Northern Territory Government

DEPARTMENT OF
THE ATTORNEY-GENERAL AND JUSTICE

ISSUES RAISED AT CONSULTATION FOR THE REVIEW OF THE

VICTIMS OF CRIME ASSISTANCE ACT

ISSUES PAPER

December 2012

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Submissions Close 31 March 2013

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1 INTRODUCTION

Section 70 of the *Victims of Crime Assistance Act* (the Act) provides that 'there is to be a review of the first 3 years of operation of this Act'.

The Act commenced on 1 May 2007 and this Issues Paper has been prepared to seek contributions from the community on a review of the operation of the Act.

1.1 Purpose of issues paper

The purpose of this paper is to give a direction to discussion about some issues raised by stakeholders relating to the Act, and to elicit public comment on these issues and generally.

The issues raised are not intended to be exhaustive, and commentators are invited to identify other issues in their submissions.

1.2 Process

The Attorney-General and Minister for Justice, the Hon John Elferink MLA, is calling for submissions on the issues raised in this paper, and on any other issue relating to the Act that may not have been identified.

Policy options and recommendations for change may be further developed by the Department of the Attorney-General and Justice from the submissions received. It is intended to provide a report to Government on those issues.

Further consultation (either broad or targeted) may be necessary, depending on the level of complexity or the scope of any proposed changes to the Act.

1.3 How to make a submission

Anyone can make a submission. It can be as short and informal as a letter or email, or it can be a more substantial document. A submission does not have to address all of the issues identified in the paper, and it does not have to be confined to the issues identified in the paper. Electronic copies of submissions should also be sent whenever possible. Submissions will be publicly available unless clearly marked as "confidential".

Submissions should be sent to:

Director Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

Or by email to Policy.AGD@nt.gov.au

Closing date for submissions is 31 March 2013.

Any submission, feedback or comment received by the Department of the Attorney-General and Justice will be treated as a public document unless clearly marked as 'confidential'. In the absence of a clear indication that a submission, feedback or comment is intended to be confidential, the Department of the Attorney-General and Justice will treat the submission, feedback or comment as non-confidential.

Non-confidential submissions, feedback or comments may be made publicly available and published on the Department of the Attorney-General and Justice website. The Department of the Attorney-General and Justice may draw upon the contents of such and quote from them or refer to them in reports, which may be made publicly available.

Any requests made to the Department of the Attorney-General and Justice for access to a confidential submission, feedback or comment will be determined in accordance with the *Information Act* (NT).

Note: Although every care has been taken in the preparation of the Issues Paper to ensure accuracy, it has been produced for the general guidance only of persons wishing to make submissions to the review. The contents of the paper do not constitute legal advice or legal information and they do not constitute Government policy documents.

2 BACKGROUND

2.1 Northern Territory

The *Victims of Crime Assistance Act*, on commencement, repealed and replaced the financial assistance scheme for victims under the *Crimes (Victims Assistance) Act* (the repealed Act) which was a court based compensation scheme relying heavily on legal representation of both the applicant and the Northern Territory government. The repealed Act had, in turn, modified an earlier court based compensation scheme under the *Crimes Compensation Act*.

On 29 March 2006, the then Minister for Justice and Attorney-General, the Hon Dr Peter Toyne noted in his second reading speech introducing the Victims of Crime Assistance Bill 2006 that the previous scheme was:

- inefficient and uncoordinated;
- too slow in providing financial support;
- did not provide up-front assistance;
- intimidating for victims and overly complex; and
- operating at enormous annual cost to the Territory with up to 40 per cent of expenditure being spent on legal costs.

The intent of the new scheme was the provision of a more streamlined administrative case assessment process for financial assistance, complemented by the provision of free counselling support.

On commencement in 2007, the main elements of the scheme (as outlined in the explanatory statement of the Victims of Crime Assistance Bill 2006), were:

- three main types of assistance – counselling assistance, financial assistance for economic loss (i.e. out of pocket expenses) and financial assistance for compensable injuries (similar to the awards for pain and suffering made at common law);
- all victims, including extended family members of a primary victim, are eligible for counselling;
- victims who are eligible for compensation under the *Workers Rehabilitation and Compensation Act* or the *Motor Accidents (Compensation) Act* are eligible for counselling but not for financial assistance under the scheme;
- total maximum financial assistance for a primary or secondary victim increased from $25,000 to $40,000;
- the $40,000 maximum can include up to $10,000 in financial loss (such as loss of earnings and medical costs) and up to $40,000 for the injury itself, as long as the total award does not exceed $40,000;
- financial assistance for the injury itself is determined by a table of 'compensable injuries' which specifies set amounts for specific injuries;
- there is a minimum threshold of $7,500 in relation to compensable injuries (although it can be met by a combination of several separate injuries);

- there is no minimum threshold for financial loss;
- of the $10,000 maximum available for financial loss, up to $5,000 can be made immediately available to victims, in circumstances of hardship;
- applications for financial assistance are made to the Director of the Crime Victims Services Unit, established under the *Victims of Crime Rights and Services Act,* and the application process is simplified, with case managers at the Crime Victims Services Unit available to assist victims to prepare their applications;
- final decisions as to eligibility and assessments of awards are made by legally trained assessors on an administrative basis and in accordance with the *Victims of Crime Assistance Act* and its guidelines;
- appeals are available to the Local Court against a decision of an assessor and legal costs payable for successful appellants; and
- the provisions under the repealed Act for recovery of assistance from an offender and the establishment of the Victims Assistance Fund (including the imposition of the victims levy) were continued in the same form.

In regards to the review, the then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) that:

> 'I propose to review the operation of the scheme after the first three years of operation. Although I am confident that this new scheme will dramatically improve the assistance available to victims across the Northern Territory, as with any reform, it is essential to make sure that it is operated as fairly and efficiently as envisaged, and provides the maximum benefit to the people it is designed to help.'

The following amendments were made to the Act, before commencement, by the *Justice Legislation Amendment Act 2007*, after various technical issues were identified during preparations for commencement of the scheme to ensure it operated effectively and in accord with the original policy intent:

- the most significant amendment was the introduction of the concept of 'compensable violent act', to co-exist with the existing 'compensable injury', and which clarified that financial assistance was available where a person is a victim of a prescribed sexual offence. Victims of a 'compensable violent act' do not need to prove actual physical or mental injury; they simply have to prove that the offence occurred;
- an amendment to the section 4 definition of 'medical expenses' to include 'medical reports' to ensure that applicants can access disbursement costs up-front in cases of financial hardship and the Crime Victims Services Unit will be able to assist applicants, both practically and financially, to obtain the necessary medical reports; and
- an amendment to section 33 of the Act which deals with the service of a victim's application on the alleged offender. The amendment gives the Director of the Crime Victims Services Unit a wide discretion as to whether to serve the offender with a copy of the application to avoid putting some victims at risk.

The Act has, since commencement on 1 May 2007, been amended in minor ways only, as follows:

- *Law Reform (Work Health) Amendment Act 2007* - consequential amendments to Act following amendments to the *Work Health Act* in July 2007 including amending the title to the *Workers Rehabilitation and Compensation Act;*
- *Justice Legislation Amendment Act (No. 2) 2007* - amendments (to section 61(3)(b)) as of 8 January 2008 to clarify that bodies corporate, convicted of criminal offences and liable to a monetary penalty only, are liable to pay the victims levy;
- *Justice Legislation Amendment (Penalties) Act 2010* - minor statute law revision amendments (to sections 36(5), 44(3), 46(8) and 63) in 2010 by substituting the words 'Maximum Penalty:' where the word 'Penalty:' was used;
- *Revenue and Other Legislation Amendment Act 2010* - increase the victims levy in section 61(6)(a) of the Act from $10 to $20 as of 1 July 2010; and
- *Statute Law Revision Act 2010* - minor statute law revision amendment (to section 4) from 13 October 2010.

In summary, the aim of the Act is to assist the rehabilitation of victims of violent acts by implementing schemes to provide counselling and financial assistance for financial loss and compensable violent acts and compensable injuries. The maximum payable for a violent act is $40,000. Applications for financial assistance under the Act are made by the victim, their guardian or their representative and financial assistance is paid for individual compensable injuries (e.g. a broken leg, or a broken jaw), for a compensable violent act or death or for financial loss of up to $10,000. Compensable violent acts are domestic violence injuries, sexual assaults and/or chronic psychiatric/psychological disorders. The Act also provides for the recovery of monies from offenders.

See flowchart at Attachment A.

2.2 Legislation in other Australian jurisdictions

Queensland: Queensland's legislation is the only new legislation since the NT Act commenced, although other jurisdictions have made amendments to their legislation. The *Victims of Crime Assistance Act 2009* (QLD) commenced on 1 December 2009 following a review and 'Report to the Queensland Government on the Victims of Crime Review 2008'. The new Act replaces the compensation-based scheme through the court system with a new administrative financial assistance scheme focusing on victim recovery by paying for goods and services needed to recover from the physical and psychological effects of an act of violence. Government assessors determine financial assistance awards, exercising discretion over the final amount with regard to legislative requirements. The objectives of the Queensland scheme are to help victims recover, to express the States recognition of the injuries suffered and to add to other services available through the Queensland Government. The assistance is not intended to reflect the level of compensation entitled at common law or otherwise.

New South Wales: The *Victims Support and Rehabilitation Act 1996* provides that victims who receive a compensable injury or die as a direct result of an act of violence are eligible for statutory compensation with the amount being determined by assessors primarily in accordance with a schedule of injuries with a set amount or range for each type of injury or offence.

Australian Capital Territory: The *Victims of Crime (Financial Assistance) Act 1983* provides that victims injured as a result of a violent crime are eligible to apply to the Magistrates Court for an award of financial assistance. The policy behind the legislation is to assist victims and related victims of violent crimes to recover from the physical and/or mental injuries sustained by providing a means to recover expenses reasonably incurred in treating those injuries.

Victoria: The *Victims of Crime Assistance Act 1996* provides that a victim injured as a direct result of an act of violence can apply to the Victims of Crime Assistance Tribunal for assistance including special financial assistance. There was a recent review of victims' compensation and the Act was amended in 2010 to allow the Chief Magistrate to delegate powers to judicial registrars and create a new assistance award category of safety-related expenses. Assistance is not intended to reflect the level of compensation victims may be entitled at common law or otherwise and the scheme is to support other government services for victims.

Tasmania: The *Victims of Crime Assistance Act 1976* provides that a person can apply for an award of compensation where injured as a result of an offence or in assisting police to be determined by the Criminal Injuries Compensation Commissioner. The scheme provides for victims of violent crimes to claim for financial assistance through the Tasmanian Government if they are unable to recover monies from the offender.

South Australia: The *Victims of Crime Act 2001* provides for an immediate victim of an offence causing injury to claim statutory compensation for the injury and for other persons to claim for grief, financial loss and funeral expenses. Initial application made to Crown Solicitor and, if not settled by agreement, can apply to

the District Court for an order. The objects of the South Australian legislation is to provide from public funds limited monetary compensation to victims most directly affected by criminal offending.

Western Australia: The *Criminal Injuries Compensation Act 2003* provides that a person who suffers injury or financial loss as a consequence of a criminal offence may apply to the Chief Assessor for compensation, to be determined by an assessor (who may conduct a hearing). Close relatives of persons killed as a result of an offence may also claim for financial loss.

Refer to the table on page 39 for a jurisdictional comparison of award cap amounts.

3 CURRENT OPERATIONS

3.1 Applications

When the reformed Crime Victims Assistance Scheme was introduced in May 2007, it was estimated that approximately 300 to 350 applications would be submitted per annum.

Under the previous scheme, the number of applications received was:

- 304 in 2005/06; and
- 386 in 2006/07 (with 41 under the new scheme which commenced 1 May 2007).

The number of applications under the new scheme peaked in 2008-09. See table below:

	2007-08 actual	2008-09 actual	2009-10 actual	2010-11 actual	2011-12 actual
applications	468	580[1]	506	478	512

It is likely that the main reason for the decline in applications since 2008/09 is that the high number of applications in 2008-09 included a backlog of victims who would not have received assistance under the previous Act. Many victims of domestic violence who receive assistance under the current Act would have received little or no assistance under the old Act.

On the limited trend data, it appears that the number of applications per annum is settling at around 500 per year.

3.2 Counselling

The provision of specialist crisis counselling is a significant aspect of reform to the support and financial assistance available to victims of crime.

All primary, secondary, family or related victims (and including such victims who are not eligible for financial assistance because they are eligible under the *Motor Accidents (Compensation) Act* or the *Workers Rehabilitation and Compensation Act*) are eligible to apply for counselling.

The Department of the Attorney-General and Justice funds Anglicare - NT Resolve Counselling Education and Mediation cluster to provide a free Victims of Crime Counselling Support Service to individuals throughout the Northern Territory who have experienced a violent crime, and/or secondary victims who have been impacted by crime. Counsellors use restorative counselling practice and their skills and experience in grief, loss and trauma counselling to support clients to resolve issues they face as a result of a crime.

[1] There was an initial 'spike' in applications when the new Act commenced.

Anglicare is currently providing face to face counselling in Darwin, Alice Springs, Katherine and Nhulunbuy.

The greatest challenge for the service is the delivery of culturally appropriate support to victims of crime from remote Northern Territory, against a background of passive acceptance of violence which affects willingness of victims to engage, and difficulties in recruiting and retaining appropriately experienced support staff.

Anglicare is exploring trialling e-counselling for remote communities. This is based on research undertaken by Anglicare in Tasmania, and by Relationships Australia at Palm Island.

Number and location of Anglicare clients 1 July 2011 to 30 June 2012

Location	July-Dec 2011	Jan-June 2012	Total
Darwin	28	29	57
Palmerston and Rural	3	9	12
Katherine	0	0	0
Nhulunbuy	0	9	9
Alice Springs	22	30	52
Remote	3	5	8
TOTAL	**56**	**82**	**138**

Approximately 33 per cent of Anglicare clients identify as Indigenous.

Number of Counselling and Support Sessions 1 July 2011 – 30 June 2012

Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
53	37	48	29	61	33	35	65	61	49	74	77	622

3.3 Operational Costs

The Total Assistance and Operational Costs of the scheme in 2011-12 was $4.687 million.

Total assistance paid in 2011-12:			
• Assistance paid under the old scheme		$6,000	
• Assistance (including Anglicare counselling) paid under the current scheme		$3,612,000	
			$3,618,000
Plus CVSU Operational Costs:			
• CVSU Personnel and Operational (Number of staff in the CVSU in 2011/2012 is 12**)**	$839,000		
• Section 35 and 36 Costs (for medical reports, psychiatric and psychological assessments)	$219,000		
• Appeal costs	$11,000		
			$1,069,000
Plus costs generated under the old scheme which comprises:			
• SFNT (outsourced solicitors) Costs	$0,000		
• Applicants' Solicitors Costs	$0,000		
			$0,000
Total Assistance and Operational Costs of the scheme in 2011-12			$4.687 million

The Department of Justice Annual Report 2009-10 notes that the operational cost of the Victims of Crime Assistance Scheme had been reduced from a high of 42 per cent in 2002-03 to 21 per cent in 2009-10 with the shift from a court-based to an administrative decision-making framework.

The attached spreadsheet (refer Attachment B) shows actual and proportional costs from 1998/99 to 2011/2012. In 2011/12 the total cost of the Victims of Crime Assistance Scheme was $4.687 million. Of this amount, $3.618 million was paid to assist victims of crime and $1.069 million was for operating the Crime Victims Services Unit. In 2011/12, 77 per cent of the costs of the scheme were paid in assistance and support to victims of crime, and 23 per cent was paid to administer the scheme. In comparison, in 2002/03, $3.674 million (58 per cent of total cost) was paid in assistance, and $2.66 million (42 per cent) was paid in legal and other costs.

The reformed scheme has delivered greater financial assistance to victims of crime, at a less cost to government.

3.4 Recovery

A stated object of the Act is to enable the Northern Territory to recover money from offenders found guilty of committing violent acts resulting in payments of financial assistance to their victims (refer section 3(b) of the Act). Such recovered money provides a source of revenue for the Victims Assistance Fund, from which financial assistance to victims is paid.

In regards to recovery, the then Minister for Justice and Attorney-General noted in his second reading speech that the provisions of the now repealed *Crimes (Victims Assistance) Act,* providing for recovery of assistance from an offender, were to continue in the same form. That form was the result of amendments in the now repealed *Crimes (Victims Assistance) Amendment Act 2002.*

The amount of money recovered from offenders over the last five years is set out below:

	2007/08 actual	**2008/09 actual**	**2009/10 actual**	**2010/11 actual**	**2011/12 actual**
recovery revenue *	218,000	155,000	123,000	132,000	145,969

* Recovery revenue collection levels are impacted by resource constraints within the Solicitor for the Northern Territory Division of the Department of the Attorney-General and Justice.

4 LEGISLATIVE ISSUES

4.1 Part 1 of the Act provides for Preliminary Matters.

Objects of the Act

The then Minister for Justice and Attorney-General stated in his second reading speech (29 March 2006):

> 'The Victim of Crime Assistance Bill 2006, repeals and replaces the *Crimes Victim Assistance Act*, and establishes a new administrative assessment scheme for the provision of financial assistance to victims of violent crime. It also establishes a counselling scheme which will provide immediate counselling assistance to victims across the Territory.'

The objects of the Act are set out in section 3, namely:

(a) to assist the rehabilitation of victims of violent acts by implementing schemes to provide counselling and financial assistance for financial loss and compensable violent act and compensable injuries; and
(b) to enable the Territory to recover money from offenders found guilty of committing violent acts resulting in payments of financial assistance to their victims; and
(c) to establish a fund for the schemes implemented by this Act and to provide revenue for the fund by imposing a levy on certain people.

1.1 Generally, do the policy objectives of the Act remain valid and its terms remain appropriate for securing its objectives?

Definitions and terms generally

Section 4 of the Act (and the following sections 5-7) sets out the definitions of various terms used in the Act. It has been suggested that the scheme may be less confusing if some of the terms were changed.

1.2 Are there any terms and their definitions which could be amended to provide more clarity?

Definition of 'medical expenses'

The definition of 'medical expenses' in section 4 'includes expenses for any of the following:

(a) medical, surgical, dental, ophthalmic, psychological or psychiatric treatment;
(b) transportation by ambulance;
(c) hospitalisation;
(d) physiotherapy;
(e) a medical report relating to an injury'.

It has been suggested that paragraph (d) of the definition of 'medical expenses' should be broadened from just 'physiotherapy' to cover the expenses of other health-related services, such as speech therapy, occupational therapy or acupuncture. Should expenses such as massage and dieticians be paid if reasonable in the circumstances?

1.3 Should paragraph (d) of the definition of 'medical expenses' be broadened to other health services and, if so, to which other health services?

1.4 Should the type of expenses covered be broadened even further?

1.5 Should there be a general discretion to accept expenses depending on the particular circumstances?

It has also been suggested that the term 'medical expenses' should be changed to 'therapeutic expenses' being a more accurate description of the types of expenses covered, including psychological, dental and physiotherapy.

1.6 Should the term 'medical expenses' be changed and, if so, to what?

It has also been suggested that paragraph (e) of the definition of 'medical expenses' should be broadened from just 'medical report relating to an injury' to cover expenses for other records relating to an injury, such as hospital records. There are for example fees charged for copies of hospital records which may be relied on when making an application.

1.7 Should paragraph (e) of the definition of 'medical expenses' be amended to include records relating to an injury?

Related violent acts treated as one act

Under the Act, a victim may only apply for one award of financial assistance for the same violent act, which may be a series of related criminal acts.

Concerns have been raised that victims who are severely injured as a result of both a sexual assault and domestic violence at the hands of the same perpetrator are unfairly disadvantaged because the true extent of their injuries is not recognised or reflected in the financial assistance they may be awarded.

Section 5(3) and (4) of the Act define 'a series of related criminal acts'. Criminal acts are considered to be related if they are committed against the same person and occur either (i) at approximately the same time or (ii) over a period of time and are committed by the same person or groups of persons, or (iii) share another common factor.

A series of related criminal acts, whether committed by one or more persons, constitutes a single violent act (section 5(4)) and an eligible victim may only apply for one award of financial assistance for the same violent act (section 25(2)).

There was no such limitation under the previous scheme and victims made multiple applications for criminal acts that were related and part of a series of criminal acts. This approach affected the capacity of the scheme to assist all victims appropriately.

The Court of Criminal Appeal in the *Northern Territory of Australia v AB* [2010] NTCA 06 considered a case involving criminal acts (sexual assaults and aggravated assault) committed on three separate occasions by the same offender with whom the victim was living in a domestic relationship and, after deciding that the criminal acts committed against the victim were a series of related criminal acts, comprising a single violent act, provided guidance on assessing the award of a victim in such circumstances.

The former Chief Justice BR Martin in *NTA v AB* noted with respect to determining the award in such circumstances:

> '[103]… Notwithstanding that the injuries were sustained on separate occasions over a period of time, s 5(4) deems that the multiple acts constitute a "single violent act" and, therefore, for the purposes of reg 18 the injuries are the result of "the same violent act".'
> [106] As I have said, the principle underlying the award is financial assistance based on the commission of a compensable violent act to assist the victim who has been the subject of a sexual offence. …
> [107] …The key to this approach is to recognise that multiple acts are treated as a single violent act which means that all acts and injuries are combined for the purposes of assessing seriousness and a position in the range of award.'

1.8	Although guidance has now given by the Court, should the Act provide for how an assessor is to assess a claim based upon multiple compensable violent acts committed over a period of time or a combination of multiple compensable acts and other acts causing injuries?

Domestic violence injuries

The concern has also been raised that the amount awarded for domestic violence is low and that a person experiencing ongoing domestic violence for many years may only be entitled to one payment.

Domestic violence injuries are defined in regulation 5(1) and a victim suffers domestic violence injuries if:

(a) the victim suffers 1 or more injuries as a direct result of:
  (i) a violent act involving a pattern of abuse [being a series of 3 or more related criminal acts that occur over a period of time and the acts are committed against the same victim by the same offender], committed by an offender with whom the victim is in a domestic relationship; or
  (ii) a violent act of unlawful stalking under section 189 of the Criminal Code in contravention, or apparent contravention, of a domestic violence order; or

(iii) a combination of violent acts mentioned in subparagraphs (i) and (ii) if committed by the same offender; and

(b) the injuries are more than transient or trifling, though they need not be serious.

Domestic violence injuries are listed in Part 2 of Schedule 3 of the Regulations as a compensable injury with the standard amount of financial assistance being a range of $7,500 – 10,000.

It is noted that an award range of $7,500 - $10,000 ensures all eligible domestic violence victims automatically reach the minimum threshold, even if the applicant's injuries would not reach the minimum $7,500 threshold if assessed separately. Furthermore, if it would result in a greater amount of assistance, the domestic violence applicant's injuries may be assessed separately.

The Court of Criminal Appeal in *NTA v AB* also considered the principles in deciding the amount of an award within a range provided for in the Regulations either for a compensable violent act or for domestic violence injuries or psychological and psychiatric disorders under compensable injuries. The former Chief Justice BR Martin stated:

> '[74] In the case of domestic violence injuries, the financial assistance is being provided because the victim has suffered a pattern of abuse within a domestic relationship at the hands of the same offender or has suffered a violent act of stalking in contravention of a domestic violence order. It is the suffering of the injuries in the context of the domestic relationship, or from stalking in breach of a domestic violence order, that entitles the victim to an award. …
> [82] As to …where a particular group of such [domestic violence] injuries falls within the small range of $7,500 - $10,000… The award is made because the victim has suffered injuries in particular circumstances over a period of time. If the injuries are serious enough, a claim would be based upon suffering a compensable injury rather than the amorphous grouping of "domestic violence injuries". The provision for domestic violence injuries appears to contemplate a collection of injuries that either individually or in combination would not attract more than $10,000 under the table of compensable injuries. Domestic violence injuries must be more than transient or trifling, but they need not be serious and they need not be specified as compensable injuries in Pt 2 of Sch 3.'

The former Chief Justice also noted that limiting the expression could work injustice to a victim and defeat the purposes of the scheme with respect to domestic violence injuries:

> '[99]. …A victim of domestic violence often suffers relatively minor injuries on multiple occasions of violence in domestic circumstances, being injuries which would not qualify as a compensable injury under Pt 2 of Sch 3. The intention of the Legislature is that in respect of these repeated and separate occasions of violence, a victim is eligible for an award for domestic violence injuries notwithstanding that, individually, the injuries do not amount to a compensable injury. …[A ruling that the criminal acts must be continuing in the sense that they form part of a single episode of offending] would mean, for example, that such injuries suffered through violence on a Monday could not be considered in conjunction with injuries suffered on a separate occasion of violence occurring

on Tuesday because they would not be committed over a period of time. If the victim was restricted to claiming for each separate occasion, the victim might not be entitled to any award because the injury sustained on each occasion did not amount to compensable injury and one occasion cannot qualify as "domestic violence injuries" because it does not involve a pattern of abuse over a period of time.'

1.9 Is amendment to compensable injury amounts in Part 2 of Schedule 3 of the Regulations required?

Psychological Harm

Section 6 of the Act defines 'injury' (which cannot include an injury resulting from the loss of or damage to property). 'An injury is any of the following:

(a) a physical illness or injury;
(b) a recognisable psychological or psychiatric disorder;
(c) pregnancy;
(d) a combination of any injuries mentioned in paragraphs (a) to (c).'

The Crime Victims Services Unit (CVSU) notes that an award for psychological or psychiatric injury as a compensable injury is not routinely assessed as part of an application for financial assistance, despite a tendency for applicants to seek such an award without any evidence of psychological or psychiatric injury. Prior to assessing an applicant for psychological or psychiatric injury, the CVSU will seek third party confirmation that a psychological or psychiatric injury has occurred. This will usually be a report on diagnosis and treatment from a mental health professional. Recognising that access to emotional support and wellbeing services may be difficult in remote Northern Territory, where no third party confirmation is available, the CVSU will ask the applicant to describe their emotional response to the violent act in his or her own words.

Additionally, applicants need to identify which offence has been committed under Schedule 2 of the Regulations in order to claim a Category 1 psychological or psychiatric disorder and this information is seldom included in the application.

It is noted that regulation 10(2)(b) requires that if the application is for financial assistance for a compensable injury for a Category 1 or 2 psychological or psychiatric disorder, a written report about the applicant's condition must accompany an application.

1.10 Is any amendment to legislation needed?

4.2 Part 2 of the Act provides for eligibility to apply for assistance.

Division 1 Categories of victims of violent act and eligibility

Primary Victims

Section 9 of the Act sets out who a primary victim of a violent is and that a primary victim is eligible under section 10 for:

- counselling;
- an award of financial for financial loss and, in circumstances of financial hardship, an immediate payment for that financial loss; and
- an award of financial assistance for a compensable violent act or for one or more compensable injuries.

A primary victim's financial loss is defined in section 10(5).

Secondary Victims

Section 11 of the Act sets out who a secondary victim is and provides that a person is not a secondary victim if the person committed the violent act. A secondary victim of a violent act is:

(1) a person who is present at the scene of the violent act and suffers an injury as a direct result of witnessing the violent act (section11(1));
(2) one of the following persons who suffers an injury as a direct result of subsequently becoming aware of the violent act:
    (a) a child or stepchild of the primary victim, or a child under the guardianship of the primary victim, when the violent act occurs;
    (b) if the primary victim is a child – a parent, step-parent or guardian of the primary victim when the violent act occurs.

The effect of the definition of 'child' in section 4 of the Act, as being a person who is less than 18 years of age, on the definition of a secondary victim in section 11(2) is that, for example:

(a) an adult child is not eligible for an injury suffered as a direct result of subsequently becoming aware of the violent act where a parent is the primary victim; and
(b) a parent is not eligible for an injury suffered as a direct result of subsequently becoming aware of the violent act where an adult child is the primary victim e.g. has died as a result of a violent act.

2.1 Should section 11(2) be amended to ensure that -

- an adult child of a primary victim; and
- the parent of an adult primary victim;

can be a secondary victim?

A secondary victim is eligible under section 12 for:

- counselling;
- an award of financial assistance for financial loss and, in circumstances of financial hardship, an immediate payment for that financial loss;
- an award of financial assistance for compensable injuries; and
- an immediate payment for funeral expenses for the primary victim, if also a family victim.

Section 12(6) lists the matters for which a secondary victim can claim for financial loss. It has been noted that this list of matters in section 12(6) does not include loss of earnings to care for the primary victim.

Section 25 of the Act provides that an eligible victim may only apply for financial assistance in only one category, unless the victim is a secondary victim who is also a family victim. In that case, the secondary victim can also apply (as a family victim) for a payment for funeral expenses.

2.2 Should section 12(6) be amended to allow for secondary victims (who are also family victims) to be eligible for other types of financial loss such as loss of earnings to care for the primary victim?

Family Victims

A 'family victim' is eligible under section 14 to apply for counselling and an award of financial assistance for financial loss including an immediate payment for funeral expenses for the primary victim and, in circumstances of financial hardship, other financial loss.

Section 13 defines a 'family victim' of a violent act as a person who, when the violent act occurs, is one of the following:

(a) the spouse or de facto partner of the primary victim of the violent act;
(b) a parent, step-parent or guardian of the primary victim of the violent act;
(c) a child or stepchild of the primary victim of the violent act or a child under the guardianship of the primary victim of the violent act (including a child born after the violent act occurs);
(d) a person entirely or substantially dependent for financial support on the primary victim of the violent act.

The effect of the definition of 'child' in section 4 of the Act, as being a person who is less than 18 years of age, on the definition of a family victim means that an adult child of the primary victim is not a family victim and is not, for example, eligible to claim funeral expenses where a parent has died as a result of a violent act. This result has been queried.

It has also been queried whether the definition should be amended to include a sibling. It is noted that a sibling may be the only family member still alive to meet funeral costs for the primary victim.

2.3 Should section 13(2) be amended to ensure that -

- an adult child of a primary victim; and
- a sibling of a primary victim;

can be a family victim?

Division 2 Miscellaneous matters

Motor Accidents (Compensation) Act

Section 17 of the Act provides that an injured person who suffers an injury as a direct result of a violent act is not eligible to apply as a primary (or as a secondary or family) victim for financial assistance if the injured person is being paid, or has been paid, or is entitled to, a benefit under the *Motor Accidents (Compensation) Act* (MACA). A person entitled to a benefit under the MACA, regardless of whether they have made a claim for such a benefit, is not eligible to make an application for financial assistance under the Act. An injured person can however apply for counselling as a primary victim of the violent act or as a secondary, family or related victim.

Benefits are payable under the MACA to a person who suffers personal injury or dies in a motor accident occurring in the Territory or to a resident of the Territory who is injured or dies in an accident occurring outside the Territory but in Australia and involves the use of a Territory vehicle (section 7 of the MACA).

The Explanatory Statement to the Bill outlines that:

> 'The rationale for disentitling such victims of crime from receiving victims financial assistance is to treat all injuries consistently. It is inappropriate and unfair to allow a person to access compensation from a variety of funds. The different statutory compensation schemes provide different types and amounts of assistance and therefore should be completely separated. The effect of allowing victims to access a variety of compensation schemes is that these victims will often be better off than other victims of crime or other victims of car accidents. This puts unnecessary and unfair pressure on tax-payer funded statutory compensation funds and creates unjust inconsistencies between injured persons. A person injured by a car accident will suffer the same injuries regardless of whether it is a result of a dangerous act or just a simple accident.'

Thus the provision applies even when the nature of the damage or loss is not payable under a MACA claim.

However, it is arguably unclear whether an applicant whose application under the MACA has been rejected on procedural grounds (e.g. out of time) is still 'entitled to a benefit' under the MACA and therefore not eligible for victims assistance.

2.4 Should a person, whose application under MACA has been rejected on procedural grounds, be eligible for victims assistance?

It has been suggested however that a person who is excluded from all benefits under section 10 of the MACA because the person was criminally responsible for the theft or unlawful use of the vehicle in question, or was using the vehicle in the commission of an indictable offence or using it to escape the scene of a crime etc. or using it to intentionally inflict death or injury, is not entitled to a benefit under MACA within the meaning of section 17(1)(b) of the Act and the person may therefore be eligible for financial assistance under the Act.

It is noted that in such circumstances (i.e. where the injured person is eligible as a primary victim for an award) the financial assistance must not be awarded if the injury or death occurred during the commission of a crime by the applicant (section 43(f) of the Act) or may be reduced if the primary victim contributed to or participated in the violent act (section 41(1)(a) and (b) of the Act).

However, it is arguable that a situation of permitting a person who is excluded from entitlement to claim benefits under MACA because of his unlawful act, to be eligible to apply for financial assistance under the Act should be changed.

2.5 Should section 17 be amended to exclude all applications for assistance where the injury or death is the result of a motor vehicle accident where the person is entitled under MACA or otherwise would have been entitled but for the operation of section 10 of MACA?

Workers Rehabilitation and Compensation Act

Section 18 of the Act provides that a worker who suffers an injury as a direct result of a violent act is not eligible to apply as a primary victim for financial assistance for the same (or substantially the same) injury if the worker:

(a) is being paid, or has been paid, compensation under the *Workers Rehabilitation and Compensation Act* for the injury; or
(b) is entitled to compensation under the *Workers Rehabilitation and Compensation Act* for the injury, regardless of whether the worker has made a claim for such compensation.

It has been queried whether section 18 should also cover people receiving compensation under other workers' compensation schemes, such as the Comcare scheme (which provides rehabilitation and workers' compensation and OHS arrangements for Australian Government employees and for the employees of organisations which self-insure under the scheme) the *Military Rehabilitation and Compensation Act* or Seaman's Insurance.

2.6 Should section 18 be amended to include people receiving compensation under other workers compensation schemes, such as but not limited to Comcare, the *Military Rehabilitation and Compensation Act* or Seaman's Insurance?

Whilst section 18 provides that an injured worker who is entitled to work health compensation is not eligible to apply for victims financial assistance, regulation 13 provides that, when deciding an application for immediate payment or an award for financial assistance, the Director (or assessor) must, for the purposes of section 18 of the Act, presume that an injured worker, who has made a claim for compensation under the *Workers Rehabilitation and Compensation Act* which is being disputed by the employer, is not entitled to such compensation for the injury and decide the application accordingly. In exceptional cases, the assessor may defer consideration of an application until the injured person's entitlement is decided - such as when there is only a short time before the claim for workers compensation is to be finally determined.

This ensures victims in borderline cases (where it is not clear whether or not they fall under the *Workers Rehabilitation and Compensation Act*) are not unduly disadvantaged. The concern has been raised that under the new scheme victims still have to wait until their claim is rejected under the *Workers Rehabilitation and Compensation Act* before they can make a claim. Such cases can sometimes take years to resolve. This is contrary to one of the main aims of the new scheme which is to provide a quicker process for assessing claims by victims of crime.

In the event a victim were to receive assistance under the Act and is later awarded compensation under the *Workers Rehabilitation and Compensation Act*, the victim is required to refund the money under section 47 of the Act.

2.7 Should section 18 be amended to clarify that the Director can, notwithstanding section 18, process applications in the circumstances covered by regulation 13?

4.3 Part 3 of the Act provides for the Victims Counselling Scheme.

The then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) that one of the most significant aspects of the reforms was the establishment of the victims counselling scheme to provide immediate counselling assistance to victims and the extended victims of crime. He noted that this form of immediate assistance is much more effective in assisting victims to come to terms with the effects of a crime than the previous approach that provided only financial assistance via an intimidating court process and long after the event.

All victims are eligible for counselling and there is no set upper limit on the amount of counselling an individual victim can receive under the scheme. However, in practice, a person needing long-term counselling would apply under the scheme for financial assistance to pay for the counselling.

3.1 Is any amendment needed to the counselling provisions?

4.4 Part 4 of the Act provides for the Victims Financial Assistance Scheme.

Division 1 Preliminary matters

One application

Section 25 of the Act provides for financial assistance applications generally. Section 25(1) provides that an eligible victim may apply for financial assistance in only one of the categories of primary victim, secondary victim or family victim of a violent act (unless the applicant is a secondary victim to whom section 12(5) applies). Section 25(2) provides that 'an eligible victim must not apply for more than one award for the same violent act'.

It has been suggested that section 25(2) be amended by deleting it altogether or amending it to 'an eligible victim must not receive more than one award for the same violent act'. It is a matter for the Director/Assessors to accept or reject applications. It is argued that if an application is rejected, the applicant should not then be disentitled from making another application for example in the right category.

The purpose of section 25 is to make it clear that victims cannot be paid under more than one category and cannot have two types of applications proceeding at the same time, rather than to exclude bona fide victims from changing their applications if they made a mistake in their application, whether it was a mistake as to the nature of their injury or otherwise.

4.1 Should section 25(2) be amended to clarify that a victim must not receive more than one award for the same violent act, rather than cannot apply for more than one award for the same violent act?

Division 2 Immediate payments of financial assistance for financial loss

Immediate Payments

The then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) the importance of immediate financial assistance and counselling as one of the most effective ways to help victims of crime overcome and rehabilitate from the effects of the crime. Providing for immediate monetary assistance was a new feature of the Act. Of the $10,000 maximum available for financial loss, up to $5,000 can be made immediately available to victims in circumstances of financial hardship for out of pocket expenses including upfront medical expenses, such as ambulance and dental costs; replacement of personal

items such as clothing and glasses; relocation costs; security measures; and funeral costs.

Immediate payments are however deducted from any ultimate award of financial assistance for financial loss and are included in the maximum of $10,000 for financial loss. There is no right of review or appeal from the decision to approve or refuse an application for an immediate payment of financial assistance.

It has been suggested that it is more accurate to describe such payments as interim payments rather than immediate payments because:

- calling them immediate payments raises the expectation of victims that the money can be paid within a very short time frame (i.e. a few days), whereas the reality is that it takes some time for the payments to be processed; and

- they are in the nature of provisional payments made in the interim to a final award being made and the amount is deducted from any ultimate award of financial assistance for financial loss.

4.2 Should the term 'immediate' payments be amended to 'interim' payments?

Division 3 Applications for awards of financial assistance

Time limit to apply

Section 31 provides a time limit of two years for lodging an application for an award. This was an increase on the limit under the previous scheme which only allowed a 12 month time limit after the offence has occurred.

It has been suggested that victims tend to submit a claim too early to be in a position to determine whether they have suffered any psychological or psychiatric harm.

In regards to a victim being able to apply for an increase in an award, the then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) that:

> 'This is to cover situations where there has been a significant change in the circumstances, such as the injury has become more serious than was the original prognosis.'

It is also noted that the Director, after accepting an application, must accept further relevant information or documents given by the applicant.

4.3 Is any amendment to section 31 needed?

Late Applications

While section 31 provides a time limit of two years for lodging an application for an award, the Director can accept a late application, if the circumstances justify it, and section 31(3) sets out the matters the Director must have regard to when deciding whether to accept a late application. Section 31(3) provides as follows:

> 'In deciding whether to accept a late application, the Director must have regard to the following matters:
>
> (a) whether the injury or death occurred as a result of sexual assault, domestic violence or child abuse;
> (b) the age of the applicant at the time of the violent act;
> (c) whether the offender was in a position of power, influence or trust in relation to the applicant;
> (d) any mental incapacity of the applicant;
> (e) whether the delay in making the application will affect the assessor's ability to make a proper decision;
> (f) whether the violent act was reported to a police officer within a reasonable time after it occurred or at any time before the application is made.'

It has been suggested that other factors could be relevant and that a further general matter should be added, for example '(g) any other factor deemed relevant by the Director'. Examples of such other factors include lack of knowledge of the scheme, English as a second language, applicant lives in remote area.

Whilst it is arguable that the matters set out in section 31(3) are not exhaustive and the provision does not prevent the Director from taking into account other matters which show or tend to show whether the circumstances justify accepting a late application, such an amendment would make this clear.

The matters set out in section 31(3) refer to reasons why the Director may accept a late application (section 31(3) (a) to (d)) and reasons why the Director may reject a late applications (section 31(3)(e) and (f)). To ensure clarity in describing why a late application is accepted or rejected, it may be useful to separate the reasons into different sections.

However, it has been argued that the time limit should be strictly adhered to, consistent with, for example, the approach to applications for assistance under the *Motor Accidents (Compensation) Act.*

4.4 Should section 31(3) of the Act be amended regarding matters which must be considered by the Director in deciding whether to accept or reject a late application?

4.5 Should section 31 be amended to ensure the time limit is more strictly applied?

Content of applications

Section 32(1) sets out the following information that must be included in an application for an award:

(a) category of victim i.e. primary, secondary or family – such information is required as it relates to section 25(1);
(b) brief description of violent act, name of offender (if known) and date act occurred - such information is required to determine if applicant eligible;
(c) date applicant made statement to police if primary victim – such information is relevant for section 43(b) and (d);
(d) date applicant made statement to police of secondary or family victim or that primary victim made statement to police – such information is relevant for section 43(b) and (d);
(e) description of compensable injury - such information is required to determine application – see further regulation 10(1)(b) and (c);
(f) the standard amount sought for the compensable injury - such information assists in determining the application;
(g) nature and amount of financial loss - such information is required to determine if applicant eligible;
(h) brief description of exceptional circumstances if applying for expenses to assist recovery from effects of act - such information is relevant for section 10(5)(d) and section 12(6)(c);
(i) details of any immediate payments – such information is relevant for assessing applications and the maximum amounts under sections 38(2), 39(2), 40(2);
(j) details of civil or criminal proceedings in relation to the violent act or the applicant's injury, death or financial loss and, if so, the nature and outcome of the proceeding – such information is relevant for section 42;
(k) whether the applicant has applied under MACA or Work Health - such information is relevant for sections 17 and 18;
(l) whether the applicant believes any other person may be a victim of the violent act - such information is relevant for maximum awards in sections 39(1) and 40(1); and
(m) any other information required by regulation.

Regulations 8 and 10(1) provide additional information to be included in an application.

Section 32(3) further requires the application to be accompanied by the following documents:

(a) a copy of the applicant's statement about the violent act made to a police officer, unless the applicant has given reasons why a statement has not been made;
(b) all documents in the applicant's possession supporting the application, such as medical reports and invoices for expenses incurred;

(c) any other documents required by the Director or by regulation. Regulation 10(2) provides for additional documents substantiating loss of earnings and a psychological or psychiatric report if relevant to be included in an application.

4.6 Is any amendment needed to the information required to be included in, or to accompany, an application i.e. by section 32 of the Act and regulations 8 and 10?

4.7 Should such requirements, i.e. as to what information is required in the applications, all be in one place rather than split over both the Act and Regulations?

Notification to the offender of application

A victim of a violent act submits an application to the Director for an award of financial assistance.

Section 33(1) requires the Director to give the application for financial assistance to an assessor as soon as practicable after accepting it. Section 33(2) provides that the Director may give a copy of the application to an offender named in the application and any other person the Director considers to have an interest in the application. If the Director notifies the offender or any other person, the Director must also notify them of the fact that they are entitled to make a written submission to the Director in relation to the application no later than 28 days after the date of the notice. The Director must forward any submissions received to the relevant assessor.

Section 33 was amended in 2007 to give the Director a wide discretion as to whether to serve a victim's application on the alleged offender. As the then Minister for Justice and Attorney-General noted in his second reading speech (21 February 2007), the amendment was required because the government had determined that mandatory service of the offender may have the unintended consequence of putting some victims at risk.

It has been suggested that the provision should go further and provide for an exception to any possible notification of the alleged offender in domestic/family violence cases or any other case where it might lead to the re-victimisation of the applicant. It is argued that providing a copy of the application may not be appropriate or suitable in cases involving family violence, or where the victim fears that legal proceedings against the offender may result in further violence being committed against them.

It has been further raised whether section 33(2)(a) should be deleted on the basis that an offender has no reason to be involved in the application process but has an opportunity to challenge the award of financial assistance when the debt recovery process is under way.

The then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) that:

> 'The current provisions of the *Crimes (Victims Assistance) Act* providing for recovery of assistance from an offender … will continue in the same form.'

That recovery scheme had resulted from amendments to the repealed Act (i.e. the *Crimes (Victims Assistance) Act)* by the *Crimes (Victims Assistance) Amendment Act 2002* which addressed a number of recommendations made by the Crime Victims Assistance Committee in its 1997 report to simplify the scheme. The then Minister for Justice and Attorney-General in his second reading speech on 22 August 2002 stated:

> '…One of the main ways that the assistance process will be simplified is to remove the alleged offender from the proceedings. … Involving the alleged offender in the assistance process can be distressing to the victim and has been the subject of criticism by victim groups. Involving the offender can also add unnecessary costs and lengthen the assistance process because of the difficulty in finding and serving offenders and because of their often unwillingness to be involved in, or agree to, settlement offers. …The alleged offender must currently be a party to the proceedings because the Territory has an automatic right of recovery from the offender for the amount paid by way of assistance to the victim. …The amendments also provide for the Territory to commence separate recovery procedures against an offender after an award to the victim has been made.
>
> Only where the Territory commences such proceedings will the offender be given the right to argue his or her case, including whether the victim contributed to the offence. If the offender can establish contribution, the amount to be paid by the offender will be reduced accordingly. In any event, although an offender will not be a party to the actual proceedings for victim assistance, if there is any suggestion of victim contribution or a question of the offender's identity, this will be in most cases addressed by the Territory's legal representatives at the time of the victim's assistance proceedings. Just because the offender is not a party to the initial proceedings, there is nothing to stop the Territory from gathering evidence from the offender at that time. …'

The Crime Victims Services Unit has not to date given an offender notice of an application.

However, it is noted that the application process involves the creation of documents which name alleged offenders and can lead to findings of fact on the balance of probabilities where there is no criminal conviction.

4.8 Should section 33(2)(a) of the Act be amended to:

(i) further restrict; or

(ii) omit;

notification of alleged offenders and, if so, in what circumstances?

Division 4 Deciding applications for awards of financial assistance

Dental examinations

Section 35(1) provides that the assessor may, by written notice, require the applicant to undergo an examination by any of the following persons:

(a) a medical practitioner;
(b) a psychologist;
(c) a psychiatrist.

The Crime Victims Services Unit notes that there are occasions when a dental report is required.

4.9 Should section 35(1) of the Act be amended to include a dentist – or any other health practitioner?

Applicant's out-of-pocket expenses

Section 35(3) provides that the expenses of an examination and report required by an assessor pursuant to section 35(1) must be paid by the Territory to the person making the report.

It is not clear what 'expenses of an examination' covers and it has been argued that the Act is silent regarding costs incurred by applicants who have to travel to attend an examination.

Currently, the Crime Victims Services Unit pays for travel and accommodation (which includes breakfast) for remote applicants required to travel for an examination. However, there is no allowance or reimbursement for other meals. This is on the basis that such expenses would be incurred wherever the person happened to be, i.e. applicants would be buying their own food at home anyway.

It has been argued that the result for some remote applicants is that, if they have money, they are out of pocket and, if they don't have money, they go hungry, or rely on emergency food relief.

4.10 Which expenses of an applicant, who is required to travel for an examination under section 35, should be paid by the Territory?

4.11 Should section 35(3) of the Act be amended to clarify what expenses of the applicant should be paid? Should such expenses be prescribed by regulation?

Obtaining information and documents

Section 36 provides for assessors to obtain such information and make such inquiries necessary to make a proper decision. Section 36(2) and (4) provide that an assessor may, by written notice, require the applicant or any other person to provide information or documents relevant to the application.

It has been suggested that section 36 be amended to allow the Director and/or case managers of the Crime Victims Services Unit to require such information or documents. Case managers undertake the investigation of applications and prepare the recommendations for assessors. This change would streamline signing of correspondence.

4.12 Should section 36 of the Act be amended to allow case managers or the Director to require, by written notice, the applicant or any other person to provide information or documents relevant to the application?

Threshold

One of the features of the new Act was the $7,500 threshold that must be reached before financial assistance for compensable injuries may be paid. The threshold can be met by a combination of several separate injuries. Under the previous scheme, the threshold was $500.

In his second reading speech, the then Minister for Justice and Attorney-General noted that:

> 'The provision of a threshold amount is also consistent with the policy taken in respect of several personal injury claims that was introduced by *Personal Injuries (Liabilities and Damages) Act* 2003 as part of the national process of tort law reform. At present compensation for non-pecuniary loss is not recoverable where that loss is assessed at less than 5 per cent impairment. The setting of a threshold must be viewed in the context of the increased maximum from $25,000 to $40,000 and the additional provision of counselling. Funding for assistance schemes by governments is not unlimited, and the object of a criminal injuries compensation scheme must be to provide assistance to victims in a balanced, fair and appropriate manner, and to ensure that funds are directed to victims who have the greatest need.'

The aim of the threshold was to limit applications and subsequent awards for minor or trivial injuries. However, it has been argued that it usually takes as much time to investigate and resolve an application in which there is an injury but no subsequent payment for the injury because the financial assistance for the injury falls below the threshold, as it does to resolve an application in which the threshold is reached, so there are minimal administrative savings to excluding those applications where the payment for injury falls under $7,500.

Twenty-three applications in 2008-09 did not receive an award as the amount awarded fell below the threshold of $7,500. This is 17 per cent of unsuccessful applications, and 5 per cent of all analysed applications in 2008-09.

In 2008-09, if the threshold had been lowered to $5,000, 14 applications would have received an award. At the average of $6,250 per award (midline between $5,000 and $7,500) a further $87,500 would have been paid to victims of crime. This represents 2.4 per cent of the total payment ($3.548 million) and would have led to an increase in the total payment to $3.635 million in 2008-09.

It has been argued that lowering the threshold to $5,000 would have little impact on administrative costs, and would increase the number of people receiving payments by 3.3 per cent and the cost of the scheme by about 2.4 per cent.

4.13 Should the $7,500 threshold be lowered to $5,000?

Cap

Under the Act, the total maximum financial assistance for a single primary (section 38(1)) or all secondary (section 39(1)) or all family (section 40(1)) victims is $40,000.

The then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) that the previous scheme had provided at $25,000 the lowest maximum payment in Australia for a criminal injuries assistance scheme.

It is noted that, with the exception of Tasmania for a single offence, the total maximum of $40,000 is still the lowest maximum payment in Australia for a criminal injuries assistance scheme. Currently the other jurisdictions are:

NT	Vic	NSW	ACT	QLD	TAS	SA	WA
$40,000	Primary victim: $60,000 plus $10,000 special financial assistance Secondary victim: $50,000 Related victim: $50,000 and all related: $100,000,	Single: $50,000 All family victims: $50,000	All primary: $50,000 All related victims $30,000 Eligible property damage: $50,000	Primary victim: $75,000 Secondary or related victim: $50,000 and all related: $100,000, plus $500 for application legal costs	Primary victim $30,000 for single offence; and $50,000 if more than one Secondary victim: $20 000 Related victim: $10 000 and all related: $50,000	$50,000	$75,000

4.14 Should the $40,000 cap in the NT be raised and if so to what amount?

Multiple Victims

Section 39 provides for awards to secondary victims and section 39(1) provides that the maximum financial assistance that may be awarded to all the secondary victims of the same violent act is $40,000, even if the victims' financial loss and the standard

amounts for the victims' compensable injuries exceed the maximum amount. Section 39(4) also provides that if the total financial assistance for all the secondary victims of the same violent act is assessed to be more than the maximum amount, the assessor must proportionately reduce each amount awarded, although certain victims who witnessed the death of the primary victim are given priority in accordance with section 39(5).

Section 40 provides for family victims and section 40(1) similarly provides that the maximum financial assistance that may be awarded to all the family victims of the same violent act is $40,000, even if the victims' financial loss exceeds the maximum amount.

It is noted that if, for example, there are multiple secondary victims (e.g. TIO bombing), none can be settled until all applications are received.

It has been suggested that the legislation be amended to:

- include a time limit for receipt of multiple applications for one violent act. The current time limit for applications generally is within two years after the occurrence of the violent act (section 31(1)); and
- clarify how to manage multiple secondary victims, where one or more don't submit an application. Section 40(8) and (9) by contrast provide a means by which the assessor can be satisfied that no further family victim is likely to make an application.

4.15 Should the Act be amended to provide for:

(i) a more limited time limit for multiple applications; and

(ii) whether provisions similar to section 40(8) and (9) should be included in section 39 for secondary victims?

Reduction of award due to applicant's actions, conduct or character

Section 41(1) provides that an assessor may reduce an award after taking any of the following matters into account:

(a) if the applicant is a primary victim or secondary victim of a violent act – any behaviour (including past criminal activity), condition, attitude or disposition of the victim that directly or indirectly contributed to the injury or financial loss;
(b) whether the applicant participated in the violent act, encouraged another person to commit the violent act or gave assistance to the offender;
(c) whether the applicant failed to take reasonable steps to mitigate the extent of the injury or financial loss, such as seeking appropriate medical advice or treatment or obtaining counselling, as soon as practicable after the violent act occurred;
(d) whether the award is likely to benefit the offender because of a relationship or connection between the applicant and offender; and
(e) any other matters the assessor is satisfied justify the reduction.

It has been suggested that some matters should be explicitly identified, for example:

- criminal convictions; and
- where excessive voluntary use of alcohol or illicit drugs by the applicant contributed to the circumstances which gave rise to the injury in such a way as to make it inappropriate that a full award, or any award, be made.

4.16 Should other matters be explicitly identified in section 41(1) of the Act?

Reduction of award for likely benefit to the offender

Section 41(1)(d) provides that an assessor may reduce an award after taking into account whether the award is likely to benefit the offender because of a relationship or connection between the applicant and the offender.

It has been argued that this provision discriminates against victims of domestic/family violence who remain in relationships with the offenders and fails to take into account the relevant psychological and cultural dynamics of domestic violence.

The dynamics of family violence are well understood. However, it is argued strongly by the Crime Victims Services Unit that payments to victims who remain in a violent relationship benefit the offender, and both the applicant and the offender are being rewarded for participating in a violent relationship.

The interpretation of section 41(1)(d) was recently reviewed by Justice Southwood in the decision of *James v NT* [2012] NTSC 51. His Honour observed that section 41(1)(d) is somewhat unusual in the context of the other provisions of section 41, which primarily deal with circumstances where blame or fault attaches to the victim. His Honour stated:

> '[24] It seems a somewhat archaic and chauvinistic to imply that a victim who continues in a violent relationship is at fault or is to blame for the injuries that she has sustained as a result of the offender's past violence.
> [25] Section 41(1)(d) of the *Victims of Crime Assistance Act* stands in contrast to s 36 of the *Criminal Injuries Compensation Act 2003* (WA) which simply states that an assessor *must not make* [emphasis added] a compensation award in favour of a victim, or a close relative of a deceased victim, if the assessor is of the opinion - (a) that there is a relationship or a connection between the person who committed the offence and the victim or close relative; and (b) that by reason of the relationship or connection any money paid under the award is likely to benefit or advantage the person who committed the offence. The object of the provision is clear. The policy choice of the Western Australian Parliament is that the offender is not to benefit at all from an award of compensation even if it means that the victim receives no compensation.'

His Honour also outlined what an assessor must do when applying section 41(1)(d):

> '[42]...the assessor is under a duty to make all of the necessary findings of fact according to his/her belief in the reality of what is found to have occurred based on the information before the assessor. Whether the factum in s 41(1)(d) is made out is a matter of fact and degree which is to be determined in light of the

particular circumstances of each case and by the assessor exercising common sense.
...a consideration of both the nature and character of the relationship or connection between each particular applicant and offender is required.
[43]...an assessor is required to weigh up or compare the competing possibilities and determine where the preponderance of probability lies, by assessing the information before him/her in a common sense manner, and determining if it is more likely than not that the award will benefit the offender because of the relationship or connection...
[44] An assessor is required to make a proper decision and has power to obtain all documents and information which are necessary to make a proper decision.
[48] The assessor is required to consider all relevant information that is received by the assessor on the s 41(1)(d) issue and, at the election of the assessor, may obtain further information to assess the veracity and reliability of any information received by the assessor.'

4.17 Although guidance has now been given by the Court, should section 41(1)(d) of the Act be amended?

When financial assistance must not be awarded

Section 43 provides that an assessor must not award financial assistance if certain circumstances apply. Several of these circumstances relate to whether the matter was reported to police within a reasonable time frame, or whether the applicant has, without reasonable excuse, failed to assist police.

4.18 Should the option of reducing an award (rather than not paying an award) be available in these circumstances?

Third Party Payments

Division 4 of Part 4 provides for an assessor to decide an application by awarding or refusing to award financial assistance. Section 44 provides that, as soon as practicable after deciding the application, the assessor must give the Director a notice of the assessor's decision including specified information.

It is noted that section 44(2) does not provide for third party payments in relation to awards – unlike under section 27(4) where the Director approves an immediate payment and the Director must also decide whether any of the amount to be paid is to be paid to a person other than the applicant, for example, directly to a health care provider. Arguably there is no statutory authority which permits the withholding of an amount awarded as financial assistance for payment to third parties, without the express consent of the recipient in writing.

The Crime Victims Services Unit advises that such third party payments are occasionally made with the agreement of applicants, but not routinely as it is not clear that there is authority to do it. It would be useful if the Act clearly provided the capacity to make third party payments for financial loss payments.

While it has been queried as to why the Territory would wish to intervene in private contractual arrangements between private parties, a psychologist of long-standing in Alice Springs has suggested that awards for victims of crime should be paid out only on attendance at, or completion of, whatever therapeutic intervention has been recommended. The concern is that many victims of crime in Alice Springs have substance abuse or mental health problems and the payment of large sums of cash to these people does not contribute to their healing or rehabilitation, and in many cases, puts them at greater risk of further violence. This is a view that is shared by other stakeholders in Alice Springs.

4.19 Should section 44 of the Act be amended to provide for third party payments in relation to awards?

Reasons for decision

Section 44 deals with the notice of decision and what it must include. Section 44(2) sets out what must be included by the assessor in a notice to the Director awarding financial assistance; and section 44(4) sets out what must be included in a notice refusing to award financial assistance. The Director must give the notice to the applicant under section 44(2) and may give it to the offender and, if appropriate, to any person who made a submission under section 33(3) relating to the application.

It has been argued that more reasoning and calculations should be included in the notice to make the process more certain and transparent. The example given was that, if an assessor decides to reduce an award, the amount of the reduction will be what the relevant assessor considers to be reasonable in the circumstances, which lacks transparency or uniformity.

Further, it has been argued that the assessors' decisions in the categories of injury for which applicants may receive an award within a stated range - including domestic violence and sexual assault - are not required to provide reasoning or calculation and therefore applicants receive a seemingly arbitrary figure within the stated range without any justification and that also makes the merits of any appeal difficult to assess.

It is noted however that section 44(2) requires that the notice awarding financial assistance must include:

- the total financial assistance awarded together with the amount for each type of financial loss and for each compensable injury or compensable violent act and the basis on which each amount is awarded; and
- in the case of a reduction of an award, the amount by which the award has been reduced and the reason for the reduction.

The assessor's notice arguably provides reasoning, detail and calculations. The amount of reduction in any matter must be decided on a case by case basis, on the merits of the matter.

Regarding awards within a range, assessors use a range of decision support tools to determine the award within the range, the main one being reference to previous

decisions under the current legislation. Assessors are also guided by the decision in *NT v AB* [2010] NTCA 6, which provides guidance on the factors to be considered when determining an award within a range. In particular, with respect to the ranges of standard amounts specified in Schedule 3, the former Chief Justice relevantly stated in [84]:

> 'Speaking generally, those ranges are relatively narrow. They apply to awards of financial assistance arising from the commission of crimes covering a very broad range of seriousness. In these circumstances, when assessors are required to determine where in a range an award should be made based upon where an offence sits in the scale of seriousness, or where injuries sit in a scale of seriousness, fine distinctions as to the level of seriousness are not appropriate. A broad brush approach is both necessary and appropriate.'

4.20 Should section 44 of the Act be amended to specify further information that should be included in the notice of decision?

Current practice is that, if the assessor is considering refusing or reducing an application for an award, they write to the applicant with reasons and ask for further comment. Should this practice be a requirement under the Act?

4.21 Should the Act be amended to provide the applicant with the opportunity to comment on a proposed reduction or refusal to award financial assistance?

Division 5 Payments, increases and refunds of financial assistance

Increase in awards

Section 46 provides that an applicant, who has been paid financial assistance under section 45, may apply to the Director for an increased award within three years of payment. The main purpose of this application was to allow victims, whose injuries were more serious than first thought, to apply for additional financial assistance in relation to those injuries. It was necessary to ensure the administrative process is as speedy as possible and to ensure assessors would not be deterred from deciding awards on the small chance that a particular victim's injuries may worsen in the long term.

It has been queried that there is no mechanism to allow a person who has been refused financial assistance to later apply for financial assistance if circumstances change. An injury may emerge which was not evident at the time of assessment e.g. a psychiatric injury or an infectious disease or other police evidence may emerge to substantiate a violent act. Thus an application may have been refused as it fell below the threshold but later a psychiatric injury emerges. As the injury relates to the same criminal act as the refused application, a new application is not appropriate.

4.22 Should the Act be amended to allow a legitimate decision refusing assistance to be revisited if circumstances change?

Under section 46(1) there is no specific criteria for a further application to be made. From time to time, an application is made for an increase to an award which is not based on a change in circumstances such as the deterioration or emergence of an injury not originally apparent. In these cases, the application is almost a late appeal where the original decision is being revisited.

4.23 Should the Act be amended to tighten the reasons for an increase to an award?

Refund of financial assistance

Under section 47 an assessor may require a person to refund an amount if the person has received a payment to which they are not entitled (e.g. the applicant has received an insurance payment or if the applicant makes a subsequent application and provides information that leads the assessor to form the view that the applicant was not entitled to a previous award). However, assessors are only likely to become aware of another payment if the applicant advises the Crimes Victims Services Unit. The Act does not authorise an assessor to require the provision of information or documents to substantiate a refund. It has been suggested that the Act be amended to give an assessor a similar power to that provided in section 36 of the Act which allows an assessor to obtain information and make inquiries necessary to make a proper decision.

4.24 Should the Act be amended to allow an assessor to obtain further information and make further inquiries that the assessor considers necessary?

Division 6 Appeals

Refusal to accept application

Section 48 provides that an applicant may appeal against certain decisions to the Local Court. Such decisions are:

- a decision of the Director to refuse to accept a late application notified under section 31(4);
- a decision of the assessor awarding or refusing to award financial assistance notified under section 44(5);
- a decision of the assessor regarding an application for an increased award notified under section 46(9); and
- a decision of the assessor requiring a person to refund an amount to the Territory notified under section 47(3).

However, a decision by the Director to refuse to accept an application is not subject to appeal. An application may not be accepted on one of the following bases:

- the offence occurred interstate;
- MACA or Work Health entitlements;
- the applicant is deceased; or

- any other reason that is apparent on receipt of the application.

4.25 Should section 48 of the Act be amended to include an appeal against the Director's decision not to accept an application?

Access to information used in making a decision

Section 48(1)(b) of the Act provides that applicants may appeal decisions of assessors notified under section 44(5), i.e. awarding or refusing to award financial assistance.

Access to information used by an assessor in making a decision is available to applicants on request. De-identified police documents are cleared through Police to ensure no third parties are identified, and no investigations are compromised. Medical documents are usually made available with the exception of psychological or psychiatric reports if the specialist advises the Crime Victims Services Unit that release of the report may be detrimental to the applicant.

Should an applicant choose to appeal an assessment decision, access to any confidential documents will be discussed at that time.

4.26 Does the Act need to be amended to ensure that the applicant has access to all of the information that the assessor relied upon in making their decision?

Type of appeal

As noted, an applicant may appeal against certain decisions under the Act to the Local Court. Such appeals are by way of review of the decision on the merits (section 49(1)). The Court considers all the evidence that was before the decision-maker and may only admit as evidence new information and material (i.e. that was not before the decision-maker) if the Court is satisfied there were special reasons that prevented its presentation to the original decision-maker.

It has been queried whether an appeal to the Local Court is the best avenue of appeal or whether there are other less legal options more suited to an administrative scheme, such as review of the assessor's decision by another assessor or by a senior assessor, or an appeal to an administrative tribunal.[2]

It is further noted that the then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006):

> 'The existence of appeal rights and the scrutiny of decisions by a court ensures the soundness of the administrative process.'

4.27 Should the Act be amended to change the type of appeal?

[2] As there is currently no administrative appeals tribunal in the NT, if a tribunal were recommended, an existing tribunal would need to be identified or a new one established.

Division 7 Legal representation and costs

Legal fees

The Act provides that the Territory will not pay any costs (legal or otherwise) associated with making an application under the Act (section 54(4)), except 'the reasonable expenses of a person in giving information or documents required by an assessor under section 36(2) or (4) of the Act' (regulation 12 of the *Victims of Crime Assistance Regulations*).

The amount paid in legal costs under the previous scheme was a major concern and catalyst for change. The then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006):

> '…The victims compensation scheme provided by the *Crimes (Victims Assistance) Act* has been operating at an enormous annual cost to the Territory, yet much of those costs have not been going to the victims of serious crime, the intended beneficiaries of this scheme, but have been spent on legal costs. …
> One of the consequences of introducing an administrative scheme is to move away from legal representation for applicants. Some concern has been raised at the removal of the right to payment of legal costs in relation to an application, amounts to victims losing their right of legal representation. However, the application process will be simplified to such an extent that legal assistance will not be necessary. Legal representation is not necessary where a fair and transparent compensation process exists. In the event that a victim is dissatisfied with the decision of an assessor or the director, he or she can appeal to the Local Court under the provisions of Division 6 of Part 4. Legal costs will be payable on that appeal where the appellant is successful. The existence of appeal rights and the scrutiny of decisions by a court ensures the soundness of the administrative process. …'

It has however been argued that, for many Aboriginal people who may be vulnerable, marginalised and/or speak English as a second, third, fourth language, the scheme would be inaccessible without assistance from relevant legal services such as the Central Australian Aboriginal Family Legal Unit (CAAFLU) and the North Australian Aboriginal Family Violence Legal Service (NAAFVLS). These services act as the liaison between Aboriginal applicants and the Crime Victims Services Unit. They visit remote communities educating victims about their rights. They locate applicants who are difficult to contact, engage interpreters, book appointments, take, print and scan photographs of scarring, provide transport to and from appointments, explain the process and assess the merits of appeal. It has been argued that for most applicants assisted by CAAFLU or NAAFVLS, these tasks would be impossible without assistance and therefore it is unreasonable for the Territory not to allow a scheduled fee for legal assistance in these cases.

However, it is noted that these tasks are almost entirely administrative in nature, not requiring legal expertise or knowledge. Furthermore, the Commonwealth Attorney-General's Department funds agencies through the Family Violence Prevention Legal Service Program to provide these services.

4.28 Should the Act be amended to provide for the payment of -
- a scheduled fee for legal assistance; or
- administrative costs;

reasonably incurred in making applications for assistance?

4.5 Part 5 provides for recovery of money from offenders.

A stated object of the Act is to enable the Northern Territory to recover money from offenders found guilty of committing violent acts resulting in payments of financial assistance to their victims (refer section 3(b) of the Act).

Section 56 of the Act permits recovery as follows:

- if the Northern Territory has paid financial assistance to a victim of a violent act, it may commence a proceeding in the Local Court for recovery of an equal or lesser amount from the offender;

- the proceeding must be commenced within 3 years after the date on which assistance is paid to the victim; and

- in the proceeding, the Northern Territory must prove that it paid the amount sought to be recovered and that the offender against whom the proceeding is brought was either found guilty of an offence that resulted in the payment or, on the balance of probabilities, committed an offence resulting in the payment.

If the Court makes an order that the Northern Territory may recover an amount from an offender, it is entitled to recover all or part of that amount by set-off if assistance is payable to the offender as a victim of a different violent act (section 57).

Any money recovered from offenders is paid into the Victims Assistance Fund (section 59) which is used to fund the schemes established by the Act.

It is noted that section 56(3)(b) goes further than the stated object in section 3(b) in providing for recovery action against an alleged offender proven, on the balance of probabilities, to have committed an offence resulting in the payment. Often, recovery action will be the first the alleged offender learns of the matter.

5.1 Should there be recovery action taken where the alleged offender has not been found guilty e.g. because the police did not prosecute or the alleged offender was found not guilty?

It has also been argued that recovery of assistance paid to victims of crime may not be suitable for cases involving family violence, or where the victim fears that legal

proceedings against the offender may result in further violence being committed against them.

The Department of the Attorney-General and Justice has debt recovery processes in place to reduce the risk to victims who are concerned that recovery action may lead to retribution by the offender. Those processes include:

- ensuring the victim is aware when making an application that the Northern Territory will generally seek to recover any assistance paid to the victim from the person/s responsible for causing the injuries;
- inviting the victim to discuss any concerns they have about recovery during the assessment stage;
- advising all victims in the final letter advising of an award of financial assistance, that the Northern Territory intends to commence recovery proceedings against the person/s responsible for the victim's injuries, and invite the victim to discuss any concerns they may have;
- where a victim does not respond, a further letter to be sent advising that if nothing further is heard from the victim, the Northern Territory will commence recovery proceedings against the relevant offender/s without further notice to the victim;
- if particular concerns are held for a victim's safety in any case (and in any cases involving family or sexual violence), and no response has been received to the correspondence previously sent to the victim, attempts will be made to further contact the victim (e.g. telephone or otherwise);
- in any case where a victim advises of concerns that recovery proceedings may result in further violence against them, the victim will be asked for further supporting information, such as police records about further domestic violence incidents, or further medical attendances required because of a subsequent assault; and
- the victim's request will then be considered based on all the information available. If it is considered that there is an objective risk to the victim's safety posed by recovery proceedings, then recovery action will not be pursued. If the objective risk to the victim is minimal, recovery action may still be pursued, particularly where the offender/s have lodged an application for financial assistance in respect of a different violent act, if the offender has the capacity to repay the debt, or there is any other pressing reason to recover.

5.2 Are the current debt recovery processes sufficient or should a legislative exception be included that recovery not be sought in domestic/family violence cases or any other case where it might lead to the re-victimisation of the applicant?

Section 57 allows the recovery of an amount from an offender (the debtor) by set-off if under the financial assistance scheme, financial assistance is payable to the debtor as a victim of a violent act. A limitation period of 12 years (imposed by section 15 of the *Limitation Act*) applies to recovery of debts by set-off. However, there have been matters where a debt has expired under the *Limitations Act* and a debtor has been able to receive a full award under the *Victims of Crime Assistance Act*, despite having been a previous offender.

5.3 Should a debt under the Act be excluded from any limitation period under the *Limitation Act*?

As previously noted, the recovery provisions of the now repealed *Crimes (Victims Assistance) Act* were continued in the same form in 2007. Those provisions had resulted from amendments to the repealed Act by the *Crimes (Victims Assistance) Amendment Act 2002* which addressed a number of recommendations made by the Crime Victims Assistance Committee in its 1997 report to simplify the scheme. The then Minister for Justice and Attorney-General in his second reading speech on 22 August 2002 stated:

> '…the recovery rate from offenders is extraordinarily low. Often the offender is in gaol and has no means to pay the amount. Alternatively, he or she cannot be found or simply cannot afford the amount owed.
> In the 2000-01 financial year, less than 5 per cent of the assistance amounts awarded to victims was recovered from offenders. In 2001-02, the amount recovered was only 6 per cent despite the best efforts of the Solicitor for the Northern Territory……. However, it was felt that an offender should not be able to get away scot-free. The amendments also provide for the Territory to commence separate recovery procedures against an offender after an award to the victim has been made. This will allow the Territory to effect recovery where it is considered appropriate and feasible, and it will ensure that the recovery rate is not reduced even further. …'

In 2007-08 financial year, the percentage of the assistance amounts awarded to victims which were recovered from offenders was similarly less than 5 per cent and in 2010-11 is down to 3 per cent.

5.4 How can the current debt recovery process be improved?

5.5 Alternatively, should the current debt recovery processes be abandoned completely?

4.6 Part 6 provides for the Victims Assistance Fund and levy.

Victims levy

Section 60 of the Act establishes the Victims Assistance Fund (the Fund) which consists of the following:

(a) money appropriated for the Fund to the Agency primarily responsible for the administration of the Act;
(b) the total amount of the levy imposed under section 61 of the Act;
(c) money recovered by the Territory under the Act; and
(d) money paid into the Fund under any other Act.

On 28 November 2012, the Northern Territory Government introduced the Victims of Crime Assistance Amendment Bill 2012. The purpose of the Bill is to amend the *Victims of Crime Assistance Act* to increase the victims levy on court imposed fines,

infringement notices and enforcement orders and to provide that future changes to the levy can be given effect by Regulation.

The proposed amendment seeks to generate more revenue for the Victims Assistance Fund and will give effect to an election commitment to take immediate action on law and order, increase the victims assistance levy and provide for victims of violent acts.

The Bill amends section 61 of the *Victims of Crime Assistance Act* by increasing the levy amounts in section 61(3) for:

- an adult:
  - from $60 to $200 for an indictable offence;
  - from $40 to $150 for any other offence i.e. summary offences;
- a child, from $20 to $50 for any offence; and
- a body corporate, from $200 to $1000 for any offence.

The levy imposed on infringement notices in section 61(6) will be increased from $20 to $40. The *Victims of Crime Assistance Act* also provides that the levy which applies to infringement notices, also applies to the issuing of an enforcement order under the *Fines and Penalties (Recovery) Act*. This means the $20 levy applied on the making of an enforcement order will also be increased to $40, noting that the levy can only applied once in relation to an offence.

During a recent series of Territory-wide public forums on Justice Law Reforms, concerns were raised that under the current legislation there are significant problems in juveniles accruing debts that they cannot pay. The point was made that increasing the debts will worsen the position. Additionally, the increases would have a disproportionate impact on Indigenous people, particularly in relation to traffic offences.

Concerns were also raised about the impact the levy increases will have on children. Of the five jurisdictions (ACT, NSW, TAS, SA and the NT) that impose a victims levy on convicted offenders, SA and the NT are the only jurisdictions which do not allow the courts the ability to exercise discretion in applying the levy to children. In Tasmania, the levy does not apply to a person convicted in the Magistrate Court under the Youth Justice Division[3]. In New South Wales, the court has discretion to not allow the levy to be imposed on children under the age of 18 years[4] and in the Australia Capital Territory, the Court may exonerate a child offender to pay the levy if satisfied paying the levy is likely to cause undue hardship[5].

6.1	Should section 61 of the Act be amended to allow the courts the ability to exercise discretion when applying the levy to children?

As noted, section 61(2)(c) of the Act imposes a levy on a person against whom an enforcement order is made.

3 *Victims of Crime Assistance Act 1976* (TAS)
4 *Victims Support and Rehabilitation Act 1996* (NSW)
5 *Victims of Crime (Financial Assistance) Act 1983* (ACT)

The Fines Recovery Unit manages enforcement orders, enforcement fees are applied under sections 36 and 49 of the *Fines and Penalties (Recovery) Act* when:

- fine is imposed by a court are unpaid; or
- a penalty under an infringement notice has not been paid.

6.2 Should section 61(2)(c) of the Act be amended by deleting the levy on enforcement orders, instead relying on enforcement fees under the *Fines and Penalties (Recovery) Act*?

4.7 Part 7 provides for miscellaneous matters.

Penalties

Section 63 of the Act provides offences for obstruction and providing false information, namely:

> 'A person must not:
>
> (a) hinder or obstruct a person exercising a power or performing a function under this Act; or
> (b) knowingly or recklessly provide false or misleading information to a person exercising a power or performing a function under this Act.
>
> Maximum penalty: If the offender is a natural person – 100 penalty units[6] or imprisonment for 6 months. If the offender is a body corporate – 500 penalty units.'

This one offence appears to cover two separate and disparate offences.

Under other Territory legislation, depending on the Act, the penalty for hindering or obstructing is generally 50 penalty units (or 6 months imprisonment in the *Police Administration Act*). The penalty for giving false information is generally between 200 and 400 penalty units with imprisonment of two years.

6 As of 1 July 2012, $141 is the monetary value of a penalty unit (refer Penalty Units Regulations).

7.1 Should section 63 of the Act be amended to separate the offences and change the penalties to be consistent with other legislation in the Northern Territory or are there good reasons for the differing penalties?

7.2 Do any other offences or penalties in the Act need to be amended and of so in what way?

Guidelines

Section 65 of the Act provides that the Minister may issue guidelines, consistent with this Act and the Regulations, relating to the performance of functions by the Director and assessors and that the Director and assessors must have regard to the guidelines when performing their functions under this Act

There have been no guidelines issued to date and this was identified by Justice Southwood in *James v NTA* [2012] NTSC 51 where His Honour highlighted that:

> '[36]…despite the fact that the Act commenced on 1 May 2007, no guidelines relating to the performance of functions by assessors have been issued by the Minister under s 65 of the Act. As there are no guidelines the assessment of what is a reasonable reduction in the circumstances of a particular case must involve an objective assessment based on all of the available evidence.'

His Honour also indicated in his decision that he was minded to order that the respondent pay the appellant's costs on the reservation because it involved significant questions which should have been addressed by guidelines issued under section 65 of the Act.

The Department of the Attorney-General and Justice endorses a case by case approach, rather than the issuing of guidelines.

7.3 Would guidelines be useful? If so, what should they contain?

4.8 Part 8 provides for transitional matters for the *Victims of Crime Assistance Act 2006*.

Eligibility under both the *Crimes (Victims Assistance) Act* and the Act

Section 73 provides that the repealed Act (the *Crimes (Victims Assistance) Act*) continues to apply in relation to an application for an assistance certificate made before the commencement day (i.e. applications made before 1 May 2007).

Section 74 provides that the Act applies to an application for counselling or financial assistance even if the violent act to which the application relates occurred before the commencement day.

The then Minister for Justice and Attorney-General noted in his second reading speech (29 March 2006) with respect to the transitional matters that:

> 'The scheme will apply to all applications made after the Act commences, even if the offence occurred prior to that date.'

However, the transitional provisions do not determine whether a person can make applications for financial payment under both Acts in respect of the same violent acts. There is no express or implied prohibition on a victim who had already received assistance under the repealed Act, or whose application was rejected under the repealed Act, to apply under section 25 (provided within the two year time limit) and receive an award under the Act, in relation to the same compensable violent act, injury, death or loss. Whilst section 25(2) prohibits an eligible victim from making more than one application for an award of financial assistance for the same violent act, 'award' has a specific meaning under the Act and does not extend to a person who received financial assistance under the repealed Act. However, it does disclose an intention against multiple awards in respect of the same violent acts, as do section 25(1), (3) and (4).

Furthermore section 43, which provides for the circumstances in which an assessor must not award financial assistance to an applicant, does not cover applications made under the repealed Act.

Thus once such an application is accepted by the Director, the assessor then considers whether to reduce the award under sections 41 and 42 of the Act. Under section 42(2)(d), an assessor will then reduce any award to which an applicant may be entitled by an amount equivalent to the assistance the applicant received under the repealed Act.

Given the passage of time since the commencement of the Act, such applications would now be outside the two year time limit under section 31 and could only be accepted in the exercise of the Director's discretion.

Also, it should be noted that it was argued in the matter of *BD v NTA*[7]*,* an appeal under section 48 of the *Victims of Crime Assistance Act,* that to permit a person who had received a payment of assistance under the old Act in respect of particular violent acts to make an application for an award of financial assistance under the new Act would be contrary to the principle of finality of judicial dispositions of particular controversies.

8.1	Should a victim who has previously applied and already received assistance under the now repealed *Crimes (Victims Assistance) Act*, or whose application was rejected under that Act, be eligible for an award under the Act or should the Act be amended to restrict their eligibility?

4.9 The *Victims of Crime Assistance Regulations*.

Loss of earnings

Regulation 23 sets out how to calculate the amount of financial assistance to which an applicant (being a primary or secondary victim) is entitled for each week during

[7] Claim No. 2112057, 11 January 2012.

the period when the loss of earnings is suffered. The amount is calculated as the lesser of the following amounts:

(a) 75 per cent of the difference between average weekly earnings at the date of the violent act and the applicant's net weekly earnings during the relevant period;
(b) 75 per cent of the difference between the applicant's net weekly earnings at the date of the violent act and the applicant's net weekly earnings during the relevant period.

It has been suggested that it is not clear how to calculate 'the applicant's net weekly earnings at the date of the violent act'. The current practice is to take an average of the applicant's net weekly earnings over the four weeks preceding the date of the violent act. However, it could also be interpreted as the actual earnings received in the week preceding the date of the violent act. If the employee receives variable earnings it might be fairer to look at what they have actually been earning over the last several weeks before the violent act (in case they have been doing irregular hours, or in case there was a public holiday in the week before the violent act, etc.).

It has also been queried over what length of time loss of earnings is calculated of a person who leaves the workforce after the violent act. The current practice is to allow loss of earnings for a length of time consistent with recovery from the injury and supported by medical certificates.

9.1 Should regulation 23 clarify:

(i) how net weekly earnings at the date of the violent act are assessed?; and

(ii) the situation when a victim leaves the workforce after the violent act?

Applications have been made for reimbursement of sick leave as 'financial loss' under the Act. Currently, an applicant is not reimbursed for loss of earnings in the circumstance where they have been paid sick leave as a result of injuries sustained as a result of a violent act.

9.2 Should a victim be reimbursed for sick leave? Or any other leave?

Compensable Violent Acts

Schedule 1 prescribes 'violent acts' (for the purposes of section 5(1)(a) of the Act) and such acts are compensable violent acts whose category (and therefore range) depends on whether they are set out in Part 1, 2 or 3.

It has been suggested that the list of offences in Schedule 1 needs to be revised. For example, it is noted that:

- although an offence against section 192(8) of the Criminal Code (of attempted sexual intercourse without consent causing serious harm) is a Category 2 compensable violent act, an offence against section 192(7) of the Criminal

Code (of attempted sexual intercourse without consent causing harm) is not listed and arguably should be in Category 1; and

- indecent dealings with a child under 16 years (section 132 of the Criminal Code) is not listed and arguably should be included as a Category 1 compensable violent act.

9.3 Is any revision of the offences in Schedule 1 needed?

Compensable Injuries

Schedule 3 Part 2 sets out the compensable injuries and the standard amounts for such injuries.

Should the following injuries be included:

- Perforated bowel?
- Liver trauma?
- Infectious diseases?
- Partial loss of fertility?
- Malocclusion of teeth/jaw?
- Skull: stroke (continuing disability)?
- Compartment syndrome requiring surgery?
- Nerve damage?
- Vascular injuries?

It has been suggested that an award of $10,200 for a permanently clicking jaw is too high i.e. inconsistent with severity of other injuries.

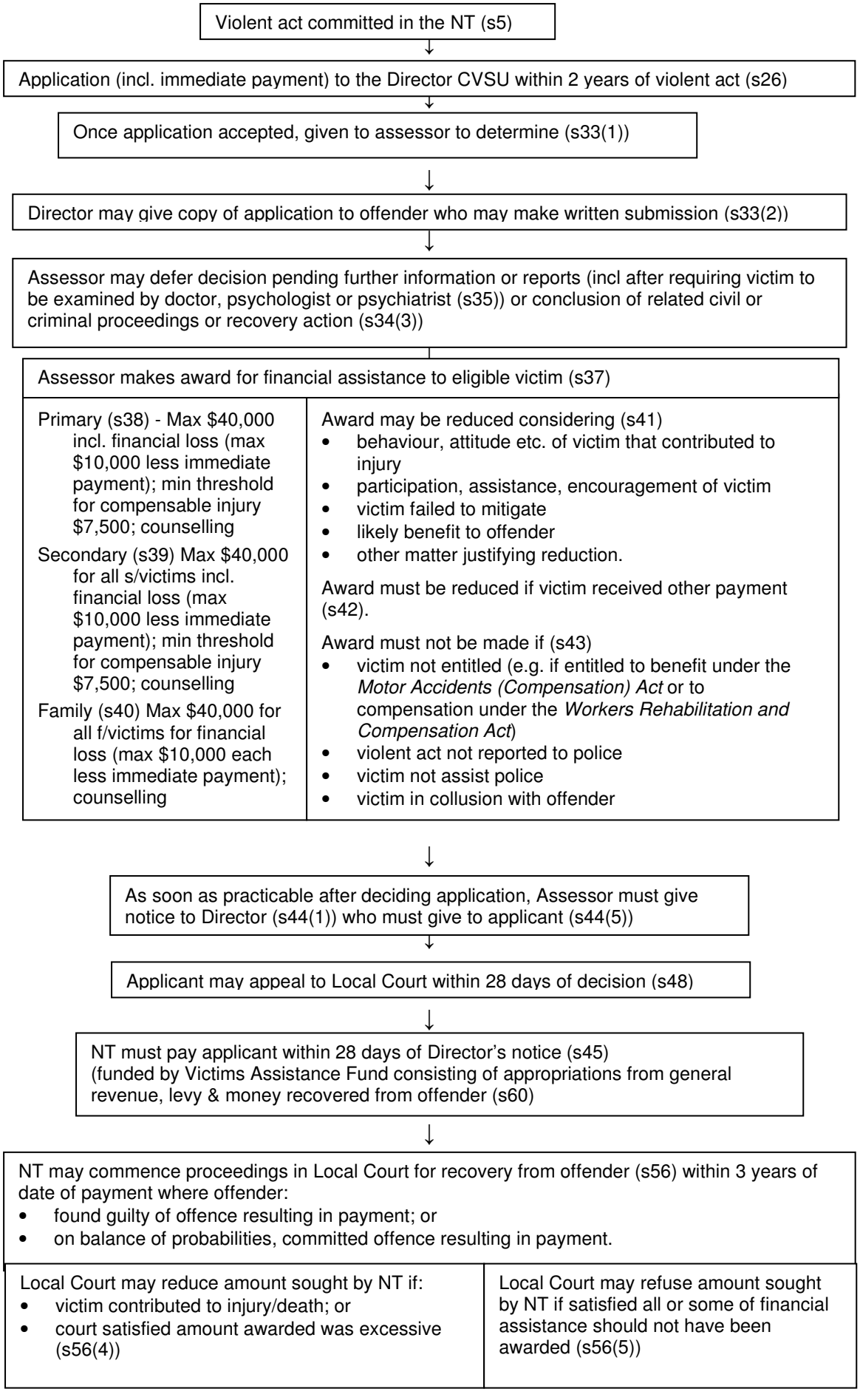
An inequitable award can result where a person breaks both lower arms or lower legs, as the award will vary significantly according to which bones are broken.

- if a person has broken the left and right radius (with full recovery), the award is $15,300
- if a person has broken the left and right ulna (with full recovery), the award is $15,300
- if a person has broken the left radius and right ulna (with full recovery), the award is $7,930.

9.4 Does the type of injury, description or standard amount of any of the compensable injuries listed in Schedule 3 Part 2 need to be revised?

ATTACHMENT A

Flowchart - Northern Territory Victim's Financial Assistance Scheme



Attachment B

Relative costs of victims of crime assistance schemes

	98-99	99-00	00-01	01-02	02-03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	$000	$000	$000	$000	$000	$000	$000	$000	$000	$000	$000	$000	$000	$000
SFNT Costs	296	577	610	821	1,046	978	850	785	790	501		50	78	0
Applicants Costs	624	875	1,182	1,439	1,614	1,378	1025	1014	1005	930	504	53	10	0
CVSU Operational Cost									33	428	771[8]	1,031	1006	1069
Total Operational Costs	920	1,452	1,792	2,260	2,660	2,356	1,875	1,799	1,828	1,859	1,275	1,134	1094	1069
Victims Assistance	2,889	3,072	3,005	3,261	3,675	3,570	3241	4180	3371	3499	1,248	43	20	6
CVSU Assistance									0	1045	3,548	3,921	3466	3612
Total Assistance	2,889	3,072	3,005	3,261	3,675	3,570	3,241	4,180	3,371	4,544	4,796	3,964	3489	3618
Proportion of operational costs (ops) to assistance paid to applicants (ast)	24% ops 76% ast	32% ops 68% ast	37% ops 63% ast	40% ops 60% ast	42% ops 58% ast	40% ops 60% ast	36% ops 64% ast	30% ops 70% ast	35% ops 65% ast	29% ops 71% ast	21% ops 79% ast	22% ops 78% ast	24% ops 76% ast	23% ops 77% ast
Total Assistance & Operational Costs	**3,809**	**4,524**	**4,797**	**5,521**	**6,335**	**5,926**	**5,116**	**5,979**	**5,199**	**6,403**	**6,071**	**5,098**	**4,580**	**4,687**

[8] Comprises $580,000 personnel, $59,000 operational and $132,000 for the provision of medical reports