may be costly, it may alleviate the financial hardship experienced by victims who wish to participate in the criminal justice process.

2. THE ACT BAR ASSOCIATION

- The Bill appears to be budget driven.
- Very few people will qualify for a payment of \$50,000, especially with the removal of the 'pain and suffering' component.
- The definition of 'extremely serious permanent injury' may bar future worthy claimants.
- The Bill has a retrospective aspect to it. The common law does not recognise retrospectivity wherein rights or liabilities are effected.
- The Bill's emphasis on rehabilitation is to be applauded.

3. LEGAL AID (ACT)

- International research and local experience suggest that very few victims of crime receive any acknowledgment of their plight. The current scheme does not cater for the majority of victims, and the compensation given is more of a token amount than true compensation. The move from suggestions of compensation to statements of financial assistance offers a better reflection of the reality of the scheme.
- Concerns about the Bill:
 - effectively disentitles a greater number of persons from assistance by substituting service delivery (greater impact of economically disadvantaged members of society) and introducing the concept of 'extremely serious injury';
 - opens the potential for a shift in demand to medical resources, leaves open the possibility of contraction of rehabilitative services;
 - mandatory reporting and use of victims service scheme impact unfairly on victims of childhood sexual assault;
 - requirement of prior access to Victims Services Scheme raises questions of timing of applications, length of service delivery and sanctions for not use of prescribed service;

- queries whether meaningful therapeutic service delivery would be cheaper for the Territory than financial payments;
- provides a potential adversarial role for the Territory through the ACTGS and discourages legal representation for victims;
- may have an unfair retrospective operation.
- Significant improvements proposed by the Bill:
 - acknowledges that in many cases rehabilitative services are more efficacious than financial assistance;
 - acknowledges that victims can not be paid and forgotten;
 - extends a message that members of the community should not stand by and watch crime, but will be compensated for assisting police (but ask why the police officer must reasonably that an offence was being committed);
 - consolidates and simplifies the determination of applications into one jurisdiction.

4. AUSTRALIAN FEDERAL POLICE ASSOCIATION ACT POLICE BRANCH

- The objective of compensation and support by the state for victims of crime is to assist them in rebuilding their lives.
- Some initiatives are noble and achievable, but the Association strongly opposes those provisions that unfairly abandon the Police and AFP Staff members.
- As a rule, Police can only access the current scheme on the grounds of pain and suffering. As Comcare only covers officers who have suffered a 10 per cent (or higher) permanent disability, police were assured when the Comcare legislation came into force that those not covered by his legislation could receive criminal injuries compensation.
- The Bill changes this, as police officers whose injuries are not serious enough to be covered by Comcare (10 per cent permanent disability) can no longer claim compensation for pain and suffering (will not come within definition of 'serious injury'. Services such as counselling and medical expenses are already available to police officers from other sources.
- The police do not 'double dip', as they only access criminal injuries compensation if they do not qualify for Comcare.
- The definition of 'serious injury' excludes most victims of sexual assault. The resulting reduction in financial assistance to sexual assault victims will lead to a reduction in reporting.
- The proposed retrospectivity is grossly unfair and must be changed.
- Possible amendments:
 - enforcement of the present provisions that a person's Workers' Compensation rights need to be exhausted prior to the scheme being applied;
 - medical expenses should be paid in instalments upon receipt of proof of costs;

- the Government should instigate and insurance scheme whereby registered clubs and licensed premises contribute towards compensation for victims of offences that relate to alcohol induced cases.

5. **AUSTRALIAN PLAINTIFF LAWYER ASSOCIATION**

- Victims should be treated with dignity and respect by the community - often the most practical and effective way of doing so is to provide financial compensation for pain and suffering.
- Some of the perception that the current scheme is out of control may come from the flood of applications made due to uncertainty about the current scheme.
- The average application takes about 1 hour of court clerical time, 30 minutes Judicial time and 3 hours Government Solicitor's time.
- There is a body of precedent awards of compensation which represent lower amounts for pain and suffering than would be expected in comparable common law actions. There appears to have been an acceptance of the need to avoid a drain on the public purse.
- APLA would oppose any move towards a 'table of maims', because of its arbitrary application which may tend to reduce the therapeutic benefits of the current scheme.
- Almost all applicants' solicitors accept this type of work on a no win no fee basis. Professional fees are charges at a lower hourly rate than other matters.
- Concern that the Working Party did not include the Law Society or lawyers.
- Strongly opposed to the retrospective provisions - the advice given by the ACTGS regarding retrospectivity should be tabled.
- The real reason for the changes is cost cutting (the annual report of the Registrar claims that the scheme is timely, efficient and has minimum administrative costs).
- Evidence shows that compensation can have a therapeutic effect for victims.
- Proceeds from the criminal injuries compensation levy should not go to consolidated revenue, but should be used for the compensation scheme.
- Issues which should be considered by the Committee:
 - victims should be encouraged to pursue civil actions;
 - no provision is made for the recovery of costs of medical reports or other evidence needed to support application;
 - requiring all applications out of a criminal act to be brought simultaneously will have the effect of causing victims to join a type of class action;
 - Bill seems to require victims to undergo potentially dangerous remedial treatment before they can claim compensation;
 - regulations which specify eligibility should be made available;
 - the reporting requirement is onerous on victims of sexual abuse and domestic violence.

- who is to provide the rehabilitation, what will their credentials be - will the services come from community based organisations;
- consideration should be given to the Workers' Compensation Act to allow compensation for psychological injuries;
- increasing liquor licensing charges at nightclubs.
- funding the scheme from the Criminal Injuries Compensation Levy.
- Victorian experience: applications dropped from 8,000 in 1996 to 120 in 1998. Cost to government reduced from over \$30 million to \$2.5 million.
- Has the Territory looked at the NSW scheme as an example of the amendments it should make?
- Recommendations:
 - Amend workers' compensation legislation to allow lump sum claims for mental/nervous shock;
 - encourage victims to sue wrongdoers in appropriate courts;
 - centralise the processing of applications in one court;
 - increase the levies paid by all convicted wrongdoers;
 - consider a 'pro-rata' injection of funding into the scheme from alcohol taxes;
 - ensure the DPP and ACTGS are adequately resources to utilise the existing legislation to recover awards from wrongdoers;
 - maintain the present system of compensation.

6. **ALP STATUS OF WOMEN POLICY COMMITTEE**

- Concerns:
 - lack of treatment options;
 - inflexibility in amounts of assistance available;
 - constitution of the Victims Services Scheme, expertise and experience of people running the scheme.
- Would like further information regarding:
 - terms of reference of the victims service scheme;
 - the Board structure;
 - the resources given to the board and accountability and appeal mechanisms.

7. **AUSTRALIAN SOCIETY OF LABOR LAWYERS (ACT)**

- The Bill represents a shifting of philosophy from compensation for victims to merely one of assistance. Compensation is to financially restore the victims to the place they were prior to the incident, assistance is only a bandaid.
- A victim of a non-violent crime will be unable to obtain financial assistance.
- Very few victims will be entitled to 'special assistance'.
- How will the court determine the proportions between secondary victims, especially if they are from the one family?
- The effect of the provisions relating to intoxication of the victim will be to replace the existing broad discretion to one which may not be able to accommodate the facts of an individual case.
- What is a victim to do when the allocated number of treatment hours from the Victims Services Scheme expires?
- The retrospective nature of the Bill could result in injustice.
- The proposed changes will greatly reduce the amount of individual awards and the overall cost of the scheme. It does not seem however that more victims in total will be able to receive assistance. There is no guarantee that the present costs of approximately \$5,000,000 per annum will be maintained to ensure that victims of crime receive proper compensation assistance. The two issues of compensation and provision of funding for support services should not be conflated.
- The Government should disclose how much funding will be allocated the victims' support services scheme, and the guidelines and criteria for the functioning and staffing of the scheme.
- If the real issue is one of cost cutting, then perhaps funding for the existing scheme should be addressed. Why is the criminal injuries compensation levy paid into consolidated revenue and not directly used to fund the scheme? Why hasn't the government looked at amending workers' compensation to cover claims arising from injuries sustained at work?

8. THE LAW SOCIETY OF THE ACT

- The main aim of the Bill is to save money - what happens to the victims of crime?
- The proposal would have two major effects: to reduce people's rights to monetary compensation and to put in place a support scheme.
- The proposed support scheme would be another layer of bureaucracy. How much will the proposed Victims Assistance Scheme cost? There is no information about the relative cost of effectiveness of the services currently available and the proposed services.
- The current scheme is well understood, cost effective and transparent. The changes take this away and replaces it with a bureaucracy controlled by the Minister.
- Cost savings would be achieved by reviewing the current scheme and making it more efficient. Concerted efforts should be made to recover compensation payments from the assailants.
- The 'serious injury' requirement is too restrictive, and gives a disincentive to recovery.

- The scheme should encourage victims to report crimes and seek therapeutic assistance - the current scheme does this but the proposed changes do not.
- The availability of monetary compensation entices many victims who would not otherwise report their crime or be involved in the criminal justice system (eg victims of sexual assault) to seek judicial assistance. The reduction in payments will result in less victims participating in the scheme, as the tangible benefit to them will be indirect.
- The Bill's attempt to spread compensation payments more evenly across victims may result in those who have experienced less serious offences benefiting at the expense of the seriously injured.
- The poorer and more under-privileged in society will find that compulsory participation in the victims support scheme, inability to claim reimbursement of solicitor's fees, and the removal of lump sum compensation will make the process difficult, confronting and unappealing.
- Lump sum compensation for pain and suffering should be retained for the following reasons:
 - it fills the void caused by the difficulties in pursuing a civil cause of action;
 - it encourages victims to report crimes and cooperate with police;
 - it has a rehabilitative effect;
 - similar changes to the Victorian scheme have led to the almost total collapse of the victims of crime compensation network and victim support groups;
 - the claim that there are rorts under the scheme is exaggerated.
- The proposed victims support scheme has not been costed. It will be put out to tender, which means that at the end of the day victims will have a limited access to help based on a limited budget. If the scheme limits service providers, choice of therapy and therapist has been taken away from the victim.
- The retrospective provision are unfair and contrary to all principles of legislative process and should be removed.
- Recommendations:
 - The Bill be withdrawn;
 - the Legislative Assembly reaffirm its commitment to assisting victims of crime through a program which retains the focus of the present scheme;
 - the Government consult with interested parties on methods of improving the efficiency of the present scheme.

9. ACT GOVERNMENT

- Outlines the background to the introduction of the Bill: release of Discussion Paper (1997) in response to concerns about the costs of the current scheme; submissions on the Discussion Paper; establishment of independent Victims Support Working Party (comprised of VOCAL, Canberra Rape Crisis Centre, National Association for Loss and Grief; the Domestic Rape Crisis Service, and government agencies and departments).

- Given the high and increasing costs of the scheme and the unmet needs of victims, the Territory is not getting value for money from the current Act. The fundamental challenge is for the Territory to deliver a scheme which contains costs at an affordable level while providing better assistance to a greater number of crime victims.
- There is no duty on the Government to provide compensation schemes - these schemes are a new invention aimed at mollifying victims rights activists. The efficacy of these schemes has been challenged by victims and victimologists.
- ACT Courts have adopted torts scale for criminal injuries compensation, which has effectively transferred to the Territory the civil liability of the offender, without giving to the Territory the rights which the offender would have in a civil trial.
- Research indicates that victims who use compensation schemes are less satisfied than victims who do not.
- The Territory's scheme is more expensive than other jurisdictions. There has been an increase in the costs due to an increase in the number of awards, which is not related to an increase in the incidence of crime. It is more likely due to high awareness of the scheme throughout the ACT community, and the relative ease which applications can be lodged and determined.
- Unless the changes proposed by the Bill are passed, the Territory could be expected to pay out \$9,426 million for the 729 applications lodged in 1998 (future costs could be higher, if a higher percentage of victims apply in future years). Administrative costs will also increase with the volume of applications. The Territory can not continue to operate a scheme whose costs are so out of line with the levels of expenditure for schemes in other jurisdictions.
- The current scheme is lacking on the issue of access and equity.
- The Government's proposal is designed to reduce the average size of awards while increasing the pool of victims assisted. From the savings generated, the Government will establish a Victims Services Scheme - a generic scheme whose services include rehabilitation.
- Payments for 'pain and suffering' have been removed from many other jurisdictions. It does not exist in workers' compensation schemes, and it is inappropriate that the criminal injuries compensation is being used to supplement workers' compensation.
- There is evidence to suggest that cash payments may actually delay or impede victim recovery. The supposed benefits of compensation payments may actually stem from the cessation of litigation and the acknowledgment of the victimisation.
- The establishment of the victims support scheme will be by regulations, in order to facilitate amendments or additions if they are required. The model of the scheme fosters the rehabilitation and recovery of victims of crime.
- An agency will be selected by tender to deliver a wide range of assistance, including:
 - provision of information about services and entitlements available;
 - provision of support and assistance to victims in their dealings with the criminal justice system;
 - assessing victims and arranging provision of appropriate rehabilitation services;
 - volunteer support program;
 - debriefing for victims and their families.
- Counselling and debriefing are not mandatory in order to be eligible for special assistance - victims must only access whichever rehabilitation services are relevant and appropriate to their needs.

- New scheme is estimated to cost around \$1 million annually, funds to come from savings in compensation payments.
- Provision of additional funding for witness support function within DPP, and crime scene clean up.
- Victims Assistance Board will work closely with the agency selected to operate the victims service scheme, the Victims of Crime Coordinator and the law enforcement and criminal justice agencies.
- Victims may apply to the Court at the time of sentencing for a reparation order to be made against the offender for the loss or damage the offender has caused to the victim.
- Compensation not a common law right, but a welfare measure, therefore the entitlements under the scheme can be adjusted or removed by legislative amendments. Precent supports the retrospective application of the Bill.

10. MR HUGH COLLIS

- The proposed reduction in maximum payment is of considerable concern.
- The maximum set is below that of other jurisdictions.
- To exclude pain and suffering implies a lack of understanding and a lack of commitment to the application of a fair and compassionate approach to assisting victims to recover from the consequences of crime.
- Criminal injuries compensation awards are less than those made in civil actions.

11. WOMEN'S LEGAL CENTRE

- The Centre strongly opposes:
 - the abolition of pain and suffering from awards;
 - the restrictive nature of eligibility for 'special assistance';
 - the requirement that a report be made to the police;
 - recovery from offenders where that entails a 'hearing';
 - the Territory having an automatic right of appearance;
 - retrospective nature of the proposed changes.
- Concerned that the Bill lists sections 40, 41 and 43 of the Crimes Act in the list of violent crime. These sections should be removed from the Crimes Act.
- The provision providing for financial compensation for loss of income should cover unpaid domestic work/child care which the victim can no longer do.

- Victims should be able to claim costs of legal representation when they make a claim, especially if they are attempting to claim ‘special assistance’.
- Women who have been the victims of sexual assault or domestic violence would not fit into the definition of ‘extremely serious’ injury, yet compensation for pain and suffering may assist them to recover as they are shown that the community does recognise the effects of the violence on them.
- It is extraordinary that the Government is willing to pay up to \$50,000 for damage to property sustained when assisting police, but it is not willing to pay for compensation for damage to health and the physical and emotional well being of victims.
- The Territory should not be a party to proceedings - if the Government feels that an application has been falsely or fraudulently made or is exaggerated, it should have the right to be heard.
- Offenders should not receive copies of medical reports or personal information about the victim. Victims should not be subject to cross examination by the offender.
- Where are the details about the Victim’s services scheme?

12. CANBERRA RAPE CRISIS CENTRE

- Rape Crisis Centre participated in the Working Group, and at that time made it clear that whilst it supported the concept of an agency to provide support to victims of crime, it did not see this agency as being a substitute for compensation payments for pain and suffering to victims of violent crime.
- Sexual assault victims are isolated and excluded from the criminal justice system. The Bill perpetrates this as there is no recognition that their experience is profoundly different to that of victims of other forms of violent crime.
- For victims of sexual assault, receiving compensation for pain and suffering is an acknowledgment of what they have suffered, often the only ‘official’ acknowledgment which they receive. Changing the philosophy of the legislation from compensation to financial assistance removes much of the symbolism of the payment for victims. The legislation should reflect community feelings about the seriousness of sexual assault, and compensation to victims for suffering caused by a crime acknowledged as abhorrent.
- The reporting requirement is burdensome on victims of sexual assault - only between 10-20 per cent of victims of sexual assault make reports to the police.
- How can a victim of sexual assault ever qualify for ‘special assistance’? The irrevocable effects of sexual assault are not necessarily completely debilitating, nor do they fall within the definition of permanent psychological damage. The basic philosophy of support services is that a victim can heal.
- Compensation for pain and suffering should be retained in order to recognise the specific extremely serious aftermath for sexual assault victim/survivors.
- Why is the financial assistance linked to victim’s use of the Victims Services Scheme, when this requirement serves to restrict the victim’s choice of therapist and therapy? Not all victims need to access therapy, they only require financial assistance.
- The retrospective nature of the legislation is contrary to the principles of equity and justice.
- There should be an assurance that any claim for restitution against the offender will not make details about the victim available to the offender.

- If there is a hearing regarding restitution, will the victim should not be forced to face the offender in court.
- Will there be similar options available for court hearings as are currently used in the Magistrates and Supreme Courts, to protect the victim?
- Where are the regulations referred to in the Bill?
- The community must be consulted in the development of a victims' services scheme, particularly on the question of guidelines for the service and the conditions of eligibility for the scheme.
- What will the 'management of funding arrangement for the responsible agency' actually entail?

13. VICTIMS OF CRIME ASSISTANCE LEAGUE ACT

- Prior to the introduction of the Bill, VOCAL made a submission referring to the A-G Discussion paper. This submission emphasised that before a move away from compensation could be considered, further emphasis would need to be placed on the provision of broader assistance to victims of crime. IT also stated that payments for pain and suffering and the provision of counselling should be made available.
- Once the Bill was released, VOCAL came out in support of reform to the scheme, and the proposal for a more holistic support program. However, VOCAL sought input from all of its members before drafting this submission. The issues which were raised are as follows:
 - the Victims Services Scheme must be personal and confidential;
 - if the support service is seen as an arm of Government, some victims may be reluctant to utilise the service;
 - it is not appropriate to limit compensation available to secondary victims to cases where the primary victim dies;
 - the purpose of the current scheme is to prevent the victim having to take emotionally taxing civil action against an offender - the scope of this should be increased;
 - limiting the choices of treatment providers which a victim may access is not acceptable;
 - requiring a victim to report an offence to the police is not acceptable;
 - a balance between service provision and compensation in the form of payments for pain and suffering is needed;
 - the retrospective component of the Bill is unacceptable;
 - the scheme needs to provide flexibility.
- VOCAL supports a well funded Victims Services Scheme, but has reservations about this coming at the expense of compensation awards.

14. DOMESTIC VIOLENCE CRISIS SERVICE

- Endorses proposals by the Women's Legal Centre, and the Canberra Rape Crisis Centre.
- Oppose abolition of pain and suffering component of compensation.
- The 'special assistance' requirement too restrictive, especially as it impacts on victims of sexual assault and domestic violence.
- Will there be broad community consultation regarding the victim support scheme?
- Recommend that the Committee review the Victorian Victim Support Service.

15. **VICTIMS OF CRIME COORDINATOR**

- Troubling that that debate has focussed so narrowly on financial compensation as a primary response to crime victims.
- Referred to findings of the Victim Support Working Party, Victim Support in the ACT - options for a comprehensive response (May 1988).
- The current scheme does not cater for all victims of crime. A service and rehabilitation response at least contains the potential to address some of the needs of a very wide range of victims.
- The Committee should be encouraged to emphasis the desirability of looking at wide reaching policies and programs to address the needs of victims.
- Support the need to move away from direct financial payments, towards a comprehensive support service.
- The Victims of Crime Act 1994 is not being fully implemented not complied with.
- Strongly recommended that funds be set aside to monitor the effects of the proposed changes.
- Recommended that some resource flexibility be built into the capacity of the new scheme to respond to new or emerging needs.
- Endorses the establishment of a Victims Services Scheme as the most important element of the Bill.
- Victims should not be made to access support services. However, it is important that victims are informed of availability of services and entitlements.
- Provided a list of important elements to consider in establishing a Victims Services Scheme, based on the experiences of Victoria and NSW.
- Strongly recommended that an inter-agency committee be set up to establish the victims support scheme and its regulations, in preference to usual tendering arrangements.
- The allocation of funds for a Witness Assistance resource within the DPP is noted with support. The Committee is urged to support this and further funding for the AFP.
- There is no duty or responsibility on the state to compensate crime victims. The argument that compensation schemes give victims a voice and acknowledgment is tokenistic, as less than 5-10 per cent of crime victim matters get to court, and of reporting sexual assault victims 60 per cent said they were not interested in applying for compensation.

- Recommended that victims be able to claim some non medical or counselling expenses as legitimate and reasonable rehabilitation expenses.
- Specific concerns about the Bill:
 - aggravated burglary has been left off the definition of serious crime;
 - special assistance should not be confined to financial assistance;
 - the reporting requirement is discriminatory and flawed and should be removed;
 - excluding victims injured whilst committing a serious offence is too far reaching - if this provision is to remain, it should be changed to deny eligibility to special assistance only;
 - there should be an express inclusion of funeral expenses in section 16'
 - is the Bill suggesting that there be an assessment process for access to the special assistance provision;
 - unsatisfactory to restrict victims' choice of access to services;
 - the proposed section 36 is excessive and potentially discriminative and should be removed;
 - the provision for interim awards leaves the possibility that victims may be left in limbo between adjudications for different entitlements;
 - the details of a hearing for restitution from the offender need to be set out.

16. ACT GOVERNMENT

Underlying Reasons for the Government's Reforms

- ACT's existing scheme is the most expensive scheme per capita in Australia yet fails to deliver any assistance to the vast majority of victims of crime.
- Followed the Working Party's suggestion that should move away from financial focus to provide a generic support scheme.
- Legal profession's interest in the scheme is from a financial position, and is not the same as the public interest.
- Public interest is that the scheme must show real results, and the current scheme does not work for the majority of victims and does not represent value for money.

Claims by VOCAL member that amendments do not reflect what they wanted

- The position taken by the VOCAL members who gave evidence did not reflect VOCAL's earlier statements.
- VOCAL publicly and privately supported the Working Party's Report and the Bill - it was open for VOCAL members to come forward if they opposed the Bill, but they did not do so. VOCAL indicated to the Government that VOCAL's Committee was in support of the Bill.

- Change in VOCAL's attitude came after VOCAL met with the Law Society. Government is concerned that the legal profession misunderstood the Bill, and passed this misunderstanding on to VOCAL.

Government responses to incorrect VOCAL statements

- new scheme is far less restrictive and the new financial assistance provisions more generous than VOCAL thinks.
- The mix of financial and non financial assistance corresponds with what VOCAL recommended to Government and publicly supported.
- The new scheme is not restricted to victims of violent crime - any victim can use the new service, subject to regulations. This access is wider than under the Victorian scheme.
- Regulations will deal with the level of entitlements available to different types of victims in different circumstances. Using regulations allows for quick adjustment and flexibility, whilst also Assembly scrutiny through the disallowance mechanism.
- Regulations are being developed by a Steering Committee, which is also developing the tender specifications for the new agency. Membership of Steering Committee: Courts, AFP, DHCC, Workplace Injury Prevention and Management Unit, Victim of Crime Coordinator, Dr Sandi Plummer (expert on the treatment of post traumatic stress disorder).
- VOCAL is not on the Committee, as it showed interest in being a tenderer.
- There will be consultation with victims groups about the draft regulations and draft tender specifications.
- New agency will not be a Government agency, it will merely be funded by Government. It is not a health service, it is merely subject to the same confidentiality requirements as health services.
- Expenses of caring for a victim can be compensated under s10(3) if they are incurred by a person who is responsible for the maintenance of a primary victim. Carers can use counselling and other assistance services.

VOCAL Victoria's position

- Mr Mel Barnett is the outgoing President of VOCAL Victoria, which is no longer operating.

The claim that the Bill will reduce reporting to police

- Bill does not set a time limit on reporting, as long as the crime is reported to the police before an application is decided.
- The anecdotal evidence by Mr Freckelton that the availability of lump sum payments as an incentive to report to police and seek counselling is simply not borne out by the available objective research evidence. Research shows that the single most important factor affecting reporting rates is the income level of the victim. The next most important factors are the perceived seriousness of the crime, age, level of education and gender and perceptions as to whether the police could do anything.
- Research shows that main reason women do not report is dissatisfaction with their treatment by police and criminal justice system.

Claim that lump sum payments encourage victims to seek help

- Objective statistical evidence shows that lump sum payments do not encourage victims to seek help. What the statistics show is that if there is a specialist victim assistance agency available, the vast majority of victims will use that scheme in preference to pursuing financial assistance.

- 1996-97: 18 of 342 awards went to rape victims, Rape Crisis had 1500 contacts. 17 awards for domestic violence, DVCS had 6000 calls and 1300 face to face contacts.
- These figures prove that the vast majority of these types of victims of violence prefer to use treatment and assistance services where they are available rather than applying for money.
- Largest group of victims seeking assistance is victims of non-sexual violence by strangers and non-family members. This group is not currently served by a fully funded victim assistance agency.
- Victoria: there has been a drop in applications for financial assistance, but there is a large take up rate for the treatment aspect of the Victorian scheme. Since late 1997, the Victims Referral and Assistance Scheme has had more than 40,000 calls from 33,000 people (some from people who have spent their compo money and now want treatment). Statistics show that victims in Victoria are happy to seek counselling from the service rather than financial assistance from the Tribunal.
- No need for victims to engage lawyers in Victoria for assistance directly from the Victims Referral and Assistance Service. Contrastingly, lawyers are usually engaged for applications to the Tribunal, and have their fees paid by the Tribunal (average of \$750).

Claims about legal fees

- In Victoria, SA and NSW, legal fees for applications are set (\$750 in Victoria, \$600 in NSW, scale used in SA).
- In the SCT, legal fees are unregulated. Public Trustee advises that legal fees usually amount to 25 per cent of the total amount awarded. So for the average award of \$13,300, the legal fee would be \$3,300. In contested criminal injuries matters involving counsel, legal fees may amount to \$20,000 or more (based on fees charged for contested workers' compensation matters and transport accident compo matters).
- It is therefore probable that more than \$1.25mill of the nearly \$5mill in awards in 1997-98 was paid as legal fees.

Claim that rape and domestic violence victims are disadvantaged by the Bill

- Rape/domestic violence victims rarely use the system.
- Sexual assault victims receive highest awards - majority of awards under current system for \$30,000 or more are for victims of sexual assault who have sustained severe psychological injuries. The Government specifically had in mind the victims currently at the high end of the scale when developing the 'extremely serious permanent injury' test. Looked to Victoria to find legislation which enabled seriously injured applicants access to higher levels of compensation while limiting access for persons with less serious/temporary injuries.
- The Courts will apply the proposed legislation in the way most favourable to applicants (follows from case law).
- Victims will still be able to receive financial assistance for expenses reasonably incurred as a consequence of their injuries, which covers things such as relocation and other non medical/treatment expenses (security systems, retraining). Covers past and future expenses.
- Reasonable expenses provision has potential to provide many of the practical benefits previously obtained from 'pain and suffering' money.
- Rape Crisis and DVCS are not able to provide victims with the same range of rehabilitative services that will be available under the new scheme, eg: physiotherapy, long term intensive counselling, occupational or vocational therapy.

- New service will provide an alternative for victims unable to use or uncomfortable using existing counselling services (usually men). In Victoria, about 30 per cent of rape and domestic violence victims who use service are men, only about 6 per cent of rapes reported to police are against men.

Claim by ACT Bar Association that victims will not use the scheme

- Victims will have choice of treatment provider, even though statistics regarding Rape crisis shows that lack of choice is not a deterrent.
- All members of professional bodies who meet appropriate professional standards and, where relevant, can demonstrate competence in dealing with victims of crime, will be able to register with the scheme. Victims can choose from registered professionals
- Proposed scheme does not make counselling or debriefing compulsory - a range of rehabilitation modalities will be offered.

Claim by ACT Bar Association that future medical treatment costs cannot be recovered

- If an injury can be treated effectively it will not be regarded as an 'extremely serious injury' and no 'special assistance' will be available. However, victims will still be able to obtain financial assistance for 'reasonable expenses' which includes treatment costs.

Claim that costs of scheme could be contained by excluding police

- eliminating payments to police would have saved only \$282,980 in 1996-97

That the NSW 'Table of Maims' approach would be better

- Refers to NSW Parliament's Joint Select Committee on Victims Compensation and the Annual Reports of the Victims Compensation Scheme.
- Government rejected the NSW model because it could not be demonstrated to achieve any costs savings, in fact the total payments under the scheme increased, as did average payments by \$3,000.

That costs could be recovered from offenders

- Bill revises processes for recovery from offenders, based on NSW provisions - however, even these provisions only result in the recovery of less than 2 per cent of amount expended on awards.
- If the Government were to seek recovery from non-convicted offenders, these offenders would have to have some right to be heard, which would lead to a hearing type situation, where the victim could be cross examined. Furthermore, the offender may not even be in a position to pay. Would be little benefit to public purse and considerable trauma to victims.

The claim that lump sum payments give victims closure

- Question to consider is whether money actually helps in the recovery process.
- Trend in schemes for workplace and transport injuries has been away from lump sum payments for pain and suffering to income support and rehabilitation.
- It is not the money itself, but the process of being awarded the money which gives the victim the incentive/ability to work towards recovery. In the ACT, over 90 per cent of cases are decided without a hearing - courts merely give formal approval to agreements made between Government Solicitor and victim's solicitor.
- Why, if payments are so effective, do so many victims prefer to use direct assistance services such as Rape Crisis and DVCS.

- Research shows that victims who receive financial compo are more dissatisfied than those who do not. Payments may be counter productive to victims.
- Australian research shows positive outcomes from RISE study.
- Government has included initiatives in the Bill to make victim's experience in the criminal justice system better. This is what will lead to better reporting rates and better satisfaction.

17. VICTIMS OF CRIME COORDINATOR

- 'The current system of responses to crime victims in the ACT is inequitable, inaccessible, discriminatory, and profoundly ineffective in meeting victim needs.'
- There are approximately 32,000 property offences and 2,200 person offences reported to police in the ACT each year. Only about 25 per cent of the total potential pool of crime victims access non-government support agencies each year, which receive approximately \$1million financing.
- CICS compensate some crime victims and not others. If take the perspective that should make CICS more accessible, the question to be answered is to what effect?
- 31 per cent of sexual assault victims develop PTSD some time in their life. 72 per cent meet the full symptomatic criteria at the second week after the incident, 44 per cent at 3 months. The bulk of improvements in the treatment of PTSD and other trauma responses in sexual assault victims occurs within the first 3 months of treatment. However, many rape victims continue reporting problems with fear, anxiety, depression, social adjustment, sexual dysfunctions and self esteem for years after. A significant minority of sexual assault victims continue to suffer trauma-related reactions for a very long period of time.
- Empirical and clinical research literature suggests that the following responses are effective in assisting people to recover:
 - practical and supportive early interventions
 - protective and security/safety oriented assistance
 - short-term counselling that emphasises cognitive behavioural therapy
 - interventions that acknowledge an individual's personal and social networks
 - specific therapeutic treatment for on-going PTSD and depression disorders for the specific proportion of crime victims suffering such effects over the longer term.
- Research literature either does not mention or places a low priority on the provision of compensation as an effective response to criminal victimisation (research into the operation of the schemes and the reactions of victims is rarer).
- Victims prefer the notion of restitution and prefer that it comes from the offender than from the state.

18. WOMEN'S LEGAL CENTRE

Amendment to section 437 of the Crimes Act 1900 - Reparation Orders

- victim may apply before sentencing of offender for payment of reparation
- support this section, but believe that it is NOT a substitute for a government funded compensation scheme.
- problems with proposed provision:
 - need for offender to have been convicted of an offence (particularly problematic in sexual assault cases)
 - women are reluctant to face their offenders
 - offender has no financial resources
 - comparable provisions show that victims do not use it (less than 24 applications have been made in Victoria)
 - discretion to award (when awards made in Vic, do not usually include pain and suffering).

Victims Services Scheme

- Support a scheme, but it should not take the place of the legal rights victims have to access compensation.
- Calls to the Victorian scheme include service providers ringing up to request pamphlets and repeat callers.
- Reiterate concerns set out in first submission.

Comparison with the Table of Maims system used in NSW

- Proposed system in ACT has more tendency to encourage victims to remain sicker for longer than the NSW system. 'extremely serious injury' emphasises permanency.
- Existing system in ACT is superior to Table of Maims, however Table of Maims is superior to Bill.

An Alternative Proposal

- Suggested as a last resort.
- If pain and suffering is to be abolished, recommend an exception be made in relation to victims of sexual abuse and domestic violence.

Compensation for Police injured in the course of their employment

- There is a public interest in allowing police to access compensation for pain and suffering given the risky nature of their employment.
- However, police should not be compensated under the criminal injuries scheme for what is a workers compensation issue.
- A different scheme should be introduced.