

Discussion Paper

Victims of Crime Reform

November 2018

Contents

| | |
|---|----|
| STATEMENT FROM THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE | 3 |
| INTRODUCTION | 4 |
| Purpose of Paper..... | 4 |
| Process..... | 4 |
| How to make a submission | 5 |
| PART ONE: CONTEXT FOR THE REVIEW OF THE CURRENT SCHEME | 6 |
| Concerns with the current scheme | 6 |
| The current scheme is ‘injury focussed’ | 6 |
| The current scheme is ‘award focussed’ | 7 |
| The need for multifaceted and additional services for victims..... | 7 |
| Scope to further simplify the current scheme | 8 |
| History of the Current Scheme | 8 |
| Overview of the Current Scheme..... | 8 |
| The VOCRAS Act..... | 8 |
| The VOCA Act..... | 9 |
| PART TWO: A POTENTIAL NEW SCHEME | 16 |
| A brief look at other relevant jurisdictions | 16 |
| NSW | 16 |
| ACT | 17 |
| QLD | 19 |
| VIC | 20 |
| A broad proposal for a new scheme for the Territory..... | 21 |
| Introduction | 21 |
| One Consolidated Act..... | 21 |
| The Charter | 21 |
| A Commissioner of Victims Rights | 23 |
| The CVAC..... | 24 |
| The CVSU | 25 |
| The Victims Register | 28 |
| Definitions of ‘Violent Act’ and ‘Injury’..... | 28 |
| Categories of Victims | 31 |
| Categories of Support and Financial Assistance..... | 31 |
| Other recovery related expenses | 37 |
| Eligibility for Support and Financial Assistance | 37 |
| Motor Accident and Workers Compensation Payments | 39 |
| Reduction or non-award of financial assistance in other circumstances | 40 |
| Making an Application (limitation periods) | 41 |

| | |
|---|----|
| Deciding Applications for Support and Financial Assistance | 42 |
| The Review Process | 43 |
| The Debt Recovery Process | 44 |
| Other | 44 |
| PART THREE: RELATED PROPOSALS TO BENEFIT VICTIMS..... | 45 |
| Victim-Offender Conferencing for adult offenders..... | 45 |
| About victim-offender conferencing | 45 |
| A brief look at some other jurisdictions | 45 |
| The proposed model of victim-offender conferencing for adult offenders in the Territory | 47 |
| Reforming Restitution and Compensation Orders made under the <i>Sentencing Act</i> | 54 |
| About restitution and compensation orders | 54 |
| Concerns with the current restitution and compensation order scheme | 56 |
| The proposed reforms to restitution and compensation orders | 57 |

Note: This paper has been prepared for discussion purposes only. Although every care has been taken in the preparation of the discussion paper to ensure accuracy, it has been produced for the general guidance only of persons wishing to make a submission to the review.

STATEMENT FROM THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Everyone has a right to be safe and feel safe in our community. That's why the Northern Territory Government has a plan to reduce crime.

The plan to reduce crime includes:

- Prevention of crime
- Alcohol Reform
- Fixing the broken Youth Justice system
- Reducing anti-social behaviour.

Our Government is putting victims first by ensuring they have a stronger voice in our justice system with better protections and access to vital services.

We are listening to Territorians who have had enough of crime and anti-social behaviour on our streets.

We want to reduce crime and reduce the numbers of victims of crime.

But where people do suffer from crime – we are putting these victims first. That is why the updated Victims Charter was recently released for public comment.

The Charter clearly states that every reasonable resource will be used to support the safety and welfare of victims, their families and their property.

We understand that access to simple and quick services in a coordinated and respectful manner is critical to victims of crime and their families.

That is why we are also releasing this Discussion Paper on Victims of Crime Reform for public comment.

The Discussion Paper on Victims of Crime Reform will look at:

- a review of the Territory's current victims of crime assistance, rights and services scheme, established under the *Victims of Crime Rights and Services Act* and the *Victims of Crime Assistance Act*;
- a proposal for a victim-offender conferencing scheme; and
- a proposal for reform of restitution and compensation arrangements under the *Sentencing Act*.

We want to make sure that victims of crime get all the support they need and deserve from this legislation.

That is why we want to hear from you about how we can make it work better for victims.

Natasha Fyles

Attorney-General and Minister for Justice

INTRODUCTION

Purpose of Paper

The Northern Territory Government, through the Department of the Attorney-General and Justice (**the Department**) is currently undertaking a body of work relating to how the Territory's justice system can facilitate better outcomes for victims of crime in the Territory. The primary component of this body of work involves the conduct of a legislative review of the Territory's current victims of crime assistance, rights and services scheme (**the current scheme**), which is established under the *Victims of Crime Rights and Services Act (VOCRAS Act)*, the *Victims of Crime Assistance Act (VOCA Act)*, and related regulations. To complement this review, the Government has also developed two additional reform proposals relating to victims of crime, namely, a proposal for a victim-offender conferencing scheme for adult offenders, and a proposal for amendments to restitution and compensation orders made under the *Sentencing Act*.

The Northern Territory Government is putting victims of crime first, and this discussion paper has been developed to enable the community to provide feedback on how victims of crime may best be supported in our community. . In 2013, the Department undertook a legislative review of the VOCA Act, as required by section 70 of that Act (**the 2013 review**). Multiple stakeholders were consulted, and provided written submissions to the Department as part of that review. The Government acknowledges and thanks stakeholders for their involvement and contribution. The recommendations arising from the 2013 review that the Government considers could be progressed as part of this review are attached (**Attachment A1** refers).

The purpose of this discussion paper is to set out these three reform proposals, for consideration by key stakeholders and the wider public, and to invite submissions about the proposals.

This discussion paper is divided into three parts.

Part One provides the context for the legislative review by way of an overview of the current scheme, and an outline of some concerns with the current scheme.

Part Two considers how the current scheme could be reformed by examining some of the different approaches taken by other jurisdictions, and putting forward a broad proposal for reform in this area.

Part Three contains the two additional reform proposals, namely the proposal for a victim-offender conferencing scheme for adult offenders, and amendments to restitution and compensation orders, which are designed to complement the broad proposal to reform the current scheme.

Process

The Government is calling for submissions on the proposals put forward in this paper, and on any other issue relating to victims of crime that may not have been identified.

Policy options and recommendations for change will then be further developed based on the submissions received. Following this review, a report with recommendations will be developed and made available to the public.

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 matters identified in this paper, and it need not be confined to the issues identified in the paper.

Submissions should be made on the Department of the Chief Minister's 'Have Your Say' website or to the Department. Submissions may be sent to:

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

Electronic copies of submissions should be sent whenever possible by email to: Policy.AGD@nt.gov.au

Closing date for submissions is 29 March 2019.

Submissions will be made publicly available, and may be published on the Department's website, unless clearly marked as "confidential". The Department may draw upon the contents of submissions made and quote from them or refer to them in reports, which may also be made publicly available.

PART ONE: CONTEXT FOR THE REVIEW OF THE CURRENT SCHEME

Concerns with the current scheme

One of the main concerns with the scheme, and the basis for this review, is that the current scheme does not support victims as far or as effectively as it could.

Some particular concerns with the current scheme include:

The current scheme is ‘injury focussed’

The ‘compensable injury’ category of financial assistance requires applicants to prove that they have a particular injury, and the extent or severity of that injury, in order to receive financial assistance for that injury. This requirement can be disadvantageous to victims who suffer psychological rather than physical harm as a result of a violent act, because in those circumstances the applicant will be required to prove that they have ‘a recognisable psychiatric or psychological disorder’ in order to be eligible for assistance. The need to establish ‘a recognisable psychiatric or psychological disorder’ has the potential to conflict with a victims’ recovery. As observed by Cook, David and Grant in an Australian Institute of Criminology Report, a victim whose psychological injuries do not classify as a ‘mental illness’ “might be left with the feeling that their injuries are not real or serious, despite the ongoing impact that these injuries have on their lives.”¹ Similarly, the current minimum threshold for injuries (\$7,500) has the capacity to cause distress to those victims who do not reach the threshold due to the extent of their injuries, yet have still experienced an act of violence. As Cook, David and Grant also note, the requirement to establish a (recognisable) ‘mental illness’ “is also unlikely to compensate victims who have managed to ‘get on’ with their life, in spite of the memories and the continuing effects that the crime has on them ... (this) is likely to produce feelings of frustration, anger, loss of control and a sense of being disregarded,” which could impede a victim’s rehabilitation.

The requirement to prove a particular injury will also often require a victim to undergo an external assessment of their injury, often by a medical or psychological expert. An award for burns or scarring may also be subject to a reasonable inspection of the injury as required by the assessor.² There are concerns that such assessments, which are used to assess the nature and extent of an applicant’s injury, have the potential to re-traumatise victims. Such assessments are also costly, and can cause delay in the assessment process. Lengthy delays in receiving assistance can also exacerbate the effects of a crime. For victims who claim permanent injuries, delay can be particularly problematic, as in many cases a year will need to pass before a determination as to whether an injury is ‘permanent’ can be made.

It is acknowledged that delays in processing applications is a significant issue with the current system. The 2016-17 annual report of the Ombudsman NT notes that, in that period, the Ombudsman has received a large number of complaints about the CVSU and that the primary issue of complaint has been delay in processing applications.³

¹ Bree Cook et al, *Victims’ Needs, Victims’ Rights: Policies and Programs for Victims of Crime in Australia* (Research and Public Policy Series 19, Australian Institute of Criminology, Australian Government, 1999) 67

² Regulation 21 of the *Victims of Crime Assistance Regulations 2007* (NT)

³ Ombudsman NT, *Annual Report 2016-17*, September 2017, 5

The current scheme is ‘award focussed’

While a lump sum payment in recognition of trauma is often an important part of a victim’s rehabilitation, it is also concerned that the lump sum payment approach of the current scheme does not adequately support victims’ rehabilitation. In an article by Griffith University’s Robyn Holder, it was also observed (in relation to Dutch victims compensation funds) that “victims’ satisfaction with the Fund was related to more positive evaluations of how they were treated by Fund workers, receiving information, and a speedier decision. Victims’ satisfaction was also related to the fact that their request was approved, but it was not related to the amount they received or their evaluations of it.”⁴ Thus, it appears that victims might be more satisfied with a system that focuses more on the efficient provision of information and other support services, rather than on the provision of large lump sums.

Further, victims who experience domestic violence or mental illness, or are dependent on alcohol or other drugs are over-represented amongst victims of crime in the Territory. There is a concern that, in some cases, the provision of large lump sum payments to these and other vulnerable victims may place those individuals at risk of exploitation by people in a position of influence over them, or enable ongoing drug or alcohol issues. Such an approach facilitates, rather than inhibits, a cycle of victimisation.

The need for multifaceted and additional services for victims

A crime can affect a victim’s life in a variety of ways, including their emotional, social and behavioural wellbeing, their physical health, and finances. The effects of crime on a victim, particularly the effects of serious physical and sexual assaults, can also be long lasting. The effects of crime may also be more complex for individuals who are already experiencing disadvantage or marginalisation,⁵ for example people living in remote areas of the Territory. As such, a more holistic approach to service delivery for victims of crime in the Territory, which aims to support victims in a diverse range of areas, may be beneficial.

It also appears that the provision of targeted services in areas of particular concern could be beneficial. In 2015-16 in the Territory, 38% of applications for financial assistance were related to acts of domestic and family violence, a further 19% of applications were related to acts of sexual assault, and 68% of all applicants identified as Aboriginal or Torres Strait Islander.⁶ In relation to victims of domestic and family violence, there is an additional concern that these victims are more likely to be repeat applicants for assistance, yet may be precluded from receiving their full entitlement to financial assistance under the current scheme, pursuant to section 41(1)(d) of the VOCA Act. Section 41(1)(d) of the VOCA Act provides that the assessor may reduce an award after considering whether the award is likely to benefit the offender because of a relationship or connection between the applicant and offender. Thus, in circumstances where a victim remains in a relationship with the offender after a violent act, section 41(1)(d) may result in the reduction of the amount of assistance that is ultimately provided to the victim. The Northern Territory Government’s *Domestic, Family & Sexual Violence Reduction Framework 2018-2028: safe, respected and free from violence* highlights the prevalence of domestic, family and sexual violence in the Territory, as well as its disproportionate effect on Aboriginal people, and commits to the delivery of effective means of protecting and supporting the recovery of people experiencing domestic, family and sexual violence in our community. It is considered that the current scheme could better address the needs of these particular victims, and that additional, targeted services in these areas may assist to this end.

⁴ Robyn L Holder et al, ‘Recognition, reconnection, and renewal: The meaning of money to sexual assault survivors’ (2018) 24-1 *International Review of Criminology* 29

⁵ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report (2016) 6

⁶ Crimes Victims Services Unit, *Annual Report 2015-16*, September 2017

Scope to further simplify the current scheme

The current scheme may also be more complex than necessary, which makes it less accessible, less efficient and less effective than it could be. Some of the requirements of the current scheme, for example those relating to medical assessments of an applicant's injuries, the requirement that applications be assessed by legally trained assessors, and the dependence on court proceedings for debt recovery purposes, add layers of complexity to what was intended to be a simple administrative scheme. It is also suggested that the existence of two separate Acts, with related regulations, as well as a separate Charter of Victims' Rights, makes the current scheme less accessible than it could be.

History of the Current Scheme

The VOCA Act commenced on 1 May 2007. It repealed and replaced the *Crimes (Victims Assistance) Act* which was a court based compensation scheme for victims of crime. The processes of the *Crimes (Victims Assistance) Act* were considered to be complex, inefficient and lengthy. The costs associated with the scheme were also considered to be unsustainable, with around 40% of the total costs of the scheme going towards legal costs. The VOCA Act aimed to address these inadequacies by providing for a more streamlined administrative case assessment process for financial assistance, complemented by the provision of free counselling support.

The VOCRAS Act (other than Part 4) also commenced on 1 May 2007. The VOCRAS Act repealed and replaced the *Crime Victims Advisory Committee Act* and consolidated other Territory legislation relating to victims of crime. The VOCRAS Act established bodies, namely the Crime Victims Services Unit (**the CVSU**) and the Crime Victims Advisory Committee (**the CVAC**), to promote the rights of victims of crime and provide services to those victims. The VOCRAS Act also enables the Minister to issue a Charter of Victims Rights (**the Charter**), and provides for a Victims Register. Part 4 of the VOCRAS Act, which established the Victims Register, commenced on 1 January 2008.

Overview of the Current Scheme

The VOCRAS Act

The key features of the VOCRAS Act are outlined below.

The CVSU

The CVSU is constituted by the Director and CVSU officers.⁷ Both the Director and the CVSU officers are public sector employees appointed by the Chief Executive Officer.⁸ The Director manages the operations of the CVSU, and CVSU officers perform the functions of the CVSU in accordance with the directions of the Director.⁹

The functions of the CVSU¹⁰ include such things as administering the financial assistance and counselling schemes; operating the Victims Register; coordinating services provided to victims by the Territory; providing information to victims about other services available to victims; promoting and overseeing the operation of the Charter; assisting victims to exercise their rights; and educating the community about the rights of victims. As part of administering the financial assistance scheme, the CVSU works closely with

⁷ Section 5(2) of the *Victims of Crime Rights and Services Act 2006* (NT)

⁸ Section 6(1) and 7(1) of the *Victims of Crime Rights and Services Act 2006* (NT)

⁹ Sections 6(2) and 7(2) of the *Victims of Crime Rights and Services Act 2006* (NT)

¹⁰ Section 8 of the *Victims of Crime Rights and Services Act 2006* (NT)

assessors who are responsible for determining applications for assistance. The role of assessors is discussed in further detail later.

Currently, the CVSU has a staff level of approximately 15 full-time employees, including a number of applications officers, a Victims Register coordinator, a debt recovery officer, administrative staff, and three positions dedicated to coordinating the Territory's role in the National Redress Scheme for people who have experienced institutional child sexual abuse.

The CVAC

The CVAC is constituted by a range of members with different qualifications and experience, for example legal, medical, psychological, police, and correctional services, as well as the Director or a person nominated by the Director.¹¹ The CVAC is required to meet at least twice annually.¹² Its functions¹³ include such things as advising the Minister on matters affecting the interests and rights of victims; investigating, reporting and making recommendations to the Minister about matters referred to it by the Minister; disseminating information relating to matters affecting the interests or rights of victims; and assisting in the coordination of organisations for the provision of services to victims. The CVAC has the powers necessary or convenient for the performance of its functions.¹⁴

The Victims Register

Pursuant to section 19 of the VOCRAS Act, certain persons are eligible to be 'registered' in relation to an offender who, for the purposes of the Victims Register, is someone who has been sentenced to a term of imprisonment for a relevant offence.¹⁵ A 'relevant offence' is defined in section 18 of the VOCRAS Act and includes a criminal offence involving the threat or use of violence, regardless of whether the violence is threatened or used against a person, a serious sex offence, or, in relation to a person inside the building during the commission of an unlawful entry, an unlawful entry. The CVSU is required to give a registered person particular categories of information that relate to the relevant offender, for example release and discharge dates, conditions of parole orders, suspended sentence orders or administrative home detention orders, transfers to different prisons, and escapes from custody.¹⁶

The Charter

Pursuant to section 30(1) of the VOCRAS Act, the Minister may issue a Charter of Victims Rights. The Charter is to establish principles about the way in which victims are to be treated in the justice system and may provide for any other matters relevant to the rights of victims.¹⁷

The VOCA Act

The aim of the VOCA Act is to assist the rehabilitation of victims of crime by providing victims with free counselling and financial assistance for compensable violent acts, as well as financial assistance for financial loss and compensable injuries that arise from a violent act. The VOCA Act also provides for the recovery of money from offenders.

Some of the key elements of the VOCA Act are summarised below.

¹¹ Section 10 of the *Victims of Crime Rights and Services Act 2006* (NT)

¹² Section 13 of the *Victims of Crime Rights and Services Act 2006* (NT)

¹³ Section 16(1) of the *Victims of Crime Rights and Services Act 2006* (NT)

¹⁴ Section 16(3) of the *Victims of Crime Rights and Services Act 2006* (NT)

¹⁵ Section 17 of the *Victims of Crime Rights and Services Act 2006* (NT)

¹⁶ Section 22 of the *Victims of Crime Rights and Services Act 2006* (NT)

¹⁷ Section 30(2) of the *Victims of Crime Rights and Services Act 2006* (NT)

Definitions of 'violent act' and 'injury'

The definition of a 'violent' act' is contained in section 5 of the VOCA Act and relevantly requires the act to be a 'criminal act' that occurs in the Territory and is either prescribed by regulation or 'directly results in the injury or death of one or more persons regardless of where the injury or death occurs'.

The definition also requires a 'series of related criminal acts' to be considered to be a single 'violent act'.¹⁸ A 'series of related criminal acts' is defined in section 5(3) of the VOCA Act which provides that:

- (3) A series of related criminal acts occurs if:
- (a) 2 or more criminal acts are committed against the same person; and
 - (b) 2 or more of those acts:
 - (i) occur at approximately the same time; or
 - (ii) occur over a period of time and are committed by the same person or group of persons; or
 - (iii) share another common factor.

The definition of an 'injury' is contained in section 6 of the VOCA Act and relevantly includes:

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

Section 6(2) of the VOCA Act expressly excludes injury resulting from the loss of or damage to property from the definition of an 'injury'.

Categories of Victims:

The current scheme establishes four categories of victims who are eligible for assistance, as follows:

Primary¹⁹

A primary victim is usually the person against whom the violent act is committed. However, the definition also includes a person who suffers an injury or dies as a direct result of (a) trying to prevent another person from committing a violent act; or (b) trying to help or rescue another person against whom a violent act is being committed or has just been committed; or (c) trying to arrest another person who is committing or has just committed a violent act.

Primary victims may apply for counselling, as well as financial assistance for financial loss and compensable violent acts or compensable injuries.²⁰ These different categories of assistance will be outlined in further detail later.

Secondary²¹

A secondary victim is a person who suffers an injury as a direct result of witnessing a violent act. However, the definition also includes a person who suffers an injury as a direct result of subsequently becoming aware of a violent act in circumstances where (a) the secondary victim is a child who is under the guardianship of the primary victim; or (b) the secondary victim is the parent or guardian of the primary victim, and the primary victim is a child.

¹⁸ Section 5(4) of the *Victims of Crime Assistance Act 2006* (NT)

¹⁹ Section 9 of the *Victims of Crime Assistance Act 2006* (NT)

²⁰ Section 10 of the *Victims of Crime Assistance Act 2006* (NT)

²¹ Section 11 of the *Victims of Crime Assistance Act 2006* (NT)

Secondary victims may apply for counselling, as well as financial assistance for financial loss and compensable injuries.²²

Family²³

A family victim may be the spouse or de facto partner, parent, step-parent or guardian, child or step-child, of the primary victim, or a person entirely dependent on the primary victim for financial support. Family victims do not have to suffer an injury as a result of the violent act.

Family victims may apply for counselling. In circumstances where the primary victim dies as a result of the violent act, family victims may also apply for financial assistance for limited categories of financial loss.²⁴

Related²⁵

A related victim is a person who is a relative of the primary victim (otherwise than as a family victim). The definition also includes a person who is in an intimate personal relationship with the primary victim.

Related victims may apply for counselling.²⁶

Categories of Support and Financial Assistance

As mentioned above, victims may be eligible for different types of assistance under the current scheme, as follows:

Counselling

The Victims Counselling Scheme is established pursuant to section 20 of the VOCA Act. All categories of victims are eligible to receive counselling, and are required to apply directly to an approved²⁷ counsellor or counselling organisation to receive that service.²⁸ Currently, the Victims Counselling Scheme is administered by way of a tender process that allows non-government organisations and individuals to be engaged on a contractual basis to deliver the following services to victims of crime in the Territory:

- crisis counselling (individual and group);
- information, support and referral services; and
- community education and awareness about the Counselling Scheme.

The most recent Request for Proposal for the delivery of the above services was released on 11 April 2017 and relevantly indicates that:

- the budget for the Counselling Scheme is \$356,000 per annum inclusive of GST;
- the Funding Recipient will be required to provide a maximum of eight counselling sessions per client;
- the Funding Recipient is to deliver services in the major centres in the NT, namely Darwin, Alice Springs, Katherine, Tennant Creek and Nhulunbuy;
- services should also be made available in a number of major remote communities in the Territory. The means of remote service provision is flexible and may include visiting services, or contractual arrangements between the Funding Recipient and local providers (subcontractors); and

²² Section 12 of the *Victims of Crime Assistance Act 2006* (NT)

²³ Section 13 of the *Victims of Crime Assistance Act 2006* (NT)

²⁴ Section 14 of the *Victims of Crime Assistance Act 2006* (NT)

²⁵ Section 15 of the *Victims of Crime Assistance Act 2006* (NT)

²⁶ Section 16 of the *Victims of Crime Assistance Act 2006* (NT)

²⁷ Pursuant to section 21 of the *Victims of Crime Assistance Act 2006* (NT), the Director may approve persons or organisations to provide counselling and related services under the counselling scheme.

²⁸ Section 22 of the *Victims of Crime Assistance Act 2006* (NT)

- telephone counselling is not acceptable as the sole means of service delivery to remote communities.

Currently, CatholicCare NT is approved and funded to provide counselling to victims of crime in the Territory.

Financial assistance for compensable violent acts

Under the current scheme, victims may be eligible for financial assistance for the mere commission of a violent act, without having to prove an injury. Regulation 14 of the *Victims of Crime Assistance Regulations (the VOCA Regulations)* establishes three categories of 'compensable violent acts' determined according to the seriousness of the violent act. The 'compensable violent acts' include sexual offences. Standard amounts for compensable violent acts range from \$7,500 to \$40,000.

Financial assistance for financial loss

Under the current scheme, victims may be eligible for financial assistance for financial loss incurred as a result of a violent act. Financial loss can be described as 'out of pocket expenses' and may comprise of loss of earnings, expenses incurred due to loss of clothing or other personal effects, medical expenses, funeral expenses, and, in exceptional circumstances, other expenses reasonably incurred to assist the victim's recovery from the effects of the violent act, for example relocation expenses or the costs of securing a residence. The maximum amount that can be awarded to victims for financial loss is \$10,000.²⁹

Some victims are also able to apply to the Director for an immediate payment of financial assistance for financial loss.³⁰ Immediate payments are limited to a maximum of \$5,000,³¹ and must be deducted from any subsequent award that is made for financial loss.³²

Financial assistance for compensable injuries

Under the current scheme, victims may be eligible for financial assistance for particular injuries they suffer as a result of a violent act. Compensable injuries are contained in Schedule 3, Part 2 of the VOCA Regulations and include a range of physical illnesses and injuries as well as psychological or psychiatric disorders and domestic violence injuries. A minimum threshold of \$7,500 exists in relation to compensable injuries.³³ Regulation 18 also provides that if more than one injury is suffered as a result of the same violent act, the applicant is eligible to receive an award for the total of the three most serious injuries, apportioned in a prescribed way.

A particular definition applies to 'domestic violence injuries' under the current scheme. Pursuant to regulation 5 of the VOCA Regulations, a victim suffers domestic violence injuries if the victim suffers one or more injuries as a direct result of a violent act involving a 'pattern of abuse' committed by an offender with whom the victim is in a domestic relationship, unlawful stalking in contravention of domestic violence order, or a combination of these. A 'pattern of abuse' is a series of three or more related criminal acts that occur over a period of time and involve the same victim and offender.³⁴ Schedule 3, Part 2 of the VOCA Regulations prescribes a range of \$7,500-\$10,000 as the standard amount that can be awarded for domestic violence injuries. It is noted that a victim of domestic violence is entitled to claim for separate compensable injuries rather than 'domestic violence injuries', and may therefore be eligible to receive more than \$10,000 in some circumstances, depending on the seriousness of the applicant's injuries.

Maximum amounts of financial assistance that may be awarded

The current scheme limits the amounts of financial assistance that are available to victims, in different ways. For example, as mentioned above, the amount for both financial loss and domestic violence injuries is capped at \$10,000. In some circumstances, victims are able to apply for an increase of financial assistance

²⁹ Sections 38(2), 39(2) and 40(2) of the *Victims of Crime Assistance Act 2006* (NT)

³⁰ Section 26(1) of the *Victims of Crime Assistance Act 2006* (NT)

³¹ Section 27(5) of the *Victims of Crime Assistance Act 2006* (NT)

³² Sections 38(2), 39(2), and 40(2) of the *Victims of Crime Assistance Act 2006* (NT)

³³ Sections 38(3) and 39(3) of the *Victims of Crime Assistance Act 2006* (NT)

³⁴ Regulation 6 of the *Victims of Crime Assistance Regulations 2007* (NT)

pursuant to section 46 of the VOCA Act. However, in total the maximum amount that can be awarded to primary, secondary and family victims under the current scheme is \$40,000, even if a victim's overall financial loss and the standard amount for a compensable violent act or compensable injuries exceeds \$40,000.³⁵

Ineligibility, reduction or non-award of financial assistance in certain circumstances

Under the current scheme, primary, secondary and family victims are ineligible to receive financial assistance if the injured person is being paid, has been paid, or is eligible to receive a benefit or compensation pursuant to the *Motor Accidents (Compensation) Act* or the *Return to Work Act*, for the same (or substantially the same) injury.³⁶ This does not prevent victims applying for counselling.

The current scheme also provides for other circumstances in which an amount of financial assistance may or must be reduced, and when financial assistance must not be awarded.³⁷ Such circumstances include where an applicant contributes to their injury, or receives compensation or damages from the offender (which is dependent on the offender having the means to pay and is quite rare) or through insurance, or fails to report to or assist Police in relation to the investigation of the violent act without reasonable excuse. Regulation 19 of the VOCA Regulations also provides for the proportionate reduction of financial assistance for a compensable injury in circumstances where the applicant had a pre-existing condition.

The Application Process

Under the current scheme, applications for financial assistance may be made by victims, their guardians or their representatives,³⁸ to the Director.³⁹ Generally speaking, applications for assistance must be made within two years of the date of the violent act, injury or death.⁴⁰ However, section 31(2) of the VOCA Act gives the Director discretion to accept a late application.

Applications are decided by assessors, who have been appointed by the Minister pursuant to section 24 of the VOCA Act. An assessor must be admitted to practice as a legal practitioner.⁴¹ As soon as practicable after deciding an application, the assessor must give the Director a notice of the assessor's decision, which is in turn provided to the applicant.⁴²

In practice, prior to an application being decided by an assessor, it is allocated to an 'applications officer', who is a CVSU officer for the purposes of the VOCRAS Act. CVSU applications officers assist victims to prepare their applications by seeking further information from applicants when required and gathering relevant records from agencies and organisations, such as the Police and medical centres. Applications officers will also arrange appointments for applicants with external experts such as psychologists and doctors, as required. Applications officers will prepare a brief, including a draft notice of decision, which is provided to the assessor for consideration and determination.

Standard of proof and types of evidence

The standard of proof applicable to a decision to award or refuse to award financial assistance under the current scheme is not expressly provided in the VOCA or VOCRAS Acts. In practice, a balance of

³⁵ Sections 38(1), 39(1) and 40(1) of the *Victims of Crime Assistance Act 2006* (NT)

³⁶ Sections 17 and 18 of the *Victims of Crime Assistance Act 2006* (NT)

³⁷ Sections 41-43 of the *Victims of Crime Assistance Act 2006* (NT)

³⁸ Section 25(5) of the *Victims of Crime Assistance Act 2006* (NT)

³⁹ Section 30 of the *Victims of Crime Assistance Act 2006* (NT)

⁴⁰ Section 31(1) of the *Victims of Crime Assistance Act 2006* (NT)

⁴¹ Section 24(2) of the *Victims of Crime Assistance Act 2006* (NT)

⁴² Section 44 of the *Victims of Crime Assistance Act 2006* (NT)

probabilities standard is adopted, that is, the Director or assessor (as the case may be) must be satisfied that a finding is more likely than not.

Under the current scheme, the types of evidence that an assessor might consider include:

For compensable violent acts:

Evidence that the violent act occurred, and that the victim was in fact the victim of the violent act. Such evidence could take the form of police and/or court records, including witness statements.

For financial loss:

Evidence that the financial loss was incurred by the victim, and that the loss was a direct result of the violent act. Such evidence could take the form of quotes, receipts, pay slips or bank records, as well as police and/or court records.

For compensable injuries:

Evidence that the injury was suffered by the victim, and to what extent, and that the injury was suffered as a direct result of the violent act. Such evidence could take the form of medical records, photographs of injuries, and expert assessments and reports, as well as police and/or court records.

The Review Process

Pursuant to section 48 of the VOCA Act, an applicant for an award may apply to the Northern Territory Civil and Administrative Tribunal (**the Tribunal**) for a review of certain administrative decisions, including a decision of an assessor or a decision of the Director to refuse to accept a late application. Regulation 25 of the VOCA Regulations provides that the Territory is liable to pay the costs of an application for review in particular circumstances. Generally speaking, such circumstances are where the Tribunal varies or revokes a decision of an assessor in favour of the applicant.

Debt Recovery Process

Under the current scheme, the Territory may commence a proceeding in the Local Court against an offender, for the recovery of a sum that is equal to or less than the amount of assistance that was paid to the victim.⁴³ Such a proceeding must be commenced by way of a statement of claim, within three years after the date of payment to the victim.⁴⁴ In the proceeding, the Territory must prove, to the satisfaction of the Court, that: (a) the Territory paid the amount sought to be recovered; and (b) the offender against whom the proceeding is brought: (i) was found guilty of an offence that resulted in the payment; or (ii) on the balance of probabilities, committed an offence that resulted in the payment.⁴⁵

If the Court makes an order that the Territory may recover an amount from an offender, the Territory is also entitled to recover all or part of that amount by way of 'set-off' if, under the financial assistance scheme, financial assistance is payable to the offender as a victim of a different violent act.⁴⁶

⁴³ Section 56(1) of the *Victims of Crime Assistance Act 2006* (NT)

⁴⁴ Section 56(2) of the *Victims of Crime Assistance Act 2006* (NT)

⁴⁵ Section 56(3) of the *Victims of Crime Assistance Act 2006* (NT)

⁴⁶ Section 57 of the *Victims of Crime Assistance Act 2006* (NT)

PART TWO: A POTENTIAL NEW SCHEME

A brief look at other relevant jurisdictions

NSW

The New South Wales (NSW) victims assistance scheme is governed by a single Act, the *Victims Rights and Support Act 2013* (NSW) and the related *Victims Rights and Support Regulation 2013* (NSW). Unlike the Territory's scheme, the NSW scheme does not award large lump sum compensation payments to victims according to a schedule of compensable injuries. Rather, it aims to provide a 'package of support' that is tailored to a victim's individual needs, as well as a 'recognition payment' to acknowledge the trauma suffered by a victim. In NSW, the 'package of support' is comprised of:

- 22 hours of counselling;
- up to \$5,000 to address the immediate needs of a victim such as emergency medical and dental treatment, installation of safety measures in the home, relocation expenses etc.;
- up to \$8,000 for funeral expenses; and
- up to \$30,000 for economic loss, including up to \$5,000 for related criminal or coronial proceedings, up to \$1,500 for loss of personal effects, and up to \$20,000 for demonstrated loss of actual earnings.

The NSW scheme provides for only three categories of victims. The primary and secondary victim definitions are similar to those contained in the VOCA Act.⁴⁷ The NSW family victim definition⁴⁸ is slightly more limited than the Territory's definition in so far as it is restricted to immediate family members of a primary victim who has died as a result of the violent act. There is no related victim category in NSW.

Under the NSW scheme, primary victims may be eligible for counselling, financial assistance for immediate needs and economic loss, and a recognition payment.⁴⁹ Secondary victims may be eligible for counselling only.⁵⁰ Family victims may be eligible for counselling, financial assistance for immediate needs, funeral expenses and economic loss, and in some circumstances a recognition payment.⁵¹

The NSW scheme establishes four categories of recognition payments,⁵² as follows:

- a **Category A** payment is available to specific family members of homicide victims. A family member who was financially dependent on a homicide victim is eligible for \$15,000. A non-dependent parent of a homicide victim is eligible for \$7,500;
- a **Category B** payment is available to primary victims in respect of the most serious kinds of sexual assault (those involving serious injury, the use of a weapon, or multiple offenders), a series of related acts involving sexual assault, and indecent assaults or attempted sexual assaults that involve serious bodily injury. \$10,000 is prescribed for this category;
- a **Category C** payment is available to primary victims in respect of less serious sexual assaults, including attempted sexual assaults that result in serious injury, as well as (non-sexual) assaults that result in grievous bodily harm and a series of related acts that involve the physical assault of a child. \$5,000 is prescribed for this category; and

⁴⁷ Sections 20 and 21 of the *Victims Rights and Support Act 2013* (NSW)

⁴⁸ Section 22 of the *Victims Rights and Support Act 2013* (NSW)

⁴⁹ Section 26 of the *Victims Rights and Support Act 2013* (NSW)

⁵⁰ Section 28 of the *Victims Rights and Support Act 2013* (NSW)

⁵¹ Section 29 of the *Victims Rights and Support Act 2013* (NSW)

⁵² Section 35 of the *Victims Rights and Support Act 2013* (NSW)

- a **Category D** payment is available to primary victims in respect of indecent assaults, attempted sexual assaults involving violence, robberies involving violence, and assaults that do not result in grievous bodily harm. \$1,500 is prescribed for this category.

In NSW, a Commissioner of Victims Rights (**the NSW Commissioner**) is responsible for the consideration and determination of applications for victims support⁵³ but may delegate those responsibilities.⁵⁴

If an applicant is dissatisfied with a decision of a delegate of the NSW Commissioner with respect to an application for victims support, the applicant may apply to the NSW Commissioner for an internal review of the delegate's decision.⁵⁵ In circumstances where the initial decision is made by the NSW Commissioner, there does not appear to be an avenue for internal review. A person who is dissatisfied with a decision of the NSW Commissioner (either at first instance or following an internal review) in relation to a recognition payment may apply to the NSW Civil and Administrative Tribunal (**NSW Tribunal**) for a review of that decision.⁵⁶

With respect to the recovery of victims support payments from offenders, the NSW system is somewhat different to the Territory's system. The NSW process is contained in Part 5 of the *Victims Rights and Support Act 2013* (NSW). In summary, the process allows the NSW Commissioner, in circumstances where an offender has been found guilty of the relevant crime, to make a Provisional Restitution Order (a **PRO**) which must be served on the offender. Once served, the offender is given 28 days to object to the PRO. If the offender consents or does not object to the PRO, the NSW Commissioner may confirm the PRO. Where the offender does object, the NSW Commissioner must consider the objection and either confirm (with or without variations) or revoke the PRO, and give notice of the same. The offender may seek a review of the objection determination by the NSW Tribunal. Upon confirmation of the PRO, either by the NSW Commissioner or the NSW Tribunal, the amount owed by the offender becomes a debt payable to the NSW Commissioner. Accordingly, a debt notice is required to be served on the offender. Where the debt is not paid by the due date, the NSW Commissioner may refer the matter to the NSW Fines Commissioner for enforcement.

The NSW Department of Justice has recently conducted a review of the *Victims Rights and Support Act 2013* (NSW) in accordance with section 119 of that Act. The review did not recommend significant reforms to the NSW scheme and concluded that the terms of the *Victims Rights and Support Regulation 2013* (NSW) were securing its policy objectives. However, the review also observed that, at the time of the review, there was very limited data available, which made it impossible to assess the overall efficacy of the NSW scheme.⁵⁷

ACT

The Australian Capital Territory (**ACT**) victims assistance scheme is comprised of two separate Acts, and their related Regulations. The financial assistance component of the ACT's scheme is contained in the *Victims of Crime (Financial Assistance) Act 2016* (ACT) and the related *Victims of Crime (Financial Assistance) Regulation 2016* (ACT). This component of the ACT's scheme is similar to the NSW scheme in so far as it provides for four main categories of financial assistance, as follows:

- up to \$10,000 to address the immediate needs of a victim such as emergency medical and dental treatment, installation of safety measures in the home, relocation expenses, and crime scene cleaning;
- up to \$8,000 for funeral expenses;

⁵³ Section 10(1)(i) of the *Victims Rights and Support Act 2013* (NSW)

⁵⁴ Section 9(2) of the *Victims Rights and Support Act 2013* (NSW)

⁵⁵ Section 49 of the *Victims Rights and Support Act 2013* (NSW)

⁵⁶ Section 51 of the *Victims Rights and Support Act 2013* (NSW)

⁵⁷ NSW Department of Justice, *Statutory Review: Victims Rights and Support Act 2013*, Report (2018) 1

- payments for economic loss including up to \$30,000 for loss of actual earnings, \$1,500 for loss of personal items, and up to \$5,000 for justice related expenses; and
- recognition payments of between \$1,000 - \$26,250, depending on the nature of the violent act and, in circumstances where the resulting injury is 'very serious and likely to be permanent', the nature of the injury.

Like NSW, the way in which different categories of victims are defined under the ACT scheme appears to be slightly more limited than in the Territory. For example, under the ACT's scheme, a family member of a primary victim will only be considered to be a 'Related Victim' in circumstances where the primary victim has died.⁵⁸ Further, a witness of a violent act is only eligible for assistance in circumstances where the primary victim has died.⁵⁹

Pursuant to regulation 5 of the *Victims of Crime (Financial Assistance) Regulation 2016* (ACT), the maximum amounts of financial assistance that are currently available to victims of crime in the ACT are as follows:

- for a primary victim—\$50,000;
- for a class A related victim—\$30,000;
- for a class B related victim—\$20,000;
- for a class C related victim—\$10,000; and
- for a homicide witness—\$10,000.

The ACT's scheme bears a number of other similarities to the NSW scheme. For example, in the ACT, the 'Victims of Crime Commissioner' is responsible for deciding applications for financial assistance.⁶⁰ In particular circumstances, a mechanism for an 'internal review' of a decision is also available to applicants.⁶¹ The process for recovering payments from offenders in the ACT is also similar to NSW in so far as the process is limited to offenders who have been found guilty of the relevant offence and is commenced by serving a 'recovery notice' on the offender which may become a 'debt due' to the ACT if the amount in the notice remains unopposed and unpaid.⁶²

The *Victims of Crime Regulation 2000* (ACT) is an interesting element of the ACT's scheme in so far as it provides for, among other things, the number of 'contact hours' available to different categories of victims, and whether a 'care plan' is required for an applicant. 'Contact hours' refers to the number of hours of service a victim is eligible to receive through the scheme. Contact hours are usually provided to the victim by the ACT Victims of Crime Commissioner or an 'approved service provider'. The ACT Victim Support website⁶³ indicates that the ACT's panel of approved service providers includes psychologists, social workers, counsellors, remedial masseurs, and tutors. A 'care plan' is a tool developed by the applicant's case manager in collaboration with the applicant. It is intended to identify the applicant's rehabilitation goals as well as the number of contact hours and particular services to be provided to the applicant for achieving those goals.⁶⁴ The ACT Victim Support website explains that the particular services provided to an applicant may include psychological interventions such as Cognitive Behaviour Therapy or Acceptance and Commitment Therapy, as well as educational assessments or tutoring. The ACT Victim Support website further provides that counselling can be provided directly to applicants by Victim Support ACT staff members or by private practitioners in the community.

⁵⁸ Sections 13, 14 and 15(1) of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

⁵⁹ Sections 16 and 23 of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

⁶⁰ Section 86(c) of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

⁶¹ Section 92(1) and Schedule 2, Part 2.1 of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

⁶² Part 6 of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

⁶³ <https://www.victimsupport.act.gov.au/>

⁶⁴ Regulation 34(6) *Victims of Crime Regulation 2000* (ACT)

QLD

The Queensland (QLD) victims assistance scheme is governed by the *Victims of Crime Assistance Act 2009* (QLD), and the related Director General Guidelines. The QLD scheme bears a number of similarities to the NSW and ACT schemes including that it does not award compensation according to a schedule of compensable injuries. Rather, under the QLD scheme, victims are eligible for financial assistance for a range of recovery-related expenses, including:

- counselling expenses;
- up to \$6,000 for urgent or immediate needs;
- medical costs;
- safety and security costs;
- travel expenses;
- up to \$20,000 for loss of earnings;
- loss of or damage to clothing; and
- in exceptional circumstances, other expenses reasonably incurred.

In addition, under the QLD scheme, primary victims may be eligible to receive a 'special assistance payment' of up to \$10,000;⁶⁵ and related victims may be eligible to receive a 'distress payment' of up to \$10,000.⁶⁶ Such payments are the QLD equivalent to recognition payments, and are determined according both to the objective seriousness of the violent act, as well as (in some cases) the nature or extent of the injury suffered by the victim.⁶⁷ Accordingly, the *Victims of Crime Assistance Act 2009* (QLD) contains provisions relating to medical examinations of victims,⁶⁸ as is the case in the Territory's current scheme.

In QLD, the maximum amounts of assistance available to victims are as follows:

- Primary - \$75,000 (plus \$500 for legal costs);⁶⁹
- Secondary - \$50,000 (plus \$500 for legal costs);⁷⁰
- Related - \$50,000 (plus \$500 for legal costs).⁷¹

The QLD scheme bears a number of other similarities to the NSW and ACT schemes, including that an internal review procedure is available for a range of administrative decisions,⁷² and that recovery of payments from offenders is limited to offenders who have been found guilty of the relevant offence.⁷³

The QLD scheme is similar to the Territory's scheme in that applications for assistance are determined by government appointed assessors.⁷⁴ In QLD, assessors are not necessarily required to be legally trained, but must be public service employees and "appropriately qualified for the functions and powers of government assessors under (the QLD) Act."⁷⁵

A distinguishing feature of the QLD scheme is the provision for 'special primary victims' which are expressly permitted to report offences to doctors, psychologists, counsellors or domestic violence workers, rather than to the Police.⁷⁶ Section 81(2) of the *Victims of Crime Assistance Act 2009* (QLD) indicates that a 'special primary victim' includes a child, a person with impaired capacity, a victim of a sexual offence or an act of

⁶⁵ Section 39(h) and Schedule 2 of the *Victims of Crime Assistance Act 2009* (QLD)

⁶⁶ Section 49(f) of the *Victims of Crime Assistance Act 2009* (QLD)

⁶⁷ Schedule 2 of the *Victims of Crime Assistance Act 2009* (QLD)

⁶⁸ Section 73 of the *Victims of Crime Assistance Act 2009* (QLD)

⁶⁹ Section 38 of the *Victims of Crime Assistance Act 2009* (QLD)

⁷⁰ Sections 41 and 44 of the *Victims of Crime Assistance Act 2009* (QLD)

⁷¹ Section 48 of the *Victims of Crime Assistance Act 2009* (QLD)

⁷² Section 124(1) of the *Victims of Crime Assistance Act 2009* (QLD)

⁷³ Section 107 of the *Victims of Crime Assistance Act 2009* (QLD)

⁷⁴ Section 89 of the *Victims of Crime Assistance Act 2009* (QLD)

⁷⁵ Section 128(3) of the *Victims of Crime Assistance Act 2009* (QLD)

⁷⁶ Section 81(1)(a)(ii) of the *Victims of Crime Assistance Act 2009* (QLD)

domestic and family violence, a victim of an offence committed by a person in a position of power and/or trust over them, or someone being threatened or intimidated by the person who committed the violence.

VIC

The Victorian Law Reform Commission has recently conducted a review of Victoria's victims assistance scheme. The Victorian Law Reform Commission's final report, *Review of the Victims of Crime Assistance Act 1996*, was published on 19 September 2018, and makes a number of recommendations in relation to Victoria's current scheme. In its current form, the Victorian scheme is governed by the *Victims of Crime Assistance Act 1996* (Vic) and the related *Victims of Crime Assistance (Special Financial Assistance) Regulations 2011* (Vic). It is different from the schemes discussed previously in so far as applications for assistance are determined by the Victims of Crime Assistance Tribunal, which is constituted by a magistrate, and may involve the conduct of a hearing.⁷⁷ However, it is also similar to those discussed above in terms of the categories of victims that are eligible for assistance and the types of assistance available to them.

In Victoria, primary, secondary and related victims are eligible to receive assistance. Primary and secondary victims are defined in a similar way to that in the Territory. The related victim category refers to a person who is a close family member of, a dependent of, or a person in an intimate personal relationship with, a primary victim who has died as a result of the violent act.⁷⁸ In Victoria, related victims do not need to have suffered an injury in order to be eligible for assistance.

In addition to payments for financial loss such as counselling and medical expenses, loss of earnings, damage to clothing, and safety related expenses, primary victims in Victoria may be eligible to receive a 'special financial assistance' payment in an amount up to \$10,000.⁷⁹ Special financial assistance is the Victorian equivalent to a recognition payment and is available to a primary victim who has suffered a 'significant adverse effect' as a direct result of the violent act. Special financial assistance payments are divided into four categories, determined according to the nature of the violent act.⁸⁰ In Victoria, related victims may also be eligible to receive a 'distress payment'.⁸¹

In Victoria, the maximum amounts of assistance that are available to victims are as follows:

- Primary - \$60,000 (not including special financial assistance);
- Secondary - \$50,000; and
- Related - \$50,000 for a single related victims; and \$100,000 in total for all related victims of one primary victim.

⁷⁷ Sections 19(2), 26(d) and 34 of the *Victims of Crime Assistance Act 1996* (Vic)

⁷⁸ Section 11(1) of the *Victims of Crime Assistance Act 1996* (Vic)

⁷⁹ Section 8A of the *Victims of Crime Assistance Act 1996* (Vic)

⁸⁰ Regulation 6 of the *Victims of Crime Assistance (Special Financial Assistance) Regulations 2011* (Vic)

⁸¹ Section 13(2)(c) of the *Victims of Crime Assistance Act 1996* (Vic)

A broad proposal for a new scheme for the Territory

Introduction

Broadly speaking, the Government is considering moving away from the ‘injury’ and ‘award’ focus of the current scheme, towards a simpler model that more effectively rehabilitates victims. In so doing, it is also intended to complement the Northern Territory Government’s current project to develop an Aboriginal Justice Agreement for the Territory which, among other things, aims to address the complex issues that contribute to Aboriginal disadvantage in the Territory, in a culturally competent way.

To these ends, a broad proposal for reforming the current scheme has been developed. In summary, the key features of the reform proposal include a refocussing of the way in which the CVSU operates, such that a ‘case management’ approach to victims support is adopted, as well as changes to the categories of support and financial assistance available under the scheme, such that victims may be eligible to receive:

- up to 12 hours of counselling, which can be extended to up to 22 hours when appropriate;
- up to \$30,000 for economic loss (including up to \$10,000 as an interim payment to address the applicant’s short term needs);
- up to \$8,000 for funeral expenses;
- a recognition payment of between \$1,000-\$15,000 depending on the nature of the violent act; and
- support from the CVSU, including referrals to other services.

A snapshot of the different ‘packages of assistance’ that are proposed for different categories of victims is contained at **Attachment A2**.

The structure of the reform proposal set out below generally reflects the structure of the current legislation, dealing firstly with concepts contained in the VOCRAS Act, followed by concepts contained in the VOCA Act.

One Consolidated Act

In an effort to simplify the scheme overall, it is proposed that the VOCA and VOCRAS Acts be consolidated into one new Act, entitled the ‘Victims of Crime Rights and Support Act’, or similar.

Question:

1. Should the VOCA and VOCRAS Acts be consolidated into one new Act?

The Charter

It is further proposed that the content of the Charter be incorporated into the new Act, or alternatively, that it be prescribed in the new regulations. It is anticipated that this could bring greater visibility to the rights of victims, and further streamline the scheme overall.

It is noted that it is not unusual to incorporate a charter of victims’ rights into legislation. In Victoria, a dedicated statute, the *Victims’ Charter Act 2006* (Vic), exists for this purpose. A charter of victims’ rights is also contained in the QLD and NSW victims of crime laws. In Western Australia, guidelines as to how victims should be treated are set out in Schedule 1 of the *Victims of Crime Act 1994* (WA).

It is anticipated that, if the Charter is incorporated into the new Act or the related regulations, a definitional distinction will likely be drawn between a ‘victim’ for the purposes of the Charter, and a ‘victim’ for the purposes of eligibility for financial assistance, as the former should be broader than the latter. That is, a person will need to fall within the definitions of either a primary, secondary, family or related victim to be

eligible to receive assistance under the scheme. However, a 'victim' for the purposes of the Charter should be broader to include, for example, victims of property crimes.

In an effort to encourage compliance with the Charter by government agencies, it is further proposed that a similar provision to that contained in section 7(2) of the *Victims Rights and Support Act 2013* (NSW) be included in the Territory's new scheme. Section 7(2) of the *Victims Rights and Support Act 2013* (NSW) provides that 'Any agency or person exercising official functions in the administration of the affairs of the State (other than judicial functions) must, to the extent that it is relevant and practicable to do so, have regard to the Charter of Victims Rights in addition to any other relevant matter'.

Consideration is also being given to whether a mechanism specifically for lodging and resolving complaints about alleged breaches of the Charter should be established in the Territory. In NSW, it is a function of the NSW Commissioner to receive complaints from victims of crime about alleged breaches of the NSW charter and to use the Commissioner's best endeavours to resolve the complaints.⁸² This is an addition to the NSW Commissioner's functions relating to the determination of financial assistance applications. In QLD, two separate roles have been established for the performance of these different functions: the QLD 'Victims Services Coordinator' is responsible for receiving complaints about alleged breaches of the charter (as well as undertaking or commissioning research about the needs of victims, and promoting awareness of the needs of victims); and the QLD 'Scheme Manager' is responsible for deciding applications for financial assistance.

Currently in the Territory, complaints by victims about their dealings with government agencies may be made to the Ombudsman NT. In developing this discussion paper, consideration has been given to whether a 'Commissioner of Victims Rights' (**NT Commissioner**) that is independent from and in addition to the Director, CVSU, should be established for the Territory, for the purposes of receiving and resolving complaints about alleged breaches of the Charter.

There are pros and cons with respect to establishing an NT Commissioner and at this stage the creation of such a role is not being formally proposed. Notwithstanding, the concept is still being considered and the Government would welcome the views of stakeholders in relation to this option. The possible functions and powers of an NT Commissioner are discussed in further detail below.

Questions:

2. Should the Charter be set out in the new legislation and if so how?
3. If the Charter is incorporated into the new Act, do stakeholders agree that a definitional distinction should be drawn between a 'victim' for the purposes of the Charter and a 'victim' for the purposes of eligibility for financial assistance?
4. Do stakeholders support the inclusion of a provision similar to section 7(2) of the *Victims Rights and Support Act 2013* (NSW) to encourage compliance with the Charter? Is there a better way to encourage compliance with the Charter?
5. Should a mechanism specifically for lodging and resolving complaints about alleged breaches of the Charter be established, or is the Ombudsman NT sufficient for this purpose?
6. If stakeholders support the creation of a specific mechanism for lodging and resolving Charter related complaints, is the NT Commissioner model supported or is there a better way to deal with complaints?

⁸² Section 10(1)(e) of the *Victims Rights and Support Act 2013* (NSW)

A Commissioner of Victims Rights

As mentioned above, the creation of a new NT Commissioner role which is independent from and in addition to the Director, CVSU, is being considered.

In the event that such a role were to be established, it is anticipated that one of the key functions of the NT Commissioner would be to receive and resolve complaints about alleged breaches of the Charter. The separation of the NT Commissioner from the CVSU would ensure that if any complaints arise in relation to the CVSU, they can be dealt with independently of the CVSU. In addition to the complaints related function, it is anticipated that some of the current functions of both the CVSU and the CVAC could be transferred from those entities, to the NT Commissioner, as the NT Commissioner may be better placed to give effect to those functions. The functions that could be transferred include:

- section 8(e) of the VOCRAS Act - to promote and operate the Charter;
- section 8(g) of the VOCRAS Act - to educate the community about the rights of victims;
- section 16(1)(a) of the VOCRAS Act - to advise the Minister on matters affecting the interests or rights of victims;
- section 16(1)(b) of the VOCRAS Act - to investigate, report and make recommendations to the Minister about matters referred to it by the Minister; and
- section 16(c) of the VOCRAS Act - to disseminate information relating to matters affecting the interests or rights of victims.

Additional functions of an NT Commissioner could also include:

- to help government and non-government entities to comply with the Charter;
- to oversee and coordinate services provided to victims in the Territory; and
- to undertake research about the needs of victims.

It is anticipated that the new NT Commissioner would have investigation powers, including the power to compel the production of information from government agencies and non-government entities that are engaged in the administration of justice or deliver services to victims of crime in the Territory. This is so that the NT Commissioner could fulfil a complaints related function effectively. It is noted that a similar approach has been taken in NSW where section 11 of the *Victims Rights and Support Act 2013* (NSW) provides that the NSW Commissioner 'may, in connection with the exercise of the functions of the Commissioner under this Act, make such investigations as the Commissioner considers necessary'. Section 12 of the *Victims Rights and Support Act 2013* (NSW) also provides the NSW Commissioner with the power to compel the production of information.

Additional powers may also include the power to recommend that an agency apologise to a victim where a breach of the Charter has occurred. It is noted that the NSW Commissioner has a similar power, and that this may be an effective means of enforcing the Charter and empowering victims in the Territory. An NT Commissioner could also be given powers 'necessary or convenient' for the performance of their functions. It is noted that the CVAC currently has such powers.⁸³ The QLD victim services coordinator, which performs a role similar to that of a Commissioner, also has the power to 'do all things necessary or convenient for the performance of their functions'.⁸⁴

As mentioned above, there are pros and cons to the creation of an NT Commissioner. On the one hand, it is expected that an NT Commissioner would be a specialised and therefore effective means of resolving complaints about victims rights in the Territory. As a public educator and coordinator of victims services in the Territory, an NT Commissioner may also generate greater cooperation and communication between various victims' services in the Territory, and be well placed to positively influence the development of

⁸³ Section 16(3) of the *Victims of Crime Rights and Services Act 2006* (NT)

⁸⁴ Section 138(5) of the *Victims of Crime Assistance Act 2009* (QLD)

public policy in this area. It is also anticipated that an NT Commissioner could provide Territory victims with a stronger voice, particularly through advising the Minister on matters affecting the interests or rights of victims.

On the other hand, the creation of an NT Commissioner may be costly for a small jurisdiction like the Territory, and is arguably unnecessary in a context where a range of services already exist for victims of crime in the Territory. While there may be scope to reduce the costs associated with establishing an NT Commissioner by, for example, expanding the role of an existing office in the Territory to include victim-related functions, or co-locating the NT Commissioner within an existing Commissioner, the costs of creating an NT Commissioner may limit the amount of funds available for additional support services for victims. In addition, the creation of an NT Commissioner may also be unnecessary where certain bodies already exist to perform a number of the abovementioned functions. For example, it is noted that complaints about delay in processing applications for financial assistance was a 'focus area' of the Ombudsman over the course of 2016-2017,⁸⁵ which indicates that the Ombudsman is actively working in this area already. In addition, the CVAC and the Director, CVSU currently play an important role in the development of victim-related policy in the Territory.

Questions:

7. Should an NT Commissioner (or similar) be established in the Territory?
8. If so, what functions and powers should an NT Commissioner have?

The CVAC

In the event that an NT Commissioner is established, an NT Commissioner would be well placed to perform most of the key functions of the CVAC. Functions relating to the investigation and reporting on victims' issues, for example, would likely be better performed by an NT Commissioner as it is anticipated that an NT Commissioner would be able to collect anecdotal and statistical data relating to victims relatively easily. As an NT Commissioner role would likely be an ongoing one (as opposed to the CVAC which is only required to meet biannually), an NT Commissioner is also likely to be better placed than the CVAC to assist in the coordination of organisations involved in the provision of services to victims. As such, if an NT Commissioner is established, it would not be expected that the CVAC be retained under the new scheme.

In the event that an NT Commissioner is not established, the CVAC is considered to be a valuable mechanism for facilitating collaboration between different agencies and areas of expertise on victims issues in the Territory. It would therefore be proposed that the CVAC be retained under the new scheme, in substantially the same form as it currently exists.

Questions:

9. If an NT Commissioner were to be established under the new scheme, should the CVAC be retained? If so, what functions and powers should the CVAC have?
10. In the event that an NT Commissioner is not established, should the CVAC be retained? If so, should the current functions and powers of the CVAC be amended in any way?

⁸⁵ Ombudsman NT, *Annual Report 2016-17*, September 2017, 5

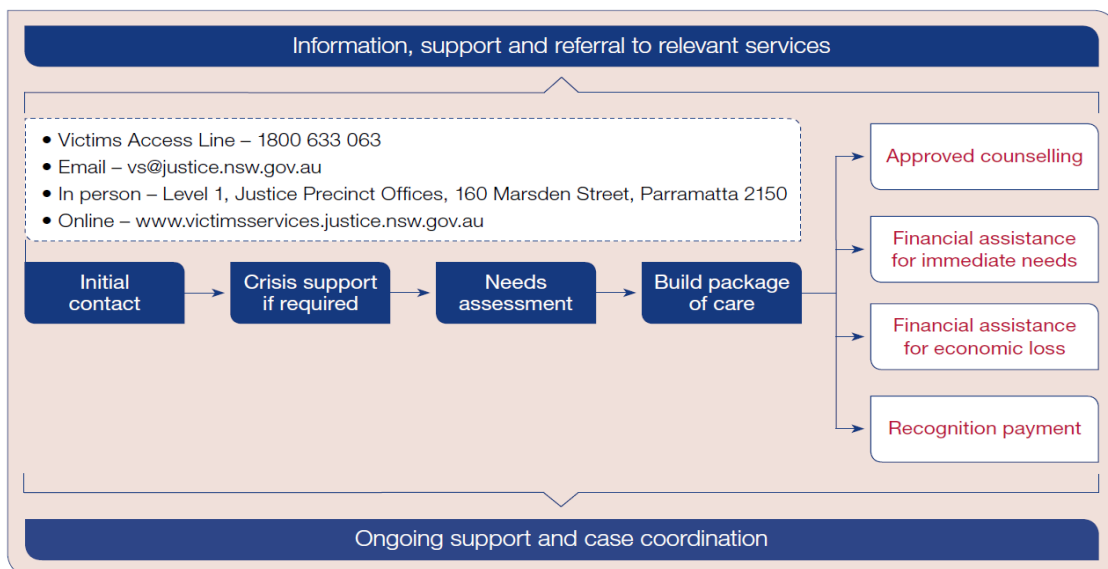
The CVSU

As mentioned above, the CVSU is currently constituted by the Director and CVSU officers. Broadly, it is proposed that this structure be retained. However, with respect to the role of the Director, it is proposed that it become an additional function of the Director to decide applications for financial assistance, rather than requiring legally trained assessors to determine applications. It is noted that the Director currently has delegation powers pursuant to section 33 of the VOCRAS Act and section 67 of the VOCA Act, and it is proposed that these powers be retained, such that applications may be determined by delegates of the Director. It is proposed that the Director and the Director’s delegates need not be legally trained. This approach is similar to that recommended by the Victorian Law Reform Commission in its recent report, *Review of the Victims of Crime Assistance Act 1996*, which is that the Victorian Victims of Crime Commissioner be responsible for deciding applications for financial assistance in Victoria, and that the Commissioner be provided with the legislative power to delegate appropriate functions to suitably qualified staff.⁸⁶

Consideration is also being given to ways of improving the operation of the CVSU itself, particularly regarding how applications for support and financial assistance are managed in a practical sense, to more effectively assist victims’ recovery. Although this aspect of the review may not necessarily require legislative change, it has been included in this paper as the Government would welcome the feedback of stakeholders (particularly stakeholders in the social work sector) in this area.

In NSW, a ‘care coordination’ approach to the provision of victims support is used. A NSW victims support publication⁸⁷ explains that in NSW, “victims are allocated a support coordinator who conducts a comprehensive assessment of each situation, develops a tailored plan and then guides (the victim) through the criminal justice and human services systems. The support coordinator provides information, referrals to other services and ongoing advice to victims of crime.” The same publication contains the following flow chart which explains how an application for assistance is managed in that jurisdiction:

Overall process



⁸⁶ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Report (2018) 172; 175

⁸⁷ http://www.victimsservices.justice.nsw.gov.au/Documents/bk19_vss-guide-details.pdf

A 'case management' approach to victims support is also used in the ACT. The ACT Victim Assist website⁸⁸ explains that, upon receiving an application for assistance:

The Intake and Assessment team at VS ACT conduct an initial interview with individuals to assess their eligibility and suitability to access services. During this initial interview individuals are provided with information regarding the services provided by VS ACT.

...

Following registration a client will be allocated to a Case Manager who will coordinate services to the client. The Case Manager firstly conducts a screening and assessment interview with the client, during which the Case Manager will:-

- *Work with the client to identify the impact of the crime, which may have affected one or more domains; physical, emotional, psychological and/or financial well-being.*
- *Develop a collaborative health and well-being plan (referred to as a care plan in the Victims of Crime Regulation 2000) which identifies client centred recovery goals.*

...

Following the development of the health and well-being plan the Case Manager identifies the appropriate evidence based therapeutic and/or non-therapeutic interventions. This step will help determine whether the Case Manager continues to work with the client and/or refers the client to a Panel member to work with the client to support the client's recovery.

In an effort to better support the recovery of victims in the Territory, the adoption of a similar 'case management' approach to those set out above is proposed. Case management or care coordination has multiple definitions depending on the context and circumstances of a particular organisation. However, the concept can broadly be described as a collaborative process which assesses the needs of a client (and the client's family, where appropriate), and plans, implements, coordinates, advocates, monitors, and evaluates, a package of services to meet the client's complex needs.⁸⁹ While not all victims of crime in the Territory will require case management, a number of victims may benefit significantly from this approach. As observed by Robyn Holder of Griffith University in QLD:⁹⁰

If the notion of recovery is pursued as a public policy aim for state (financial assistance) schemes, it should be practically grounded and responsive to the reality of survivors' needs, both day-to-day and over the longer term. The recovery element, broadly understood, can encompass the myriad ways that survivors seek to rebuild themselves ... It is crucial therefore, that scheme administrators see their role is more than that of assessors and managers of funds. By working collaboratively with other survivor services and survivors themselves, scheme administrators and the money they provide can become part of a survivor's sensitive process of reconstruction.

The ACT Victims Support Policy on Case Management also relevantly states that "Victims of crime, particularly those impacted by incident(s) of a serious and/or complex nature, will require case management where strengths are recognised and they are linked to appropriate services."⁹¹ With respect to the Territory, it is proposed that an 'Initial Intake and Assessment Team' (or similar) be established as part of the CVSU for the purposes of:

- engaging an applicant;
- identifying an applicant's immediate needs;

⁸⁸ <https://www.victimsupport.act.gov.au/what-we-do/the-victim-services-scheme/how-does-the-victim-services-scheme-work>

⁸⁹ Australian Association of Social Workers, *Scope of Social Work Practice: Case Management & Care Coordination*, December 2015, 3

⁹⁰ Robyn L Holder et al, 'Recognition, reconnection, and renewal: The meaning of money to sexual assault survivors' (2018) 24-1 *International Review of Criminology* 42

⁹¹

- determining an applicant's eligibility for financial assistance and a recognition payment (discussed in further detail below);
- providing information to an applicant about services for victims, including if they have a complaint about an alleged breach of the Charter; and
- deciding whether the applicant should be allocated to a CVSU case manager for ongoing support, or whether referrals to other organisations are required.

If an applicant is allocated to a CVSU case manager, it is anticipated that the case manager would be a professional social worker, and be responsible for:

- working collaboratively with the applicant to identify their individual circumstances and presenting issues;
- assessing an applicant's needs, including their health, housing, relationship, safety planning, financial, legal, employment, and educational needs;
- identifying any supports and services with which the applicant may already be engaged;
- developing a 'care plan' (or similar) which aims to address the applicant's needs by setting goals and determining strategies to achieve those goals;
- implementing the care plan by negotiating and advocating on behalf of an applicant to ensure access to necessary services, making referrals, and coordinating services for an applicant. It is anticipated that the case manager would work closely with the counselling provider and the Witness Assistance Service, as well as the domestic and family violence specialist worker and the Aboriginal and Torres Strait Islander specialist worker (discussed below), as required;
- monitoring the progress of the care plan by making regular contact with the applicant and other service providers, and adjusting the care plan according to an applicant's shifting needs;
- closing a file upon completion of a care plan, and ensuring that an applicant is linked to ongoing support services if required; and
- evaluating the service provided to the applicant, in collaboration with the applicant.

It is anticipated that provisions relating to the requirement for and the content of 'care plans' similar to those employed by the ACT, would be incorporated into the new scheme, either as part of the new Act or related regulations.

As indicated above, it is also proposed that the CVSU will comprise of (at least) one CVSU officer who is a domestic and family violence specialist worker and (at least) one CVSU officer who is an Aboriginal and Torres Strait Islander specialist worker. As victims of domestic and family violence, and Aboriginal and Torres Strait Islander people are over represented among victims of crime in the Territory, it would appear that these groups in particular would benefit from additional support. It is anticipated that the domestic violence specialist worker would work specifically with victims affected by domestic violence to improve their safety, for example through safety planning, and assist with the emotional and practical needs of these victims, as required. This may involve referrals to specialist domestic violence counselling services. It is anticipated that the Aboriginal and Torres Strait Islander specialist worker would provide targeted support to Aboriginal and Torres Strait Islander victims of crime, and assist with the emotional and practical needs of these victims, in a sensitive and culturally appropriate way. It is also anticipated that the specialist workers may work closely with the counselling provider, and perform outreach support, including safety planning, in remote communities in the Territory, perhaps by appointment or by way of a 'circuit' service. It is expected that the outreach role performed by specialist workers will better support victims of crime living remotely.

Questions:

11. Should the CVSU use a 'case management' approach to victims support? If so, how should this be implemented?

12. Do stakeholders support the creation of the domestic and family violence specialist worker and/or the Aboriginal and Torres Strait Islander specialist worker roles? If so, what functions should these specialist workers have? If not, is there a better way to support victims of domestic and family violence and Aboriginal and Torres Strait Islander victims in the Territory?

The Victims Register

The Victims Register is considered to be a valuable mechanism for supporting victims of crime in the Territory, offering certainty and comfort to victims as they try to recover from the trauma resulting from the violent act. The Victims Register is also an easy way for victims to access information, avoiding the need for them to chase individual agencies. As such, it is proposed that the Victims Register be retained under the current scheme.

It is also proposed that the scope of the Victims Register be broadened to include offenders (**supervised persons**) who are subject to supervision orders (both custodial and non-custodial) made pursuant to section 43Z of the Criminal Code, in respect of a relevant offence. It is proposed that the types of information that may be requested by a victim in respect of a supervised person would include the nature of the supervision order (i.e. custodial or non-custodial), the conditions of the supervision order (including where the supervised person is required to reside, if relevant), and the term of a supervision order. It is noted that section 43ZL of the Criminal Code already allows victims, at the time the court is considering whether to make, vary or revoke a supervision order, to prepare and submit a report to the court setting out their views regarding the conduct of the supervised person, the impact of the supervised person's conduct on the victim, and the impact the supervised person's conduct could have on the victim if the supervised person were to be released.⁹²

Questions:

13. Should the Victims Register be retained under the new scheme?
14. Do stakeholders support broadening the Victims Register to include 'supervised persons'? Should any other category be included?
15. Is there a need to amend the Victims Register in any other way?

Definitions of 'Violent Act' and 'Injury'

In an effort to more effectively support victims, particularly victims of domestic and family violence, and victims who suffer psychological harm as a result of a violent act, consideration is being given to whether the definitions of a 'violent act' and an 'injury' should be broadened under the new scheme.

The current definition of a 'violent act', which requires the act to be a 'criminal act', may exclude some acts of domestic and family violence, for example acts of verbal, emotional, social and financial abuse which may not constitute a criminal offence. Consideration is being given to whether there is a need to recognise the harm caused by these forms of domestic and family violence, which can be just as significant as physical acts of domestic violence, and to better support these victims in our community.

To achieve this, the definition of a 'violent act' could be broadened to include non-criminal acts of domestic violence, where those acts directly result in a particular type of injury. A similar approach has been adopted in the QLD jurisdiction, where section 25(2) of the *Victims of Crime Assistance Act 2009* (QLD) relevantly provides that:

⁹² Section 43ZL of the *Criminal Code* (NT)

an **act of violence** is domestic violence, or a series of related acts of domestic violence, that—

- (a) is committed in Queensland; and
- (b) directly results in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened; and
- (c) is not an act of violence under subsection (1).

In QLD, the definition of ‘injury’⁹³ relevantly includes, for the purposes of domestic violence, the totality of the following adverse impacts of the domestic violence suffered by a person:

- (i) sense of violation;
- (ii) reduced self worth or perception;
- (iii) lost or reduced physical immunity;
- (iv) lost or reduced physical capacity (including the capacity to have children), whether temporary or permanent;
- (v) increased fear or increased feelings of insecurity;
- (vi) adverse effect of others reacting adversely to the person;
- (vii) adverse impact on lawful sexual relations;
- (viii) adverse impact on feelings.

The ACT’s definition of ‘injury’⁹⁴ also includes, in the context of a ‘family violence offence’, ‘a sense of violation; a reduced sense of self-worth; increased fear or feelings of insecurity; or a reduced capacity to participate in sexual activity’. In respect of the Territory, the definition of ‘injury’ (for the purposes of non-criminal acts of domestic violence) could include the totality of a prescribed set of adverse impacts of the domestic violence suffered by the person, for example a sense of violation; a reduced sense of self-worth; increased fear or feelings of insecurity; and adverse impacts on lawful sexual relations. It is anticipated that this level of injury could be established without the need for an expert report, and by way of, for example, a certificate from a GP or a domestic violence specialist worker.

If the Territory’s definition of a ‘violent act’ was extended to include non-criminal acts of domestic violence, it is anticipated that the definition of ‘domestic violence’ would adopt the definition of domestic violence contained in the *Domestic and Family Violence Act*. It is noted that the definition of domestic violence in the *Domestic and Family Violence Act* is broad, and includes damage to property. This may be an appropriate expansion of the definition of a ‘violent act’, within the context of domestic and family violence, for the purposes of the victims of crime assistance scheme. It is also noted that the definition of ‘domestic relationship’ is broadly defined in the *Domestic and Family Violence Act*, such that an offender who is or has been in a carer’s relationship with the victim, would be included.

Should the definition of a ‘violent act’ be extended in this way, it is expected that an applicant would be required to establish a ‘pattern of violence’ in respect of acts of domestic violence which are not criminal acts, in order to satisfy the definition of a ‘violent act’ under the new scheme. It is anticipated that a ‘pattern of abuse’ would likely be defined in similar terms to that currently contained in regulation 6 of the VOCA Regulations, which, as mentioned earlier, provides that a violent act involves a pattern of abuse if: (a) the violent act is a series of 3 or more related criminal acts that occur over a period of time; and (b) the acts are committed against the same victim by the same offender. Adopting this approach would likely exclude victims of a one-off incident of domestic violence which was not a criminal act from accessing financial assistance and support under the new scheme. This may be an appropriate limitation, as more resources would consequently be available to victims of criminal acts, and victims who are experiencing a cycle of domestic violence.

⁹³ Section 27(1)(f) of the *Victims of Crime Assistance Act 2009* (QLD)

⁹⁴ Section 9(1)(c) of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

It is anticipated that the types of evidence that a victim could produce to support a claim for non-criminal acts of domestic violence might include a civil domestic violence order, a statutory declaration from the victim, and/or a report from a domestic violence service or counselling service.

In addition to the above, consideration is being given to whether the psychological harm aspect of the current definition of 'injury' should be broadened for the purposes of all violent acts (not just acts of domestic violence). As mentioned previously, victims who suffer psychological harm are currently required to establish a 'recognisable psychiatric or psychological disorder' in order to satisfy the definition of 'injury' under the current scheme. This could be described as a high bar, and will usually require a victim to undergo an external assessment as to the nature and extent of their mental injury. Given the intention to move away from an 'injury focussed' scheme which is heavily dependent on independent assessments of injuries, consideration is being given to whether the requirement of a 'recognisable psychological or psychiatric disorder' could be replaced with 'psychological harm', 'mental injury', or another similar term. It is noted that in NSW, the definition of 'injury' includes 'psychological or psychiatric harm'⁹⁵ and in Tasmania, the definition of 'injury' includes 'any impairment of ... mental health.'⁹⁶ While consideration is being given to broadening the psychological harm aspect of the current definition of 'injury', it is not considered that the definition of 'injury' should include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

It is noted that while the above options are being considered, they have been included in this paper as possibilities only. The practical implications of such measures, including the evidence necessary to prove non-criminal acts of domestic violence and the associated level of injury (the subjective nature of which is appreciated), as well as the impact of such changes on the financial viability of the scheme as a whole, will require further, in depth consideration. The Government would welcome the views and suggestions of stakeholders as to how such changes could operate in practice. It is also noted that the Victorian Law Reform Commission's recent report regarding its review of the Victorian victims of crime assistance scheme did not recommend that the definition of a 'violent act' in that jurisdiction be broadened to include non-criminal acts of violence. Rather, the Commission considered that "the appropriate way to address the exclusion of certain non-criminal forms of violence is to criminalise such conduct to enable its inclusion in the (scheme)."⁹⁷ To better recognise the impacts of family violence, the Victorian Law Reform Commission instead recommends that the Victorian scheme include a broader range of criminal offences e.g. property offences, where those offences occur in the context of family violence.⁹⁸

Consideration is also being given to whether there should be a threshold for physical injury under the new scheme. For example, a requirement that the physical injuries must be more than transient or trifling, though they need not be serious. On the one hand, it is proposed to move away from an 'injury focussed' scheme, in which an applicant's eligibility for assistance is dependent on the nature and level of injury suffered by a victim. On the other hand, it is necessary to be mindful that there are not unlimited funds available, and the scheme needs to remain financially sustainable. It may therefore be necessary to place a threshold on the level of injury suffered, in this way.

Questions:

16. Should the definition of a 'violent act' be broadened to include non-criminal acts of domestic violence? If so, should 'domestic violence' be defined in the same way as it is in the *Domestic and Family Violence Act*?

⁹⁵ Section 18 of the *Victims Rights and Support Act 2013* (NSW)

⁹⁶ Section 2(2) of the *Victims of Crime Assistance Act 1976* (TAS)

⁹⁷ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Report (2018) 257

⁹⁸ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Report (2018) 261

17. Do stakeholders support the requirement that applicants must establish a 'pattern of abuse' in respect of acts of domestic violence which are not criminal acts, in order to satisfy the definition of a 'violent act'?
18. Should the definition of a 'violent act' be amended in any other way to that proposed above?
19. Should the definition of 'injury' be broadened to include, for the purposes of non-criminal acts of domestic violence, matters such as the totality of: a sense of violation; a reduced sense of self-worth; increased fear or feelings of insecurity; and adverse impacts on lawful sexual relations?
20. Should the psychological harm aspect of the current definition of 'injury' be broadened for the purposes of all violent acts (not just acts of domestic violence), for example by replacing 'a recognisable psychological or psychiatric disorder' with 'psychological harm'?
21. Should a 'threshold' be placed on the definition of 'injury', for example to the effect that an injury must be more than transient or trifling?
22. Should the definition of 'injury' be amended in any other way to that proposed above?

Categories of Victims

As suggested above, the Territory's definitions of categories of victims appear to be slightly broader than in other jurisdictions. The main effect of this is that in the Territory a greater pool of people are considered eligible for counselling. As such, it is suggested that the current definitions of categories of victims be substantially retained. However, in accordance with feedback provided by a number of stakeholders during the 2013 review, it is proposed that the current definition of a secondary victim be broadened to include a person who suffers an injury as a result of subsequently becoming aware of the violent act in circumstances where:

- the secondary victim is the parent or guardian of the primary victim, and the primary victim is an adult; or
- the secondary victim is the adult child of the primary victim.

Questions:

23. Should the definition of a secondary victim be broadened in the manner proposed above?
24. Should the categories of victims be further amended, or amended differently, to that proposed above?

Categories of Support and Financial Assistance

For the reasons outlined previously in this paper, large lump sum payments to victims for compensable injuries, including the significant sums paid for those injuries to be assessed by experts and the associated travel and accommodation costs for victims who are required to travel for the purposes of being assessed, may better assist victims' rehabilitation if they are redirected towards more tangible support services for victims, greater assistance for financial loss, and smaller recognition payments.

It is therefore proposed that the new scheme will comprise of:

Counselling

It is proposed that up to 12 hours of counselling, which can be extended to up to 22 hours when appropriate, be made available to victims. As counselling sessions are currently capped at 8 sessions per client, this proposed amendment represents an increase in the level of counselling support available to victims of crime in the Territory, the intention being that, with the option of more counselling, a victims' rehabilitation prospects will be increased.

Questions:

25. Should the amount of available counselling be extended to 12 hours, with an optional further 10 hours if required? If not, should the amount of counselling available to victims be changed in any other way?
26. Does the counselling scheme require any other amendments?

Interim Payments

It is proposed that up to \$10,000 as an interim payment to address the short term out of pocket expenses incurred by a victim be made available. Such expenses may include emergency medical and dental treatment, installation of safety measures in the home, relocation expenses (including travel expenses incurred in escaping domestic and family violence), up to \$1,500 for the replacement of clothing and personal effects lost or damaged as a result of the violent act, and funeral expenses (described in further detail below). As the cap on immediate payments is currently \$5,000, this aspect of the proposal represents an increase in the level of short term assistance available to victims. It is proposed that the amount of an interim payment must be deducted from any subsequent payment made to an applicant for economic loss. It is not proposed that victims be required to establish financial hardship (which is currently required pursuant to sections 10(2), 12(2) and 14(2)(b) of the VOCA Act) in order to receive an interim payment under the new scheme.

It is anticipated that claims relating to the installation of safety measures in the home may involve a cooperative relationship between the CVSU and existing organisations such as the YWCA Darwin, which currently delivers the Keeping Women Safe In their Homes pilot project, and Victims of Crime NT which currently delivers the Safe at Home Program for Territorians living in remote communities.

With respect to loss of personal effects, it is also anticipated that an applicant's personal property damaged in the context of domestic and family violence will be included (within the limit of up to \$1,500) such that items such as a victim's mobile phone or car that is damaged by an offender in the course of an act of domestic violence may be claimed.

It is intended that under the new scheme, this category of payment will be referred to as an 'interim payment' rather than an 'immediate payment', in order to manage victims' expectations around delay. While efforts are being made to improve the timeliness of financial assistance to victims, necessary records pertaining to the violent act do take time to collate and the assessment process must be thorough. It is anticipated that efforts to improve the timeliness of victims assistance will be ongoing, despite the proposed change in terminology.

Questions:

27. Should the amount of interim assistance be capped and, if so, at what amount?
28. What categories of expenses should be allowed to be claimed as part of an interim payment?

29. Should expenses for loss of clothing and personal effects be capped and, if so, at what amount?
30. Should claims for property damaged in the context of domestic and family violence be allowed?
31. Do stakeholders support changing the terminology from an 'immediate payment' to an 'interim payment'?

Funeral Expense Payments

It is proposed that up to \$8,000 be made available for funeral expenses. In accordance with feedback provided by stakeholders during the 2013 review, it is proposed that funeral expense payments be available to any person who pays or is required to pay the costs of a funeral of a primary victim who dies as a result of a homicide, even if they are not a family or related victim. However, this category of payment would not be available to a person who committed the violent act.

It is proposed that the amount of a funeral expense payment must be deducted from any payment made to an applicant for economic loss.

Questions:

32. Should the amount of assistance for funeral expenses be capped and if so, at what amount?
33. Do stakeholders support extending the availability of funeral expense payments to any person who pays or is required to pay the costs of a funeral of a primary victim who dies as a result of a homicide?

Economic Loss Payments

It is proposed that:

- up to \$30,000 for economic loss, including ongoing medical and dental treatment, installation of safety measures in the home, relocation expenses (including travel expenses incurred in escaping domestic and family violence, if applicable);
- up to \$1,500 for the replacement of clothing and personal effects lost or damaged as a result of the violent act; and
- up to \$20,000 for demonstrated loss of actual earnings, be available to victims under the new scheme.

In an effort to more effectively assist victims' rehabilitation, it is also proposed that the definition of 'medical expenses' be broadened under the new scheme, to include mainstream allied health services such as occupational therapy, acupuncture, chiropractic and massage therapy. It is noted that this aspect of the proposal reflects the feedback of stakeholders provided during the 2013 review.

Questions:

34. Should the amounts of economic loss payments be capped and, if so, at what amount?
35. Should the definition of 'medical services' be broadened to include mainstream allied health services?

Recognition Payments

It is proposed that recognition payments between \$1,000 and \$15,000, divided into categories based on the objective seriousness of the violent act, be made available to certain categories of victims under the

new scheme. The purpose of a recognition payment is intended to acknowledge the trauma suffered by a victim. It is not intended to compensate victims for particular injuries suffered. Broadly, it is proposed that the following categories of recognition payments be established:

Category A:

It is proposed that a 'close family member' who was financially dependent on a primary victim who has died as a direct result of the violent act be eligible to receive \$15,000 in recognition of the violent act. It is also proposed that a 'close family member' who was not dependent on a primary victim who has died as a direct result of the violent act should be eligible to receive \$7,500.

It is proposed that 'close family member' be defined in the new scheme and that it be limited to persons including domestic partners, parents, step-parents and guardians, children and step-children of the primary victim, who had a genuine relationship with the primary victim.

Category B:

It is proposed that primary victims of the following categories of violent acts be eligible to receive \$10,000 in recognition of the violent act:

- sexual intercourse without consent (i.e. an offence against section 192 of the Criminal Code);
- sexual offences (including sexual intercourse, gross indecency, and indecent dealings) where the primary victim is a child (i.e. an offence against sections 127, 128, 131A and 132 of the Criminal Code);
- sexual offences where the primary victim is a person experiencing a mental illness or handicap and the offender is a provider of disability support services to the primary victim (i.e. an offence against section 130 of the Criminal Code);
- sexual offences (other than sexual intercourse without consent) against adult primary victims where a factor of aggravation applies, for example where the victim suffers serious harm, where the offence was committed by the use or threatened use of an offensive weapon, where the offence was committed by a person in the company of another person, or where the offence is part of a series of related acts.

Category C:

It is proposed that primary victims of the following categories of violent acts be eligible to receive \$5,000 in recognition of the violent act:

- sexual offences involving adults, other than those mentioned above;
- female genital mutilation (i.e. an offence against section 186B of the Criminal Code);
- non-sexual assaults where the primary victim is a child, or experiencing a mental illness or handicap;
- non-sexual assaults where the primary victim is an adult and a factor of aggravation applies, for example where the primary victim suffers serious harm, where the offence was committed by the use or threatened use of an offensive weapon, where the offence was committed by a person in the company of another person, or where the offence is part of a series of related acts; and
- acts of domestic violence which are part of a series of related acts, and are other than those mentioned above.

Category D:

It is proposed that primary victims of the following categories of violent acts be eligible to receive \$1,000 in recognition of the violent act:

- assaults, other than those mentioned above, where the primary victims suffers harm;
- kidnapping or kidnapping for ransom (i.e. an offence against section 194 or 195 of the Criminal Code);

- deprivation of liberty if the offence was committed by a person in the context of the person's unlawful entry of a building;
- abduction of a child under 16 (i.e. an offence against section 202 of the Criminal Code);
- robbery involving the use or threatened use of violence; and
- stalking.

The discrepancy between the amounts of the proposed recognition payment scheme and the amounts recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse in the form of 'redress' is acknowledged. However, the intention is to create a recognition payment scheme that is financially sustainable, and which is as equitable and as inclusive as possible, to allow for comparable recognition of crimes such as child sexual abuse that occurs outside of institutions as well as non-sexual child abuse. It is further anticipated that a victim of historical institutional child sexual abuse will not be precluded from seeking redress from the Commonwealth Redress Scheme, as a consequence of receiving a recognition payment pursuant to the Territory's new scheme, however it is noted that any prior payments are intended to be deducted from the redress payment.

In the event that the recognition payment model is supported, an issue relating to whether Category A recognition payments should be dependent on the 'close family member' proving some level of injury, will require further consideration. The issue arises from a potential inconsistency between: (a) Category A recognition payments made to 'close family members' who are secondary victims (and are therefore required to establish an injury); and (b) Category A recognition payments made to 'close family members' who are family victims (and are therefore not required to establish an injury at all). The requirement for secondary (as well as primary) victims to prove some level of 'injury', despite the proposed move away from a schedule of compensable injuries, relates to the definition of those categories of victims and is discussed in further detail later.

To address this potential inconsistency, one option could be to require family victims to prove some level of injury in order to be eligible for a Category A recognition payment. Presumably, this would usually be some form of psychological injury. Alternatively, Category A recognition payments could be made 'automatically' to 'close family members' without requiring them to prove an injury. In other words, regardless of whether the 'close family member' also satisfies the definition of a secondary or family victim.

Questions:

36. Do stakeholders support the provision of recognition payments instead of lump sum awards for compensable injuries?
37. Have the categories of violent acts been appropriately grouped under the different categories of recognition payments? If not, how could this be improved? Should any additional violent acts be included in the recognition payment scheme?
38. Are the amounts proposed for each category of recognition payment appropriate? If not, how could this be improved?
39. Should Category A recognition payments be dependent on 'close family members' proving some level of injury or should such a payment be 'automatically' available to 'close family members'?

Support Services

It is proposed that under the new scheme, victims may be eligible to receive support through the CVSU including individual case management, and support from a domestic and family violence specialist worker and/or an Aboriginal and Torres Strait Islander specialist worker (discussed above). It is also proposed that the CVSU will provide referrals to, and establish cooperative relationships with, existing external services

including medical and legal (including court support) services, housing providers, parenting support, and drug and alcohol specialist services. This aspect of the proposal proposes a different model for the CVSU's operations.

It is anticipated that the development of stronger working relationships between the CVSU case managers and legal (including court support) services will complement other current proposals aimed at improving the experience of victims in the criminal justice system, for example the proposal for the establishment of a specialised approach for dealing with domestic and family violence matters in the Alice Springs Local Court, which focusses on improving court processes and infrastructure to maximise the safety, care and comfort of victims of domestic violence who are engaged in the court process.

Questions:

40. Do stakeholders support the proposal with respect to the provision of, and referrals to, support services for victims of crime? Could this aspect of the proposal be improved in any way?
41. Are there other ways in which the current scheme could be improved to better assist victims who are engaged in the criminal justice process?

Other recovery related expenses

Consideration is also being given to the establishment of a further category of financial assistance for 'other recovery related expenses'. Currently under the VOCA Act, recovery related expenses are classified as a sub-category of financial loss and victims are only able to claim such expenses in 'exceptional circumstances'.⁹⁹ The VOCA Act provides examples of such recovery related expenses which include relocation expenses and the costs of securing the victim's place of residence or business.

The phrase 'in exceptional circumstances' may imply that only victims of extremely serious criminal acts, or who suffer an unusual reaction to a violent act are eligible for this category of payment and that a victims' rehabilitation may be further assisted if this category were broadened. One way of broadening this category would be to remove the requirement for 'exceptional circumstances', and instead allow for 'other recovery related expenses' in circumstances where the Director considers it reasonable. Additional examples of recovery related expenses could also be included in the Act, for example child care expenses, the costs of an applicant's further education and training, or other expenses which are designed to build a victim's independence and confidence. To ensure that 'other recovery related expenses' are both reasonable and appropriate, the scheme could require the expenses to be part of a victim's care plan, developed by the applicant in collaboration with their case manager. This category of expenses could also be subject to its own cap, for example \$2,000-\$5,000, that must be deducted from the 'economic loss' category of assistance.

It is noted that, should this aspect of the proposal receive support from stakeholders, it would need to be fully costed. The amount of any cap on this category of expenses would also need to be given further consideration. As mentioned earlier in the discussion paper, it is necessary to be mindful that there are not unlimited funds available, and the scheme needs to remain financially sustainable.

Question:

42. Do stakeholders support the above proposal with respect to 'other recovery related expenses'? If not, what improvements could be made to this aspect of the proposal?

Eligibility for Support and Financial Assistance

As mentioned earlier, a breakdown of the different 'packages of assistance' that are proposed for different categories of victims is set out at Attachment A2. Broadly, it is proposed that, under the new scheme, the following categories of victims will be available to claim the following categories of support and financial assistance:

⁹⁹ Sections 10(5)(d), 12(6)(c) and 14(3)(d) of the *Victims of Crime Assistance Act 2006* (NT)

Primary:

- counselling;
- economic loss (including an interim payment) for medical and dental expenses, safety and relocation expenses, loss of clothing and personal effects, and loss of earnings;
- a recognition payment; and
- support services from the CVSU.

Secondary:

- counselling;
- economic loss (including an interim payment) for medical expenses, safety and relocation expenses, and loss of earnings;
- funeral expenses;
- a recognition payment (if the victim falls within the scope of a category A recognition payment); and
- support services from the CVSU.

Family:

- counselling;
- in circumstances where the primary victim has died as a result of the violent act, economic loss (including an interim payment) for medical expenses incurred by the primary victim;
- funeral expenses;
- in circumstances where the primary victim has not died, but requires a family victim to care for them after the violent act, demonstrated loss of earnings reasonably incurred by the family victim to care for the primary victim;
- a recognition payment (if the victim falls within the scope of a category A recognition payment); and
- support services from the CVSU.

Related:

- counselling; and
- referrals to support services.

It is proposed that the amounts of financial assistance available to individual victims continue to be capped under the new scheme. It is also proposed that a total cap be applied to 'pools' of victims, including all secondary victims of a single violent act or single primary victim, all family victims of a single violent act or single primary victim, and all related victims of a single violent act or single primary victim. Details as to amount of the proposed caps are set out in Attachment A2.

Questions:

43. Should the different categories of support and financial assistance be made available to victims in the manner proposed above? If not, how could this aspect of the proposal be improved?
44. Do stakeholders support a cap on the total amount of financial assistance available to individual victims?
45. Do stakeholders support a cap on the total pool of financial assistance available to multiple victims of a single violent act or a single primary victim, as proposed?

Motor Accident and Workers Compensation Payments

As mentioned above, victims are ineligible to receive financial assistance under the current scheme if the injured person has received, or is eligible to receive, a benefit pursuant to the *Motor Accidents (Compensation) Act* or the *Return to Work Act*, for the same act of violence (**a relevant payment**). The Department consulted on these provisions during the 2013 review. Although it seems that there was limited feedback from stakeholders regarding these provisions at the time, it appears that stakeholders were generally supportive of retaining section 17 (relating to motor accidents compensation) in its current form, and broadening section 18 (relating to workers compensation) so that eligibility to receive other forms of workers compensation (e.g. Comcare, the *Military Rehabilitation and Compensation Act* and Seaman's Insurance) also deemed the person ineligible for victims assistance. Further consideration will be given to these options as part of this review.

In addition, consideration will be given to a third option involving the 'offsetting' of a relevant payment against the persons' victims assistance payment. In short, the third option would operate so that instead of deeming this category of victims ineligible for assistance, any relevant payments received must be deducted from the amount of financial assistance awarded. The intention behind this aspect of the proposal is to ensure that victims are not financially disadvantaged simply because they are eligible for a benefit under another scheme. Section 42(3) of the VOCA Act relates to circumstances where an applicant has received payments such as compensation or damages from the offender or a private medical insurance benefit and provides that in those circumstances the assessor must reduce the award by an amount equal to the payment the applicant has received. This aspect of the proposal is that a similar approach be adopted in respect of a relevant payment.

This appears to be the approach taken in both the ACT and QLD. In the ACT, a person who receives an 'associated payment' (which includes a payment under a workers' compensation law), may receive financial assistance under the ACT's victims of crime assistance scheme for the same harm or loss that the 'associated payment' covers. However, the amount of financial assistance must be reduced by an amount that is equal to the 'associated payment'.¹⁰⁰

In QLD, a primary victim who has received a lump sum compensation payment under a workers' compensation law of an amount that is less than the amount of 'special assistance' that would ordinarily be payable to the person pursuant to the QLD victims of crime scheme, is entitled to receive a 'special assistance' payment in the amount that is the difference between the two payments. A victim who receives a workers compensation payment in QLD may also be eligible to receive financial assistance for expenses incurred for loss of or damage to clothing.¹⁰¹

In relation to the Territory, it is proposed that, in circumstances where a person receives a relevant payment after receiving financial assistance as a victim of crime, the new scheme will require the person to inform the Director about the relevant payment, and stipulate that the person may be liable to repay an amount of financial assistance. Similar provisions are contained in the ACT's victims of crime legislation.¹⁰² As is the case in the ACT, it is proposed that failure to inform the Director about a subsequent relevant payment will be an offence under the new scheme.¹⁰³ It is proposed that the repayment process be similar to the proposed debt recovery process (described in detail later).

It is anticipated that this proposed amendment will affect only a small number of claims: the 2015-16 CVSU annual report indicates that in the 2015-16 financial year, only four applications were refused on account of a workers compensation claim. Notwithstanding, it is anticipated that the proposed amendment to be a worthwhile one.

¹⁰⁰ Section 47 of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

¹⁰¹ Section 32 and Part 3 of Chapter 3 of the *Victims of Crime Assistance Act 2009* (QLD)

¹⁰² Section 64(2) and more generally Part 5 of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

¹⁰³ Section 64(3) of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

Questions:

46. Should a 'relevant payment' deem the person ineligible for victims assistance or should a 'relevant payment' be deducted from the amount of financial assistance awarded to a victim?
47. Should section 18 be broadened to include other workers compensation schemes?
48. If stakeholders support the 'offset option', should a person who receives a 'relevant payment' after receiving financial assistance be required to inform the Director about the 'relevant payment'?
49. Should failure to inform the Director about a subsequent 'relevant payment' be an offence?
50. Should victims be liable to repay an amount of financial assistance if they receive a subsequent 'relevant payment'?
51. Should the existing provisions regarding payments pursuant to the *Motor Accidents (Compensation) Act* or the *Return to Work Act* be amended in any other way to that proposed above?

Reduction or non-award of financial assistance in other circumstances

As mentioned earlier, the current scheme provides for circumstances in which an amount of financial assistance may or must be reduced, and when financial assistance must not be awarded. One of the reasons for refusing an application for assistance under the current scheme relates to an applicant's failure to report the violent act to Police. Section 43 of the VOCA Act relevantly provides that:

The assessor must not award financial assistance to the applicant if:

...

- (b) the violent act was not reported to a police officer within a reasonable time after its occurrence, unless the assessor is satisfied circumstances prevented the report being made;
- (c) the violent act was not reported to a police officer before the date the assessor decides the application, unless the assessor is satisfied circumstances prevented the report being made;
- (d) the applicant failed, without reasonable excuse, to assist police officers in a material way in the investigation or prosecution of the violent act, including by failing to make a formal complaint or statement;

...

In an effort to better support victims of domestic, family and sexual violence, and other vulnerable victims in our community, it is proposed that special reporting provisions, similar to that contained in the QLD law, be established in the new scheme. As mentioned above, in QLD, 'special primary victims' (which includes children, persons with impaired capacity, and victims of domestic, family and sexual violence) are expressly permitted to report offences to doctors, psychologists, counsellors or domestic violence workers, rather than to the Police.¹⁰⁴

Questions:

52. Should special reporting provisions similar to those in QLD be incorporated into the Territory's new scheme?

¹⁰⁴ Section 81(1)(a)(ii) of the *Victims of Crime Assistance Act 2009* (QLD)

Making an Application (limitation periods)

Generally speaking, it is proposed that the current two year limitation period be retained. It is also proposed that the current provisions relating to the Director's discretion to accept a late application be retained, although those provisions may be amended in accordance with the feedback of stakeholders from the 2013 review (refer to Attachment A1 for further detail on this point). In addition, consideration is being given to whether the limitation period should be expressly extended, or removed altogether, for particular victims of particular violent acts, in the following ways:

- in respect of applications for financial assistance for violent acts that involve domestic or family violence or sexual assault and where the victim is an adult at the time of the violent act, that the limitation period be extended to 10 years after the violent act occurs. This is intended to recognise that it is common for victims of domestic and sexual violence to delay reporting such acts for multiple reasons including fears of retribution or feelings of guilt or shame;
- in respect of applications for financial assistance where the victim is a child at the time of the violent act, that the limitation period be extended to 10 years after the child turns 18; and
- in respect of applications for financial assistance for sexual assault offences where the victim is a child at the time of the offence, that the limitation period be removed altogether. This is intended to recognise that child victims of sexual offences often delay disclosing such acts for multiple reasons including shame or embarrassment, fear that they will not be believed, or that disclosure will result in a negative reaction.

In part, the proposal to extend the limitation periods in the above ways reflects the approach taken in NSW. Section 40(5) of the *Victims Rights and Support Act 2013* (NSW) provides that 'An application for a recognition payment in respect of an act of violence involving domestic violence, child abuse or sexual assault must be duly made within 10 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, within 10 years after the day on which the child turns 18 years of age'. The proposal to remove the limitation period in respect of sexual assault offences where the victim is a child at the time of the offence is also intended to be consistent with section 5A of the *Limitation Act*, which provides that there is no limitation period in relation to an action for damages for personal injury to a person arising from child abuse of the person. As 37% of applicants during 2015-16 were a child at the time the violent act occurred,¹⁰⁵ it is anticipated that the above limitation period amendments would be relevant to a significant cohort of applicants.

Questions:

53. Should the limitation period for violent acts that involve domestic, family or sexual violence and where the victim is an adult at the time of the violent act be extended to 10 years after the violent act occurs?
54. Should the limitation period for violent acts in which the victim is a child at the time the violent act occurs be extended to 10 years after the child turns 18?
55. Should the limitation period for sexual assault offences where the victim is a child at the time the violent act occurs be removed altogether?
56. Should provisions with respect to limitation periods be further amended, or amended differently, to that proposed above?

¹⁰⁵ Crimes Victims Services Unit, *Annual Report 2015-16*, September 2017

Deciding Applications for Support and Financial Assistance

As mentioned above, it is proposed that under the new scheme, applications for assistance will be determined by the Director or the Director's delegates, rather than by legally trained assessors. Consideration has also been given to whether the standard of proof for deciding applications for assistance should be lowered from the 'balance of probability' to the standard of 'reasonable likelihood'. The Royal Commission into Institutional Responses to Child Sexual Abuse recommended a 'reasonable likelihood' standard of proof for the purposes of a redress scheme, and this was adopted by the Commonwealth in the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017. The Explanatory Memorandum for that Bill states that the definition of 'reasonable likelihood' is understood to be 'the chance of an event occurring or not occurring which is real – not fanciful or remote'.¹⁰⁶ As part of this review, further consideration may be given to adopting a 'reasonable likelihood' standard in lieu of the current 'balance of probability' standard, although it is noted that the balance of probability is the standard of proof used in the ACT,¹⁰⁷ NSW,¹⁰⁸ QLD¹⁰⁹ and Vic.¹¹⁰ A 'reasonable likelihood' standard could be adopted for all offence types, or could be adopted for certain offences only, such as child sexual abuse.

In terms of the evidence that the Director may require in support of applications for assistance under the new scheme, it is anticipated that, notwithstanding the proposed move away from a schedule of compensable injuries, some evidence going to an applicant's injury will often be required. This is due to the primary and secondary victim definitions which relevantly require the person to have suffered 'an injury'.¹¹¹ While some evidence of injury will be required in order for an applicant to fall within the scope of these definitions, it is anticipated that, generally speaking, less evidence of an applicant's injury will be required under the new scheme as the precise nature and extent of the injury will not need to be proved, for example by way of an expert report. It is also noted that applicants will likely be required to produce some evidence of injury in order to support a claim for payments such as emergency dental treatment or ongoing medical treatment. This proposed approach is similar to that used in NSW. Section 39 of the *Victims Rights and Support Act 2013* (NSW) provides that:

- (1) An application for victims support is to be accompanied by such documentary evidence as may be required by the approved form.
- (2) Without limiting subsection (1), the documentary evidence to be required:
 - (a) for an application for financial assistance for immediate needs under section 26—is documentary evidence (such as a medical or police report) sufficient to support, on the balance of probability, the applicant's claim to be a victim of an act of violence, and
 - (b) for an application for financial assistance for economic loss under section 26 or 27 or for a recognition payment—is a police report or report of a Government agency and a medical, dental or counselling report verifying that the applicant or child who is the primary victim concerned has actually been injured as a result of an act of violence.
- (3) An application for financial assistance under section 26 (1) (c), 27 or 29 is to give full particulars of any economic loss for which the assistance is sought.
- (4) The application is to include:
 - (a) in the case of actual expenses—receipts, invoices or other approved forms of substantiation of the expenditure incurred or to be incurred, or
 - (b) in the case of actual loss of earnings—the name and address of the employer, the period of absence from work and a statement from the employer substantiating those particulars.

¹⁰⁶ Explanatory Memorandum, Commonwealth Redress Scheme For Institutional Child Sexual Abuse Bill 2017, 12

¹⁰⁷ Section 43 of the *Victims of Crime (Financial Assistance) Act 2016* (ACT)

¹⁰⁸ Section 39(2)(a) of the *Victims Rights and Support Act 2013* (NSW)

¹⁰⁹ Section 78 of the *Victims of Crime Assistance Act 2009* (QLD)

¹¹⁰ Section 31 of the *Victims of Crime Assistance Act 1996* (Vic)

¹¹¹ Sections 9 and 11 of the *Victims of Crime Assistance Act 2006* (NT)

Consideration is also being given to whether the scheme should allow for portions of financial assistance to be paid directly to third parties who provide services to the applicant, rather than to the applicant themselves. This could involve a process in which the CVSU 'pre-approves' a maximum amount of assistance for a particular category of expenses e.g. for medical expenses that are likely to be incurred by the victim, and settles any relevant invoices up to that amount. Such a process aims to address the various risks associated with the provision of large lump sums to victims, which were discussed earlier in the paper.

Questions:

57. Should applications for support and financial assistance be determined by the Director and/or the Director's delegates, rather than legally trained assessors?
58. What standard of proof should be used to determine applications for support and financial assistance?
59. If a 'reasonable likelihood' standard is preferred, should this be adopted for all offence types, or apply to certain offences only, for example child sexual abuse?
60. Should victims be required to provide evidence of their injury to support their application for support and financial assistance? Are there any ways in which this aspect of the proposal could be improved?
61. Do stakeholders consider that the scheme should allow for portions of financial assistance to be paid to third party service providers rather than to the applicant directly? If so, do stakeholders support the 'pre-approval' process suggested above?

The Review Process

It is proposed that under the new scheme, a mechanism for an internal review be established, in respect of decisions made by delegates of the Director about applications for victims financial assistance. It is anticipated that internal reviews will be conducted by the Director as new hearings, which would allow the Director to take additional information into account. If the initial decision is one that was made by the Director at first instance, it is not proposed that an avenue for internal review be available in respect of that decision.

It is further proposed that under the new scheme, an avenue of review to the Tribunal will remain available. However, consideration is still being given to the scope of decisions that will be subject to review by the Tribunal. In NSW, external merits review is limited to decisions made in respect of recognition payments only. At this stage, it is proposed that an avenue of review to the Tribunal only be available to applicants in respect of decisions of the Director about recognition payments, a requirement to repay an amount of assistance, and debt recovery matters (discussed in further detail below).

Questions:

62. Should a mechanism for internal review be established in respect of decisions made by delegates of the Director about applications for victims assistance?
63. Do stakeholders agree that the Director should be permitted to consider additional information at the internal review stage?
64. Should an avenue of review to the Tribunal remain available under the new scheme? If so, which decisions of the Director should be reviewable by the Tribunal?

The Debt Recovery Process

In order to simplify and increase the efficiency of the process for recovering payments from offenders, an administrative debt recovery process, similar to that which exists in NSW, is proposed. This aspect of the proposal is also consistent with feedback provided by the Solicitor for the Northern Territory during the 2013 review. In summary, the proposed process involves the service of a 'recovery notice' (or similar) on the offender, for an amount equal to the amount awarded to the victim. It is proposed that upon being served with a recovery notice, the offender would be afforded 28 days to object to the notice. It is considered that an objection should be required to be in writing and state the reasons why the offender should not have to pay the amount specified. Such reasons might include that the offender denies that they committed the offence, that the victim participated in the violent act, or that the amount paid to the victim was excessive. It is anticipated that objections will be decided by the Director, and that a subsequent avenue of review to the Tribunal will be available to offenders who are dissatisfied with the Director's decision on the objection. It is intended that if the recovery notice is consented to, remains unopposed, or is confirmed (either by the Director following an objection or by the Tribunal following a review), the amount would become a debt due to the Territory, which may be referred to the Fines Recovery Unit for enforcement if, after 28 days, it remains unpaid. It is likely that this aspect of the proposal will require consequential amendments to the *Fines and Penalties (Recovery) Act*. It is anticipated that the move away from Court proceedings will simplify the recovery process and be more resource efficient.

In relation to the existing recovery by set-off provisions, it is broadly proposed that this be retained under the new scheme in respect of offenders who are subject to an unpaid, confirmed recovery notice. In addition, it is proposed that the existing recovery by set-off provisions be broadened to allow the Territory to recover, by way of set-off, debts owed by offenders, which have been referred to the Fines Recovery Unit for enforcement, even where those debts are not related to the victims of crime financial assistance scheme.

Questions:

65. Do stakeholders support an administrative rather than court based approach to debt recovery? If so, could this aspect of the proposal be improved in any way? If not, is there a better way to simplify the current process and make it more resource efficient?
66. Should the recovery by set-off provisions be retained?
67. Should the recovery by set-off provisions be extended to allow the Territory to recover debts owed by offenders, which have been referred to the Fines Recovery Unit for enforcement, even where those debts are not related to the victims of crime financial assistance scheme?

Other

As mentioned previously, multiple stakeholders provided written submissions to the Department as part of the 2013 review. The comments and suggestions contained in those submissions are acknowledged and will be considered as part of this review.

The Government would also welcome feedback on any other aspect of the current scheme, not addressed in this paper.

PART THREE: RELATED PROPOSALS TO BENEFIT VICTIMS

In addition to the above proposal to reform the current scheme, the Government is considering how to facilitate better outcomes for victims in the criminal justice process more broadly.

The experience of victims who are engaged in the criminal justice process, including dealings with police and the court system, can have a significant impact on a victim's recovery. It could also affect their confidence in the criminal justice system overall, which may affect whether the victim reports violent acts in the future. In August 2016, the Victorian Law Reform Commission published a report on the Role of Victims of Crime in the Criminal Trial Process which noted that: "While victims' experience of the criminal justice system, and their confidence in it, appear to have improved ... [t]he Commission heard that many victims are marginalised and offended by the attitude conveyed by prosecution and defence lawyers, and by their treatment in the courtroom generally ..."¹¹² It is acknowledged that the court process, which often requires victims to appear as victim-witnesses and undergo cross examination by defence counsel, has the potential to frustrate and disempower victims, which could impede their recovery.

With this in mind, the Government has developed two further proposals relating to victims of crime, namely, a proposal for a victim-offender conferencing scheme for adult offenders, and a proposal for amendments to restitution and compensation orders made under the *Sentencing Act*. While these proposals will not resolve all of the issues faced by victims in the criminal justice process, they aim to improve outcomes for victims who are engaged in this process, and complement the proposed reforms to the victims' rights, services and financial assistance scheme discussed above. The additional proposals are set out below.

Victim-Offender Conferencing for adult offenders

About victim-offender conferencing

Victim-offender conferencing is a form of restorative justice, which can be described as a process in which a victim and an offender, if they freely consent, are able to actively participate in the resolution of matters arising from a criminal offence, with the assistance of an impartial third party. One of the key benefits of victim-offender conferencing is that it provides victims, who often feel excluded and disempowered by the traditional justice process, with an opportunity to more actively participate in the justice process. This can be empowering for victims and help them to heal.

The Territory does not currently have a victim-offender conferencing scheme for adult offenders, although a form of victim-offender conferencing does exist in the Territory's youth justice context. The *Youth Justice Act* allows Police to refer a youth to a 'youth justice conference' as an alternative to charging the youth with an offence (i.e. as a diversionary tool).¹¹³ The *Youth Justice Act* also allows the Court to order a 'pre-sentencing conference' when determining the appropriate sentence for a youth.¹¹⁴ A pre-sentencing conference may take place with the victim of the offence, community representatives, members of the youth's family or any other persons the Court considers appropriate.

A brief look at some other jurisdictions

A number of other jurisdictions in Australia have or have had adult victim-offender conferencing schemes in place. While the various schemes differ in some respects, they also share many similarities. The schemes of some Australian jurisdictions are outlined briefly below.

¹¹² Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report (2016) xiii

¹¹³ Section 39(2) of the *Youth Justice Act 2005* (NT)

¹¹⁴ Section 84 of the *Youth Justice Act 2005* (NT)

ACT

The ACT's 'Restorative Justice Conferencing' scheme appears to be one of the more comprehensive victim-offender conferencing schemes for adult offenders in Australia, as it is governed by its own dedicated statute, the *Crimes (Restorative Justice) Act 2004* (ACT) and is available to adults in relation to both 'serious' offences (including serious family violence and sexual offences) and 'less serious' offences. For the purposes of the ACT's scheme, a serious offence is defined to mean an offence punishable by imprisonment for a term longer than 14 years (if the offence relates to money or other property) or 10 years (in any other case). In relation to serious offences, the process is only available to offenders who have been charged with and found guilty of the offence.

Referrals to the process may be made by various entities including the Police, the DPP, or the Court, depending on the stage of the proceedings. Participation in this process is also voluntary. However, in order for the conference to take place, both the offender and the victim (or, in particular circumstances, a parent of the victim, or a person acting for the victim) must participate. To be eligible for the process, offenders must accept responsibility for the commission of the offence.

In the ACT, a restorative justice conference has as a primary object of the formation of a 'restorative justice agreement' which must include measures intended to repair the harm caused by the offence. This may include an apology, a plan to address the offending behaviour, community service, or financial reparation. Any agreement reached must be fair and reasonably able to be carried out by the offender. Compliance with the agreement may be monitored by the 'director-general (restorative justice)' or the referring entity. Offender participation in the ACT's Restorative Justice Conferencing scheme may also be taken into account by the sentencing judge.

NSW

In the past, NSW has also conducted a form of victim-offender conferencing for adult offenders known as 'Forum Sentencing'. A recent consultation paper¹¹⁵ released by the NSW Sentencing Council as part of its review of victims' involvement in the sentencing process indicates that forum sentencing was a conference attended by the offender, victim(s) and relevant support persons and representatives, and led by a facilitator. At least one victim must have agreed to participate in order for the conference to proceed.

Similarly to the ACT, during a 'forum sentencing conference', participants would draft an 'intervention plan' which might require, for example, that the offender apologise to the victim, or undertake voluntary work for the victim or community. In NSW, the court could subsequently approve a draft 'intervention plan' and adjourn sentencing proceedings to allow the offender to complete the plan. Successful completion of the plan could be taken into account by the court during sentencing. The NSW consultation paper further indicates that an offender could also be required to return to court for sentencing in the usual way, if they failed to complete an 'intervention plan'.¹¹⁶

Unlike the ACT, in NSW, not all offence types were eligible for referral to forum sentencing. Particular serious offences or serious prior offences, such as murder, sexual assault, stalking, and firearms offences, would disqualify an offender from participating. Also, offences that did not have a direct victim, e.g. driving without a licence, were ineligible for the program.¹¹⁷

QLD

QLD currently offers a form of victim-offender conferencing for adult offenders, known as 'adult restorative justice conferencing', which appears to be similar to the NSW forum sentencing process.

¹¹⁵ NSW Sentencing Council, *Victims' involvement in sentencing*, Consultation Paper (September 2017)

¹¹⁶ NSW Sentencing Council, *Victims' involvement in sentencing*, Consultation Paper (September 2017) 87-88

¹¹⁷ NSW Sentencing Council, *Victims' involvement in sentencing*, Consultation Paper (September 2017) 91

The adult restorative justice conferencing website¹¹⁸ indicates that referrals to conferences can be made by police, prosecutions, the court or corrective services at any stage of the criminal justice process, and that it is most commonly used for offences heard in a Magistrates Court, such as stealing, assault, fraud, wilful damage and unlawful use of a motor vehicle. The site also indicates that during a conference, a convenor will facilitate the negotiation of an outcome between participants which may involve the return of stolen property or attending counselling. Where the parties can agree on what can be done, they will also sign an 'agreement' to that effect, which is then provided to the referring entity. Where relevant, the adult restorative justice conferencing team will also monitor an offender's compliance with the agreement.

South Australia (SA)

The SA conferencing model is somewhat different to those mentioned above. The SA 'sentencing conference' process is governed by section 22 of the *Sentencing Act 2017* (SA) and is primarily designed for Aboriginal defendants. It allows the court itself, with the assistance of an Aboriginal Justice Officer, to convene a sentencing conference, provided that the defendant consents to that course. The Court is then allowed to take into consideration views expressed at the conference. Unlike the jurisdictions discussed above, a sentencing conference in SA can proceed even where a victim chooses not to participate. A range of other persons, including community elders, may also participate in the conference, pursuant to sections 22(3) and (4) of the *Sentencing Act 2017* (SA). No offences appear to be expressly excluded from the sentencing conference process in SA.

The proposed model of victim-offender conferencing for adult offenders in the Territory

The different models of adult victim-offender conferencing mentioned above have been considered, and a broad proposal for an adult victim-offender conferencing scheme for the Territory has been developed. At this stage, it is anticipated that the proposed scheme would require legislative change and be provided for in the *Sentencing Act*. The key features of the model that is proposed for the Territory are set out below. The Government would welcome stakeholders' comments about the proposed key features, as well the concept of an adult victim-offender conferencing scheme for the Territory more generally.

Supplementary to formal court proceedings

It is proposed that in relation to adult offenders, the victim-offender conferencing process be supplementary to formal court proceedings, rather than as an alternative to them. That is, it is not proposed that the scheme be available as a means of diverting adult offenders from the traditional justice process. It aims to ensure that adult offenders are dealt with appropriately through the courts, as well as making restorative justice options available. It also recognises that some victims will want an offence to be dealt with through the conventional criminal justice process, and that this may also be an important aspect of the victim's recovery.

Question:

68. Do stakeholders agree that, in relation to adult offenders, victim-offender conferencing should not be available as a diversionary tool?

¹¹⁸ Queensland Government, *About Adult Restorative Justice Conferencing* (15 June 2018)

<<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>>

Available for 'less serious offences' only

There appear to be mixed views about whether victim-offender conferencing is appropriate for serious offences, including sexual and family violence offences. Sexual and family violence offences are often viewed as being inappropriate for restorative justice, due to the risk that victims will feel pressured to participate, and that the process may exacerbate trauma or reinforce existing power imbalances. Arguably, allowing victim-offender conferencing for domestic violence offences also fails to recognise that apologies and forgiveness are a part of the cycle of family violence.

Notwithstanding, the Victorian Law Reform Commission has considered that, subject to the development of strong eligibility and suitability criteria, an emphasis on informed consent, specialist training for conference facilitators, and the development of conferencing processes that respond specifically to the circumstances and dynamics of gender-based violence, restorative justice can be effective for serious offences, including sexual and family violence offences.¹¹⁹ As mentioned above, the ACT scheme offers adult victim-offender conferencing for serious offences, including sexual and family violence offences. However, such offences were initially excluded and phased in at a later date, due to the complexities associated with those offences. The Victorian Law Reform Commission has endorsed the phased approach adopted by the ACT.¹²⁰

In relation to the Territory, it is proposed to limit the availability of adult victim-offender conferencing to less serious offences, and exclude sexual and family violence offences, at least initially. This aspect of the proposal recognises that victims of serious offences, including sexual and family violence offences, are more likely to have specific and higher needs than victims of less serious offences, and as such may require a model of conferencing that is tailored to their particular needs, as well as additional resources to ensure they are adequately safeguarded throughout the conferencing process.

For the purposes of this proposal, it is intended to define the scope of the term 'less serious offence' to an offence punishable by imprisonment for a term up to:

- (a) if the offence relates to money or other property – 14 years; or
- (b) in any other case – 10 years.

It is further intended to expressly exclude sexual and family violence offences, including the offence of contravening a domestic violence order, even if such an offence would otherwise fall within the above categories. Although it is proposed to exclude sexual and family violence offences from this scheme, it is noted that efforts are being made to better support victims of family violence in other ways, most notably through the establishment of a specialised approach for dealing with domestic and family violence matters in the Alice Springs Local Court, and through a number of the proposed amendments to the financial assistance scheme outlined above.

Questions:

69. Do stakeholders support limiting the Territory's adult victim-offender conferencing model to less serious offences?
70. If yes, do stakeholders support the proposed scope of the term 'less serious offence', or should the term be defined in some other way, for example, to offences being dealt with in the jurisdiction of the Local Court?
71. Should sexual and family violence offences be expressly excluded from the proposed scheme?

¹¹⁹ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report (2016) 189; 192

¹²⁰ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report (2016) 192

The offender must have pleaded guilty to the offence, and be awaiting sentence

It is proposed that any adult victim-offender conferencing scheme for the Territory be limited to offenders who have pleaded guilty to the offence, and that any such conference occur at the pre-sentencing stage of the relevant proceedings.

The requirement for offenders to accept full responsibility for their actions is usually a feature of victim-offender conferences, and is important to the therapeutic purpose of the conference. A requirement for a plea of guilty (as opposed to a finding of guilt following contested proceedings) also helps to guard against offenders who may participate in a conference for disingenuous reasons, for example, to have their sentence reduced.

It is also not uncommon for victim-offender conferences to occur at the pre-sentencing stage of proceedings. This is currently an option in the Territory with respect to youth offenders. The proposal to limit conferences to the pre-sentencing stage also reflects a notion that pre-sentencing conferences are generally appropriate for less serious offences, whereas conferences conducted in relation to serious offences may be better placed after sentencing, due to the length of time it may take for a victim of a serious crime to be ready to participate.

Questions:

72. Do stakeholders support limiting the Territory's adult victim-offender conferencing model to offenders who have pleaded guilty to the offence?
73. Do stakeholders support limiting the Territory's adult victim-offender conferencing model to matters which are at the pre-sentencing stage of proceedings?

There must be at least one identifiable victim of the offence

One of the main purposes of this proposed process is to better include and empower victims of crime, and to help them to heal. As such, there should be at least one identifiable victim of the offence in order for the offender to be eligible to participate in this process. In practice this will exclude certain offences, for example, certain drug and motor vehicle offences, and escapes from custody, which do not have an identifiable victim.

Question:

74. Do stakeholders agree that the process should only be available in relation to offences with an identifiable victim?

Both the offender and the victim are to participate in order for a conference to proceed, although a victim may do so via alternative means, as appropriate

As mentioned above, one of the main purposes of this proposed process is to empower victims and to help them to heal. As such, it is considered that the victim's participation should be required in order for a conference to proceed. This is different to the SA model described above, but is a common requirement in other victim-offender conferencing schemes, for example, the NSW 'forum sentencing' model.

It is further proposed to allow victims to participate in these conferences via alternative means, for example, via video link or written correspondence. This aspect of the proposal is designed to allow for flexibility in the process and to protect victims from further harm. It is noted that such alternatives are made available in the ACT. Consideration is also being given to the scope of the phrase 'alternative means', and whether the term should be limited so that certain forms of alternative participation are excluded. For example, consideration is being given to whether participation via a representative should be excluded. On one view, this form of alternative participation could create too much distance between the victim and the process, which could impede the benefits of the conference. Participation via a representative also shares similarities with the traditional criminal justice process. On another view, allowing for all forms of alternative participation, subject to the facilitator's discretion, would create greater flexibility in the process. This is likely to increase the chances that the process will meet the specific needs of individual victims.

Questions:

75. Do stakeholders agree that a victim's participation should be required in order for a conference to proceed?
76. Should victims be permitted to participate via alternative means, such as video link or written correspondence? If so, are there any particular means of alternative participation that should be excluded, for example, participation via a representative?

Both the offender and the victim to provide informed consent to participate in the process

Informed consent can generally be described as a person's voluntary agreement to a course of action after they have considered all of the relevant information required to make that decision. Informed consent is a common requirement in the context of victim-offender conferencing, and aims to prevent harm to victims and offenders and facilitate a process that has the greatest capacity to be effective. Ideally, informed consent would be obtained prior to a matter being referred for conferencing. It is also proposed that a participant should be allowed to withdraw their consent at any stage of the process.

Questions:

77. Do stakeholders agree that the informed consent of both the offender and the victim to participate should be required in order for a victim-offender conference to proceed?
78. Do stakeholders agree that participants should be allowed to withdraw their consent at any stage of the process?

Suitability assessments

It is common for restorative justice conferencing programs to require suitability assessments to determine whether a conference is appropriate, given the circumstances of the parties. A suitability assessment would normally be conducted by the conference facilitator and may be based on the offender's acceptance of responsibility, demonstrated remorse, their attitude towards the victim, interpersonal skills and various safety issues including drug and alcohol issues and cultural values. It may also be based on the offender's criminal history. It is noted that the former NSW 'forum sentencing' process expressly excluded offenders with prior convictions for particular offences, including certain sexual assault and firearms offences, from participating in the process. While it is not proposed to expressly exclude offenders with prior convictions for particular offences as part of the Territory's process, it is anticipated that a non-exhaustive list of general suitability factors may be included in the legislation, which would include the offender's criminal history. Other suitability factors that are being considered include:

- (a) the physical or psychological safety of anyone who is to take part in the victim-offender conference;
- (b) the nature of the offending, including the level of harm caused and level of violence involved in its commission;
- (c) the personal characteristics, motivations, empathy and resilience of the victim and the offender, and their needs; and
- (d) whether appropriate support is available for the victim and the offender.

These proposed suitability factors have been adapted from the *Crimes (Restorative Justice) Act 2004* (ACT),¹²¹ and a 2016 report by the Victorian Law Reform Commission.¹²²

Questions:

79. Do stakeholders consider that the legislation should expressly exclude offenders with prior convictions for particular serious offences from participating in the proposed process?
80. Should the legislation provide a non-exhaustive list of general factors to guide suitability assessments by conference facilitators? If so, which general suitability factors should be included?

Other parties such as support persons, Police, community members and/or elders, may be involved in a conference, where appropriate, and interpreters are to be used where required

It is proposed to allow a range of additional persons, for example, support persons, the police, community members and/or elders, to attend victim-offender conferences, where this is appropriate in the circumstances of a case. It is also proposed that the conference facilitator be given broad discretion to permit a range of additional persons to participate, based on whether the facilitator considers that the person will contribute usefully to the process. This aspect of the proposal aims to allow flexibility in the process, to ensure that parties are protected from further harm, and to ensure that the process is as beneficial as possible. Given the over representation of Aboriginal people in the Territory's criminal justice system, the ability to include community members and/or elders also aims to facilitate a process and outcomes that are culturally appropriate. It is noted that the South Australian 'sentencing conference' process allows a range of additional persons, including community elders, to participate in the South Australian process. To further ensure that the process is culturally appropriate and as beneficial as possible, interpreters should be used where required.

¹²¹ Section 33 of the *Crimes (Restorative Justice) Act 2004* (ACT)

¹²² Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report (2016) 189

Question:

81. Do stakeholders agree that persons other than the victim, offender and facilitator, should be allowed to attend a victim-offender conference? If so, do stakeholders consider that the conference facilitator should be given broad discretion to determine which additional persons may participate?

Conferencing Agreements

It is a common feature of pre-sentencing victim-offender conferences that the parties may reach an agreement or action plan that is aimed at repairing the harm caused by the crime. The agreement may comprise of an apology, an explanation of the offender's actions, the return of goods or property, community service, or financial reparation. As mentioned earlier, in some jurisdictions, an agreement that is reached by the parties during a conference may also be subsequently provided to the court for endorsement, and sentencing may be adjourned to allow the offender time to comply with the agreement. Successful completion of the agreement could then be taken into account as a mitigating factor in sentencing. Failure to comply with the agreement could also result in the offender being brought back before the court to be sentenced in the usual way.

Consideration is still being given to how the proposed model for the Territory should deal with conferencing agreements. On one hand, victim-offender conferences aim to repair, as much as possible, the harm suffered by a victim, and allow the victim to participate in determining the best way for the offender to make amends. A conferencing agreement appears to be a common and effective means of achieving these purposes. As such, one option could be to deal with conferencing agreements in a similar way to NSW and other like models, described above. Should this model be preferred, it is expected that the respective legislation would stipulate that:

- any agreement reached must be reasonable and capable of being fulfilled by the offender;
- participation in restorative justice will not automatically reduce the severity of the sentence; and
- a court must not increase the severity of an offender's sentence in circumstances where an offender elects not to take part in, or to withdraw from, a conference.

Provisions to the above effect are in place in the ACT.

On the other hand, consideration is also being given to an alternative model which emphasises creating a dialogue rather than reaching an agreement. Under this model, the conference facilitator would be required to provide a report to the court about the conference. The report may include observations about the attitude of the offender towards the victim and the conference, and about the impact of their offending more broadly. It is anticipated that this report would be separate from or in addition to any pre-sentencing report prepared in accordance with sections 105 and 106 of the *Sentencing Act*. To some extent, this approach reflects that taken by Tasmania, where the *Sentencing Act 1997 (Tas)* allows the court to order a mediation report. Section 85(2)(a) of the *Sentencing Act 1997 (Tas)* provides that a mediation report is to report on, among other things, 'the attitude of the offender to mediation, to the victim and to the effects on the victim of the commission of the offence'. It is anticipated that under this model, the Court would have discretion to take the facilitator's report into account during sentencing, such that genuine participation by an offender could be considered to be a mitigating factor in sentencing. Although conference participants could reach an agreement under this model if they wished, this model would not involve the provision of any conferencing agreement to the sentencing court, for the court's endorsement. It would also not involve the monitoring of compliance with any such agreement by the responsible agency.

Question:

82. How should the Territory's adult victim-offender conferencing process account for conferencing agreements? Should agreements be dealt with in a similar way to the NSW 'forum sentencing' process described above? Or, do stakeholders prefer the 'alternative model' described above, which would involve the provision of a facilitator's report, rather than an agreement reached by the parties, to the court?

Referrals to conferencing

Given the proposal that such conferences occur at the pre-sentencing stage of criminal proceedings, it is likely to be appropriate that the Court be responsible for adjourning sentencing to allow for the determination of eligibility and suitability for victim-offender conferencing and, if appropriate, for a victim-offender conference to occur. It is anticipated that referrals would be made of the Court's own motion or on application by the prosecutor or offender.

Reforming Restitution and Compensation Orders made under the *Sentencing Act*

About restitution and compensation orders

Part 5, Division 1, of the *Sentencing Act* provides for the making of restitution and compensation orders against offenders in the Territory for injury, or for the loss or destruction or damage to property that is suffered by a victim in the course of an offence. Unlike fines, compensation and restitution orders that are made under Part 5, Division 1 are payable to the victim of the offence and are ancillary to, rather than part of, an offender's sentence. They are not intended to punish the offender, but are intended to repair, as far as possible, the harm caused to the victim as a result of the crime. Section 88 of the *Sentencing Act* is the key provision which sets out the bases upon which the court can make a restitution or compensation order. Section 88 provides that:

A court may order an offender do any one or more of the following:

- (a) pay compensation for injury suffered by a person in the course of or in connection with the commission of an offence;
- (b) make restitution of property taken in the course of or in connection with the commission of an offence;
- (c) pay compensation for the loss or destruction or damage to property that occurs in the course of or in connection with the commission of an offence.

Other key provisions relating to restitution and compensation orders made under Part 5, Division 1 of the *Sentencing Act* include:

- Section 90(4), which provides that 'A court may make an order for restitution under this Division only where it is satisfied that there has been property loss and that the person claiming the loss is entitled to recover the property.'
- Section 90(5), which provides that 'A court must not make an order under this Division where the person whose property was taken, lost, destroyed or damaged does not consent to the order being made.'
- Section 91(1), which provides that 'An order under this Division may be made on the court's own motion or on the application of the prosecutor.'
- Section 92, which sets out certain matters that a restitution or compensation order must specify, including the amount to be paid, to whom, by when, and by what means.
- Section 93, which allows the court to order the imprisonment of an offender for a period of no longer than 12 months, in circumstances where the offender fails to comply with the order. Section 93(3) also allows the court to give such direction as it think fit for the enforcement of the order including a direction that the offender appear before the court at a specified time to show cause why the offender should not be imprisoned because of a failure to comply.
- Section 94, which allows the court to extend the time for complying with an order for non-monetary restitution of property. Section 94 also contains a note to the effect that an extension of time to pay, and enforcement of payment of, an order for the payment of money by way of restitution or compensation is dealt with by the Fines Recovery Unit under the *Fines and Penalties (Recovery) Act*.
- Section 97, which has the effect of preserving a person's right to bring a civil action for damages but stipulates that anything done or paid under an order made under this Division must be taken into account in any award of damages.

The *Fines and Penalties (Recovery) Act* is also relevant to an examination of restitution and compensation orders made by a court under the *Sentencing Act* as in practice these orders are often payable to, and enforceable by, the Fines Recovery Unit under the provisions of that Act. Relevant provisions of the *Fines and Penalties (Recovery) Act* include:

- Section 6, which sets out the meaning of the term ‘fine’ for the purposes of that Act, and includes, at subsection (1)(da) ‘an order for restitution by monetary forfeiture, or monetary compensation, made by a court in proceedings for an offence (an **order for restitution or compensation**).’
- Section 23, which provides that: ‘(1) A fine imposed by a court is to be paid within 28 days after it is imposed. (2) A fine imposed by a court is to be paid to the Fines Recovery Unit unless the court otherwise directs.’
- Section 26, which allows the Fines Recovery Unit to extend the time for an offender to comply with a fine, and enter into an arrangement with the offender for paying the fine by instalments.
- Section 28(5), which provides that ‘The Fines Recovery Unit may act for a person to recover money payable to the person under an order for restitution or compensation.’
- Section 35, which allows the Fines Recovery Unit to take action in relation to the enforcement of an outstanding fine imposed by a court.
- Section 50, which allows the Fines Recovery Unit to make a ‘fine enforcement order’ in circumstances where a fine has not been paid. Sections 54-55 further require the Fines Recovery Unit to serve a notice of the making of the enforcement order on the offender, which provides the offender with, among other things, a final date to pay.
- Sections 59-61, which allow the Fines Recovery Unit to request the Registrar of Motor Vehicles to take enforcement action against an offender, which may include the suspension of an offender’s licence to drive, or the suspension of the registration of any vehicles owned by the offender.
- Section 66M, which allows for the publication of the name of a fine defaulter on the website of the Fines Recovery Unit.
- Division 8 of Part 5, which allows the Fines Recovery Unit, in certain circumstances, to take civil enforcement action against a fine defaulter, including for the issuing of a property seizure order, a garnishee order, or for a statutory charge on land.
- Section 76(1A), which provides that ‘A community work order cannot be made under this Division in relation to an order for restitution or compensation.’ Section 77 allows the Fines Recovery Unit to make a community work order in relation to a fine defaulter in other circumstances, in order to work off the amount that remains unpaid.
- Section 113, which provides that any money that has been received by the Fines Recovery Unit in relation to the order is to be first allocated to the payment of any order for restitution or compensation.
- Section 115(1A), which provides that ‘If the fine is an order for restitution or compensation, the Fines Recovery Unit must pay money received under the order to the person or body identified in the order as the recipient...’

The power to enforce monetary restitution and compensation orders was first provided to the Fines Recovery Unit in 2011 by way of the *Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011*. The second reading speech for the Fines and Penalties (Recovery) and Other Legislation Amendment Bill 2011 relevantly indicates that the main reason for providing the Fines Recovery Unit with this function was that at that time there was no effective mechanism for the enforcement of such orders, resulting in an unsatisfactory outcome for victims of crime. The second reading speech further provides that “The FRU (Fines Recovery Unit) is the logical enforcement agency for compensation and restitution orders.” The *Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011* also made related amendments to the *Sentencing Act*. The main intention of those amendments appears to have been to de-emphasise the requirement for the court to set and extend the time in which monetary restitution or compensation orders must be paid, and to remove provisions which allowed the court to direct the payment of a restitution or

compensation order by instalments.¹²³ Such amendments are consistent with the policy rationale of the *Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011* which was to shift responsibility for enforcing monetary restitution and compensation orders from the court, to the Fines Recovery Unit.

Notwithstanding these amendments, section 93 of the *Sentencing Act* was retained, such that there are now two primary mechanisms available for the enforcement of restitution and compensation orders, namely the court and the Fines Recovery Unit. The enforcement mechanism that will apply to a particular restitution or compensation order will depend upon the nature of the order. However, once an order falls within either of the schemes, the order remains within that scheme until it is finalised. At present, the process under the *Fines and Penalties (Recovery) Act* is the default mechanism for the enforcement of monetary compensation and restitution orders, unless the court orders otherwise. In particular, if the court sets a time frame for compliance with the order, it appears that the order will not, as a matter of course, be referred to the Fines Recovery Unit for enforcement. It will instead remain with the court for enforcement.

Concerns with the current restitution and compensation order scheme

Despite the multiple enforcement options available to the Fines Recovery Unit under the *Fines and Penalties (Recovery) Act*, and the option of imprisonment that is available to the court under section 93 of the *Sentencing Act*, it appears that a significant proportion of restitution and compensation orders will often remain unpaid by offenders. The table below contains data compiled by the Department as at 12 July 2018 and indicates that in the 2017-18 financial year, a total of 345 restitution or compensation orders were made by the courts, but approximately 60% of those orders were unpaid, totalling \$621,647. It is noted that a proportion of the unpaid sum does comprise of orders that were not actually outstanding as at 12 July 2018. It is also noted that the proportion of unpaid restitution and compensation orders largely reflects the impecuniosity of many offenders. However, unpaid restitution and compensation orders have the capacity to cause further harm to victims of crime, by prolonging the justice process, and reducing victims' confidence in the justice system more broadly.

¹²³ Specifically, section 92(c), which previously provided that an order under this Division may specify 'the time within which restitution is to be made or compensation is, or costs are, to be paid' was amended by omitting the references to compensation or costs. Section 94(1), which relates to the court's ability to extend the time of the order, was also amended so that it was limited to non-monetary restitution of property orders only. Sections 95 and 96 which allowed a person to pay their order by instalment, were also repealed.

| Year | Issued | FRU Enf Unpaid | Court Enf Unpaid | Total Unpaid |
|---------|--------|----------------|------------------|--------------|
| 2015-16 | 398 | 91 | 50 | 141 |
| | | \$441,899 | \$42,739 | \$484,638 |
| 2016-17 | 337 | 81 | 85 | 166 |
| | | \$236,005 | \$98,088 | \$334,094 |
| 2017-18 | 345 | 72 | 139 | 211 |
| | | \$255,753 | \$365,894 | \$621,647 |

There may also be scope to further emphasise restitution and compensation orders as an option that is available under the *Sentencing Act*, to benefit victims. This may be particularly relevant for victims of property crimes, who will not generally be eligible for financial assistance under the VOCA Act. The rates of property related crimes in the Northern Territory appear to be high compared to some other Australian jurisdictions. For example, calculations using data published by the Australian Bureau of Statistics¹²⁴ indicate that in 2017, the rates of unlawful entry involving the taking of property were approximately 1 per 124 people. This can be compared to Victoria, where the rate was approximately 1 per 210 people, and NSW, where the rate was approximately 1 per 340 people, in the same period. Depending on all of the circumstances, restitution or compensation will often be a relevant and effective means of responding to the harm caused by property related offences.

Finally, there may be scope to clarify some elements of the restitution and compensation order scheme, to ensure it operates as effectively and efficiently as possible. In particular, there are some concerns that the legislation may not be sufficiently clear in distinguishing between the two enforcement processes available, namely the court and the Fines Recovery Unit. The terms 'restitution' and 'compensation', which are often used interchangeably, may also require clarification.

The proposed reforms to restitution and compensation orders

To address the above concerns, the below reform proposal has been developed, and the Government would welcome feedback from stakeholders on the same. As many offenders simply cannot afford to pay restitution or compensation, the proposed reforms are not expected or intended to resolve all of the issues faced by victims who may suffer injury, or the loss or destruction or damage to property in the course of an offence. However, the reforms aim to improve outcomes for victims who may be affected by the making and enforcement of restitution and compensation orders under the *Sentencing Act*.

Sentencing Principles

Section 5(1) of the *Sentencing Act* provides a limited list of purposes for which a court may impose a sentence on an offender. In summary, these purposes include punishment, rehabilitation, general and specific deterrence, to make it clear that the community does not approve of the conduct, and to protect the community from the offender. Section 5(2) provides a further list of matters which the court must have regard to in sentencing an offender. In relation to victims of crime, this list relevantly includes 'any physical,

¹²⁴ Australian Bureau of Statistics, *Recorded Crime – Victims, Australia, 2017* (28 June 2018); *Australian Demographic Statistics, Mar 2018* (20 September 2018) <www.abs.gov.au>

psychological or emotional harm done to a victim,¹²⁵ ‘any damage, injury or loss caused by the offender,’¹²⁶ and ‘any harm done to the community as a result of the offence (whether directly or indirectly)’.¹²⁷

To further emphasise the interests of victims in the justice process, it is proposed to amend section 5(1) of the *Sentencing Act* to provide an additional sentencing purpose, so that sentencing may be used by the court as a means of recognising the harm done to the victim of the crime and the community. It is noted that section 3A(g) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) provides that it is purpose of sentencing in NSW ‘to recognise the harm done to the victim of the crime and the community.’ Section 7(1)(g) of the *Crimes (Sentencing) Act 2005* (ACT) also provides the same, although it is noted that in the ACT, restitution and compensation orders are not ‘ancillary orders’ under that scheme. In 2013, the New South Wales Law Reform Commission recommended that section 3A(g) be retained as a sentencing purpose in NSW, on the basis that it reflected the common law position and had the general support of stakeholders at that time.¹²⁸

Question:

83. Should the *Sentencing Act* be amended so that sentencing can be used by the court for the purpose of recognising the harm done to the victim of the crime and the community?

Preconditions for the making of restitution and compensation orders

The *Sentencing Act* provides for a number of preconditions for the making of restitution and compensation orders. Firstly, for a restitution or compensation order to be made, an offender must have been found guilty of an offence. In relation to restitution orders, the current provisions also require the court to be satisfied that there has been property loss and the person is entitled to recover the property. The *Sentencing Act* also prevents the court from making an order in relation to a person’s lost, destroyed or damaged property, where the person does not consent to the order being made.

As part of these reforms, consideration is being given to whether the current requirement for consent in relation to restitution or compensation orders for property should be removed or amended, so that the restitution and compensation order provisions may be utilised for the benefit of more victims. It is noted that the *Sentencing Act 1991* (Vic) similarly requires a form of victim consent for the making of a compensation order for loss or damage to property, although it is expressed in different terms. Specifically, section 86(1B) of that Act provides that a court may only make a compensation order of its own motion where the person in whose favour the order is to be made does not oppose the order being made. By contrast, in NSW, a victim’s consent does not appear to be required at all. In NSW, compensation orders are made by the court following a finding of guilt and pursuant to the *Victims Rights and Support Act 2013* (NSW). Under the *Crimes (Sentencing Procedure) Act 1999* (NSW), compensation orders are considered to be ancillary to an offender’s sentence. Pursuant to sections 94(2) and 97(2) of the *Victims Rights and Support Act 2013* (NSW), a court in NSW may order compensation for injury or loss of its own initiative, or on application by the victim. There may be good reasons for retaining a requirement for a victim’s consent in this context, for example, in a case of family violence or conflict, where an order could place a victim at risk of harm. The Government would welcome stakeholders’ views in relation to this.

Question:

¹²⁵ Section 5(2)(b) of the *Sentencing Act 1995* (NT)

¹²⁶ Section 5(2)(d) of the *Sentencing Act 1995* (NT)

¹²⁷ Section 5(2)(da) of the *Sentencing Act 1995* (NT)

¹²⁸ New South Wales Law Reform Commission, *Sentencing* (Report, 2013) xxv; 31

84. Should the *Sentencing Act* be amended to remove the requirement for a victim's consent in relation to the making of a restitution order for property loss or damage? Alternatively, should the provision be amended in some other way, for example, in a similar way to Victoria?

Types of restitution and compensation orders

As set out above, section 88 of the *Sentencing Act* contains the types of orders for restitution and compensation that may be made by the court. The terms 'restitution' and 'compensation' are often used interchangeably, and as part of this proposal, consideration is being given to whether these terms, or the types of restitution and compensation orders that may be made by the court, should be clarified or refined. On one view, section 88 implies that 'compensation' refers to a sum of money, and 'restitution' refers to the return or replacement of tangible property. This would accord with the Encyclopaedic Australian Legal Dictionary, which provides that 'compensation' means "an amount given or received as recompense for a loss suffered",¹²⁹ and 'restitution' in a criminal law context means "restoring property to its true owner".¹³⁰ On another view, section 88(b) also suggests that restitution orders relate specifically to the offence of stealing. A recent consultation paper of the Victorian Sentencing Advisory Council relating to restitution and compensation orders indicates that this is how restitution and compensation orders are distinguished in that jurisdiction. The paper explains that under the *Sentencing Act 1991* (Vic), there are three different orders for financial reparation that a court may order an offender to pay:

- **restitution order for property loss** – the court may order an offender to return stolen goods (or money from their sale) or make payment of a sum of money up to the value of stolen property;
- **compensation order for property loss** – the court may order any compensation that it sees fit for loss, destruction or damage to property as a result of the offence, provided that it does not exceed the value of the property in question; or
- **compensation order for injury** – the court may order compensation for pain and suffering and for expenses such as counselling, medical treatment or other costs.¹³¹

To clarify these concepts in the context of the Territory's legislation, one option could be to refine the terms 'restitution' and 'compensation' to reflect the Victorian model above. Alternatively, a more detailed list of the types of orders that the court may make could be included. The following list of orders is being contemplated:

- a restitution order to direct the offender or another person who has possession or control of stolen goods to restore them to the person entitled to them;
- a restitution order to direct the offender to give possession of the property to another person within a period as set by the court;
- a restitution order to direct the offender to do anything or execute any document as may be necessary or as specified by the court, to give effect to the object of the order;
- a compensation order to direct the offender to pay compensation for injury suffered by the person;
- a compensation order to direct the offender to pay a sum not exceeding the value of the stolen or misappropriated property to the person;
- a compensation order to direct the offender to pay for the loss, destruction or damage to the property to the person.

¹²⁹ LexisNexis Australia, *Encyclopaedic Australian Legal Dictionary* (2 November 2018) <<https://advance.lexis.com/>>

¹³⁰ LexisNexis Australia, *Encyclopaedic Australian Legal Dictionary* (2 November 2018) <<https://advance.lexis.com/>>

¹³¹ Sentencing Advisory Council Victoria, *Restitution and Compensation Orders: Issues and Options Paper* (March 2018) 11

Question:

85. Do stakeholders consider that the terms 'restitution' and 'compensation', or the types of restitution and compensation orders that may be made by the court, should be clarified? If so, how should this be achieved?

Making restitution and compensation orders

As mentioned above, section 90(4) of the *Sentencing Act* currently provides that 'A court may make an order for restitution under this Division only where it is satisfied that there has been property loss and that the person claiming the loss is entitled to recover the property.' In an effort to further emphasise restitution and compensation as an option that is available to the court, to the benefit of victims, consideration is being given to whether this provision should be amended so that the court **must** consider making a restitution or compensation order in circumstances where it is satisfied that a person's property was lost, damaged, destroyed or taken in the course of or in connection with the commission of an offence.

In addition, it is proposed to include a list of factors that the court should take into account in deciding whether to make an order for restitution or compensation. Although section 104(2) of the *Sentencing Act* already provides that 'A court may, before making an order for restitution or compensation under Part 5, Division 1, receive such information as it thinks fit to enable it to make the proper order,' the inclusion of a specific list of matters to be taken into account in the making of such orders may help ensure the appropriateness of any restitution or compensation orders that are made. The factors that are being considered for inclusion are:

- the financial circumstances of the offender including the amount of outstanding fines the offender has incurred at the time of sentencing;
- the burden the order will impose upon the offender and their family;
- the interests of justice;
- the victim impact statement;
- any assessment for any sentencing orders;
- the pre-sentencing report;
- any statement or exhibit tendered during the sentencing proceedings; and
- the amount already paid to or recovered by the person in whose favour the order is to be made.

A provision that allows the court to take into account the financial circumstances of the offender may be particularly helpful in addressing the significant proportion of restitution and compensation orders that remain unpaid by offenders, by ensuring that such orders are not made against offenders who have no reasonable capacity to pay. It is noted that a similar requirement already exists in the Territory's youth justice context. Section 89(2)(b) of the *Youth Justice Act* provides that the Court must have regard to 'the ability of the youth to comply with the order' when making an order for restitution in relation to a youth who is found guilty of an offence. It is also noted that in a recent report, the Victorian Sentencing Advisory Council recommended that a court be allowed, when making a compensation order for injury or property loss, to take into account, at the court's discretion and as far as practicable, the financial circumstances of the offender and the nature of the burden that the payment of the order will impose.¹³² The limited capacity of many offenders to pay restitution or compensation, often due to their limited income and assets, is likely to be a contributing factor to the current proportion of unpaid orders. There is also a concern that making restitution or compensation orders against offenders in these circumstances may create unreasonable expectations in victims, which may in turn impede their recovery and sense of confidence in the justice system more generally.

In addition to the above, it is considered that when making a restitution or compensation order, the court should provide the offender with an opportunity to be heard in relation to that order, and give reasons for its decision to make or decline to make an order for compensation or restitution.

Questions:

86. Do stakeholders consider that section 90(4) of the *Sentencing Act* should be amended so that the court must consider making an order for compensation or restitution in circumstances where it is satisfied that a person's property has been lost, damaged or taken in the course of an offence?
87. Do stakeholders support the inclusion of a list of factors that the court should take into account in making a restitution or compensation order? If so, what factors should be included in the list?
88. Should the *Sentencing Act* include an express provision to the effect that when making a restitution or compensation order, the court should provide the offender with an opportunity to be heard in relation to the making of that order?
89. Should the *Sentencing Act* include an express requirement for the court to give reasons for its decision to make or decline to make an order for compensation or restitution?

¹³² Sentencing Advisory Council Victoria, *Restitution and Compensation Orders* (Report, October 2018) xv

Enforcing restitution and compensation orders

As mentioned above, there are currently two primary mechanisms available for the enforcement of restitution and compensation orders made under the *Sentencing Act*, namely the court and the Fines Recovery Unit. However, there may be a need to more clearly distinguish between these two processes in the legislation.

To achieve this, it is proposed to include a provision that will require the court, in circumstances where it makes a monetary order for restitution or compensation, to specify whether the order is to be enforced by the court, or referred to the Fines Recovery Unit for enforcement under the *Fines and Penalties (Recovery) Act*. In making this determination, it is proposed that the court should have regard to all of the factors previously mentioned in relation to the making of an order, as well as:

- the offender's history of compliance with restitution and compensation orders; and
- the enforcement options available under the *Fines and Penalties (Recovery) Act*.

In addition to more clearly distinguishing between these two enforcement avenues, this amendment aims to ensure that proper consideration is given to the most appropriate means of enforcing the order, if it is not paid, in light of the offender's individual circumstances.

Where a determination is made that the order be enforced by the court, it is also proposed to amend section 93(3) so that the court *must* set a future date for the offender to appear before the court, for the purposes of monitoring the offender's compliance with the order. Requiring the court to set a future date aims to facilitate greater management of restitution and compensation orders that remain with the court for enforcement, to increase the overall level of compliance. In addition to the current power to imprison an offender for failing to comply with an order, it is also proposed to provide the court with greater flexibility to manage an offender's compliance with an order, for example, by varying the terms of the order, extending the time for compliance, allowing the amount to be paid in instalments, or referring the order to the Fines Recovery Unit for further enforcement action. Similar powers are made available under the section 39A of the *Penalties and Sentences Act 1992* (Qld). Consideration is also being given to allowing the court to direct the sheriff to seize property in the offender's possession, and deliver it to the victim. These amendments aim to increase the proportion of orders that are paid, and create greater transparency of the progress of compliance, for the benefit of victims.

Consideration is also being given to whether any period of imprisonment served by an offender for failing to comply with a restitution or compensation order should discharge the offender's liability to pay restitution or compensation. Currently, it appears that an obligation to pay compensation or restitution will remain despite the offender also being imprisoned pursuant to section 93(1).¹³³ This can be contrasted with a period of imprisonment served by an offender for failing to pay a fine. Section 26(4) of the *Sentencing Act*, which relates to imprisonment for failing to pay a fine, provides that 'If an offender serves a total period of imprisonment under a warrant under subsection (3), the fine is taken to be satisfied.' Arguably, the current position with respect to whether imprisonment in default should discharge an offender's liability to pay restitution or compensation should be retained, on the basis that imprisonment does not benefit the victim in whose favour the restitution or compensation order was made. Notwithstanding, failure to make restitution or compensation is often related to an offender's limited financial means, and prolonging the enforcement process in those circumstances will not necessarily produce a better result for the relevant victim in the longer term. For this reason, consideration is being given to including a provision similar to section 26(4), in relation to unpaid restitution and compensation orders.

Questions:

¹³³ *Baxter v Hudson* [2015] NTSC 17 at [17]

90. Should the court be required to specify, at the time of making a restitution or compensation order, whether the order is to be enforced by the court or the Fines Recovery Unit? If not, is there a better way to more clearly distinguish between the two enforcement mechanisms in the legislation?
91. In circumstances where an order is to be enforced by the court, should the court be required to set a future date, to facilitate greater management of restitution and compensation orders and increase the level of compliance? If not, is there a better way to facilitate greater management of restitution and compensation orders to increase the level of compliance?
92. Do stakeholders support the proposal to provide the court with greater flexibility to vary the terms of such orders, including by extending the time for compliance?
93. Do stakeholders consider that a period of imprisonment served by an offender for failing to comply with a restitution or compensation order should discharge the offender's liability to make restitution or pay compensation?

Enforcement through community work

Consideration is also being given to the possibility of repealing section 76(1A) of the *Fines and Penalties (Recovery) Act* which, as mentioned above, provides that 'A community work order cannot be made under this Division in relation to an order for restitution or compensation.' The primary reason for preventing the enforcement of unpaid restitution or compensation orders by way of a community work order is that a community work order does not directly or personally benefit the victim of the offence. However, as discussed above, prolonging an enforcement process in circumstances where an offender is unlikely to be able to comply with the order does not benefit victims of crime either. Community work will often form part of an agreement between an offender and a victim as part of a restorative justice conferencing process, which indicates that victims may gain some satisfaction or sense of justice from this method of enforcement. Having said that, prior to directing that an unpaid restitution or compensation order be enforced by way of a community work order, a victim's consent to this course should be obtained, to mitigate the risk of disempowering victims through this process.

Question:

94. Do stakeholders consider that section 76(1A) of the *Fines and Penalties (Recovery) Act* should be repealed? Do stakeholders consider that the victim's consent should be obtained prior to directing that an unpaid restitution or compensation order be enforced by way of a community work order?

Other

In addition to the above questions, the Government would welcome feedback from stakeholders about any aspect of the restitution and compensation order scheme that has not been addressed in this paper. Alternative ideas about how to improve outcomes for victims who may be affected by the making and enforcement of restitution and compensation orders under the *Sentencing Act*, would also be welcome.

Recommendations relating to the *Victims of Crime Assistance Act* (the Act) and Regulations arising out of the 2013 review that could be progressed as part of this review

- Overall, that the Act be amended to focus more on victim rehabilitation.
- That section 11(2) be amended to include an adult child of a primary victim and the parent of an adult primary victim in the definition of secondary victim.
- That section 12(6) be amended to allow a secondary victim (who is also a family victim) to be eligible for financial loss to care for the primary victim.
- That the Act be amended to allow any person left with the responsibility to pay for the funeral of the primary victim to be reimbursed the cost of the funeral.
- That section 25(2) be amended to clarify that a victim must not receive more than one award for the same violent act.
- That the term ‘immediate’ payments be changed to ‘interim’ payments throughout the Act.
- That section 31 (regarding late applications) be amended to provide:
 - a general provision in section 31(3)(g) to allow for the Director of the CVSU to consider “any other relevant factor” in deciding whether to accept or reject an application for financial assistance;
 - an amendment to clearly separate the reasons why an application should be accepted and why an application should be rejected.
- That section 32 (regarding the form of an application) be amended to consolidate the information set out in regulations 8 and 10 and section 32 of the Act.
- That guidance be inserted into section 33 to clarify that, in deciding whether to give a copy of an application to the offender, the Director must consider the impact on and possible repercussions for the victims in doing so.
- That section 44 be amended to allow for awards to be made directly to third parties.
- That section 45 be amended to allow for flexibility to make late payments of assistance to victims where the CVSU has been unable to effect payment due to unusual circumstances or for other technical reasons.
- That the Act be amended to allow a legitimate decision refusing financial assistance to be revisited if specified circumstances change (for example, an injury develops or a violent act can be substantiated through a finding of guilt).
- That section 46 be amended to clarify the reasons for an increase to an award (for example, deterioration of a health condition) or if reasons for a reduction to an award change (for example, change in a relationship, the offender dies).

- That the Act be amended to allow an assessor to obtain further information if the assessor has a reasonable suspicion that the applicant has received another payment.
- That consideration be given by the Director of the CVSU and NTPFES to ways to improve the current process for the flow of relevant information.
- That the appeal period to the NTCAT of a decision of the Director under the VOCA Act be increased to 2 months.
- That no amendment to the Act is required to provide for the payment of a schedule fee for legal assistance or administrative costs, but that the CVSU be funded to develop a resource/material kit for support workers to assist them for the purposes of assisting victims, particularly those living in remote areas of the NT, to make their applications.
- That the Act continue to allow recovery action against offenders who have not been found guilty of an offence.
- That the current process regarding reducing the risk of re-victimisation during the debt recovery process does not require amendment; however, the process should be outlined in guidelines.
- That, given the *Limitation Act* does not apply to set off under the *Victims of Crime Assistance Act*, no amendment is necessary to exclude the limitation period.
- That the debt recovery process should be retained and improved i.e. by the ability to issue notices of set-off and recovery to avoid the court process.
- That section 61 be amended to allow courts to exercise discretion to reduce or not apply the levy to child offenders.
- As a levy is almost always imposed at the time of issuing an infringement notice or court fine (rather than at the enforcement order stage of a proceeding), that section 61(2)(c) be amended to remove the levy on enforcement orders.
- That section 63 of the Act be amended to bring the offences and penalties in line with other Northern Territory legislation, including consistency with Part IIAA of the Criminal Code.
- That guidelines be prepared to support various processes and procedures under the Act.
- That regulation 23 be amended to clarify how loss of earnings are generally calculated.
- That the Regulations be amended to clarify how recreation leave and other leave should be treated.
- That Schedule 1 of the Regulations be amended to include a reference to sections 128, 132 and 192(7) of the Criminal Code.

Proposed Packages of Victims Assistance

| Category of Victim | Potential 'Package of Assistance' |
|-------------------------|---|
| Primary Victim | <p>Total cap of \$40,000 comprising of:</p> <ul style="list-style-type: none"> • Free Counselling – up to 12 hours, which can be extended to up to 22 hours where appropriate; • Free Case Management by the CVSU, including referrals, where required; • Up to \$10,000 as an 'interim payment' for short term economic loss (which must be deducted from any subsequent payment for economic loss); • Up to \$30,000 for economic loss, including up to \$20,000 for loss of earnings, and up to \$1,500 in loss of or damage to personal effects; and • A recognition payment in one of the following categories: <ul style="list-style-type: none"> - Category B (for serious sexual offences) - \$10,000 - Category C (for less serious sexual offences, non-sexual offences where a factor of aggravation applies, and acts of domestic violence which are part of a series of related acts) - \$5,000 - Category D (for non-sexual assaults and other specific offences) - \$1,000. <p style="text-align: right;">Maximum per victim: \$40,000</p> |
| Secondary Victim | <p>Total cap of \$45,000 per victim comprising of:</p> <ul style="list-style-type: none"> • Free Counselling – up to 12 hours, which can be extended to up to 22 hours where appropriate; • Free Case Management by the CVSU, including referrals, where required; • Up to \$10,000 as an 'interim payment' for short term economic loss (which must be deducted from any subsequent payment for economic loss); • Up to \$30,000 for economic loss, including up to \$20,000 for loss of earnings, and up to \$8,000 for funeral expenses; and • No recognition payment, unless the secondary victim is also a family victim who falls within the scope of a category A recognition payment, as follows: <ul style="list-style-type: none"> - Category A (for a close family member who was financially dependent on the (primary) homicide victim) - \$15,000 - Category A (for a close family member who was not financially dependent on the (primary) homicide victim) - \$7,500. <p style="text-align: right;">Maximum per victim: \$45,000</p> <p style="text-align: center;">Total pool for all secondary victims of the one violent act or the one primary victim: \$45,000</p> |

| Category of Victim | Potential 'Package of Assistance' |
|--|---|
| Family Victim | <p>Total cap of \$45,000 per victim comprising of:</p> <ul style="list-style-type: none"> • Free Counselling – up to 12 hours, which can be extended to up to 22 hours where appropriate; • Free Case Management by the CVSU, including referrals, where required; • Up to \$10,000 as an 'interim payment' for short term economic loss (which must be deducted from any subsequent payment for economic loss); • Up to \$30,000 for economic loss, including up to \$20,000 for loss of earnings, and up to \$8,000 for funeral expenses; and • No recognition payment, unless the family victim falls within the scope of a category A recognition payment, as follows: <ul style="list-style-type: none"> - Category A (for a close family member who was financially dependent on the (primary) homicide victim) - \$15,000 - Category A (for a close family member who was not financially dependent on the (primary) homicide victim) - \$7,500. <p style="text-align: right;">Maximum per victim: \$45,000</p> <p style="text-align: center;">Total pool for all family victims of the one violent act or the one primary victim: \$45,000</p> |
| Related Victim | <p>Total cap of \$8,000 per victim comprising of:</p> <ul style="list-style-type: none"> • Free Counselling – up to 12 hours, which can be extended to up to 22 hours where appropriate; and • Up to \$8,000 for funeral expenses, if the person was required to pay for the funeral. <p style="text-align: right;">Maximum per victim: \$8,000</p> <p style="text-align: center;">Total pool for all related victims of the one violent act or the one primary victim: \$8,000</p> |
| Unrelated person who is required to pay for the funeral of a Primary Victim | <p>Total cap of \$8,000 per person comprising of:</p> <ul style="list-style-type: none"> • Funeral expenses. <p style="text-align: right;">Maximum per person: \$8,000</p> <p style="text-align: center;">Total pool for all persons required to pay for the funeral of one primary victim: \$8,000</p> |

Questions for consideration by stakeholders

1. Should the VOCA and VOCRAS Acts be consolidated into one new Act?
2. Should the Charter be set out in the new legislation and if so how?
3. If the Charter is incorporated into the new Act, do stakeholders agree that a definitional distinction should be drawn between a 'victim' for the purposes of the Charter and a 'victim' for the purposes of eligibility for financial assistance?
4. Do stakeholders support the inclusion of a provision similar to section 7(2) of the *Victims Rights and Support Act 2013* (NSW) to encourage compliance with the Charter? Is there a better way to encourage compliance with the Charter?
5. Should a mechanism specifically for lodging and resolving complaints about alleged breaches of the Charter be established, or is the Ombudsman NT sufficient for this purpose?
6. If stakeholders support the creation of a specific mechanism for lodging and resolving Charter related complaints, is the NT Commissioner model supported or is there a better way to deal with complaints?
7. Should an NT Commissioner (or similar) be established in the Territory?
8. If so, what functions and powers should an NT Commissioner have?
9. If an NT Commissioner were to be established under the new scheme, should the CVAC be retained? If so, what functions and powers should the CVAC have?
10. In the event that an NT Commissioner is not established, should the CVAC be retained? If so, should the current functions and powers of the CVAC be amended in any way?
11. Should the CVSU use a 'case management' approach to victims support? If so, how should this be implemented?
12. Do stakeholders support the creation of the domestic and family violence specialist worker and/or the Aboriginal and Torres Strait Islander specialist worker roles? If so, what functions should these specialist workers have? If not, is there a better way to support victims of domestic and family violence and Aboriginal and Torres Strait Islander victims in the Territory?
13. Should the Victims Register be retained under the new scheme?
14. Do stakeholders support broadening the Victims Register to include 'supervised persons'? Should any other category be included?
15. Is there a need to amend the Victims Register in any other way?

16. Should the definition of a 'violent act' be broadened to include non-criminal acts of domestic violence? If so, should 'domestic violence' be defined in the same way as it is in the *Domestic and Family Violence Act*?
17. Do stakeholders support the requirement that applicants must establish a 'pattern of abuse' in respect of acts of domestic violence which are not criminal acts, in order to satisfy the definition of a 'violent act'?
18. Should the definition of a 'violent act' be amended in any other way to that proposed above?
19. Should the definition of 'injury' be broadened to include, for the purposes of non-criminal acts of domestic violence, matters such as the totality of: a sense of violation; a reduced sense of self-worth; increased fear or feelings of insecurity; and adverse impacts on lawful sexual relations?
20. Should the psychological harm aspect of the current definition of 'injury' be broadened for the purposes of all violent acts (not just acts of domestic violence), for example by replacing 'a recognisable psychological or psychiatric disorder' with 'psychological harm'?
21. Should a 'threshold' be placed on the definition of 'injury', for example to the effect that an injury must be more than transient or trifling?
22. Should the definition of 'injury' be amended in any other way to that proposed above?
23. Should the definition of a secondary victim be broadened in the manner proposed above?
24. Should the categories of victims be further amended, or amended differently, to that proposed above?
25. Should the amount of available counselling be extended to 12 hours, with an optional further 10 hours if required? If not, should the amount of counselling available to victims be changed in any other way?
26. Does the counselling scheme require any other amendments?
27. Should the amount of interim assistance be capped and, if so, at what amount?
28. What categories of expenses should be allowed to be claimed as part of an interim payment?
29. Should expenses for loss of clothing and personal effects be capped and, if so, at what amount?
30. Should claims for property damaged in the context of domestic and family violence be allowed?
31. Do stakeholders support changing the terminology from an 'immediate payment' to an 'interim payment'?
32. Should the amount of assistance for funeral expenses be capped and if so, at what amount?

33. Do stakeholders support extending the availability of funeral expense payments to any person who pays or is required to pay the costs of a funeral of a primary victim who dies as a result of a homicide?
34. Should the amounts of economic loss payments be capped and, if so, at what amount?
35. Should the definition of 'medical services' be broadened to include mainstream allied health services?
36. Do stakeholders support the provision of recognition payments instead of lump sum awards for compensable injuries?
37. Have the categories of violent acts been appropriately grouped under the different categories of recognition payments? If not, how could this be improved? Should any additional violent acts be included in the recognition payment scheme?
38. Are the amounts proposed for each category of recognition payment appropriate? If not, how could this be improved?
39. Should Category A recognition payments be dependent on 'close family members' proving some level of injury or should such a payment be 'automatically' available to 'close family members'?
40. Do stakeholders support the proposal with respect to the provision of, and referrals to, support services for victims of crime? Could this aspect of the proposal be improved in any way?
41. Are there other ways in which the current scheme could be improved to better assist victims who are engaged in the criminal justice process?
42. Do stakeholders support the above proposal with respect to 'other recovery related expenses'? If not, what improvements could be made to this aspect of the proposal?
43. Should the different categories of support and financial assistance be made available to victims in the manner proposed above? If not, how could this aspect of the proposal be improved?
44. Do stakeholders support a cap on the total amount of financial assistance available to individual victims?
45. Do stakeholders support a cap on the total pool of financial assistance available to multiple victims of a single violent act or a single primary victim, as proposed?
46. Should a 'relevant payment' deem the person ineligible for victims assistance or should a 'relevant payment' be deducted from the amount of financial assistance awarded to a victim?
47. Should section 18 be broadened to include other workers compensation schemes?
48. If stakeholders support the 'offset option', should a person who receives a 'relevant payment' after receiving financial assistance be required to inform the Director about the 'relevant payment'?

49. Should failure to inform the Director about a subsequent 'relevant payment' be an offence?
50. Should victims be liable to repay an amount of financial assistance if they receive a subsequent 'relevant payment'?
51. Should the existing provisions regarding payments pursuant to the *Motor Accidents (Compensation) Act* or the *Return to Work Act* be amended in any other way to that proposed above?
52. Should special reporting provisions similar to those in QLD be incorporated into the Territory's new scheme?
53. Should the limitation period for violent acts that involve domestic, family or sexual violence and where the victim is an adult at the time of the violent act be extended to 10 years after the violent act occurs?
54. Should the limitation period for violent acts in which the victim is a child at the time the violent act occurs be extended to 10 years after the child turns 18?
55. Should the limitation period for sexual assault offences where the victim is a child at the time the violent act occurs be removed altogether?
56. Should provisions with respect to limitation periods be further amended, or amended differently, to that proposed above?
57. Should applications for support and financial assistance be determined by the Director and/or the Director's delegates, rather than legally trained assessors?
58. What standard of proof should be used to determine applications for support and financial assistance?
59. If a 'reasonable likelihood' standard is preferred, should this be adopted for all offence types, or apply to certain offences only, for example child sexual abuse?
60. Should victims be required to provide evidence of their injury to support their application for support and financial assistance? Are there any ways in which this aspect of the proposal could be improved?
61. Do stakeholders consider that the scheme should allow for portions of financial assistance to be paid to third party service providers rather than to the applicant directly? If so, do stakeholders support the 'pre-approval' process suggested above?
62. Should a mechanism for internal review be established in respect of decisions made by delegates of the Director about applications for victims assistance?
63. Do stakeholders agree that the Director should be permitted to consider additional information at the internal review stage?
64. Should an avenue of review to the Tribunal remain available under the new scheme? If so, which decisions of the Director should be reviewable by the Tribunal?

65. Do stakeholders support an administrative rather than court based approach to debt recovery? If so, could this aspect of the proposal be improved in any way? If not, is there a better way to simplify the current process and make it more resource efficient?
66. Should the recovery by set-off provisions be retained?
67. Should the recovery by set-off provisions be extended to allow the Territory to recover debts owed by offenders, which have been referred to the Fines Recovery Unit for enforcement, even where those debts are not related to the victims of crime financial assistance scheme?
68. Do stakeholders agree that, in relation to adult offenders, victim-offender conferencing should not be available as a diversionary tool?
69. Do stakeholders support limiting the Territory's adult victim-offender conferencing model to less serious offences?
70. If yes, do stakeholders support the proposed scope of the term 'less serious offence', or should the term be defined in some other way, for example, to offences being dealt with in the jurisdiction of the Local Court?
71. Should sexual and family violence offences be expressly excluded from the proposed scheme?
72. Do stakeholders support limiting the Territory's adult victim-offender conferencing model to offenders who have pleaded guilty to the offence?
73. Do stakeholders support limiting the Territory's adult victim-offender conferencing model to matters which are at the pre-sentencing stage of proceedings?
74. Do stakeholders agree that the process should only be available in relation to offences with an identifiable victim?
75. Do stakeholders agree that a victim's participation should be required in order for a conference to proceed?
76. Should victims be permitted to participate via alternative means, such as video link or written correspondence? If so, are there any particular means of alternative participation that should be excluded, for example, participation via a representative?
77. Do stakeholders agree that the informed consent of both the offender and the victim to participate should be required in order for a victim-offender conference to proceed?
78. Do stakeholders agree that participants should be allowed to withdraw their consent at any stage of the process?
79. Do stakeholders consider that the legislation should expressly exclude offenders with prior convictions for particular serious offences from participating in the proposed process?
80. Should the legislation provide a non-exhaustive list of general factors to guide suitability assessments by conference facilitators? If so, which general suitability factors should be included?

81. Do stakeholders agree that persons other than the victim, offender and facilitator, should be allowed to attend a victim-offender conference? If so, do stakeholders consider that the conference facilitator should be given broad discretion to determine which additional persons may participate?
82. How should the Territory's adult victim-offender conferencing process account for conferencing agreements? Should agreements be dealt with in a similar way to the NSW 'forum sentencing' process described above? Or, do stakeholders prefer the 'alternative model' described above, which would involve the provision of a facilitator's report, rather than an agreement reached by the parties, to the court?
83. Should the *Sentencing Act* be amended so that sentencing can be used by the court for the purpose of recognising the harm done to the victim of the crime and the community?
84. Should the *Sentencing Act* be amended to remove the requirement for a victim's consent in relation to the making of a restitution order for property loss or damage? Alternatively, should the provision be amended in some other way, for example, in a similar way to Victoria?
85. Do stakeholders consider that the terms 'restitution' and 'compensation', or the types of restitution and compensation orders that may be made by the court, should be clarified? If so, how should this be achieved?
86. Do stakeholders consider that section 90(4) of the *Sentencing Act* should be amended so that the court must consider making an order for compensation or restitution in circumstances where it is satisfied that a person's property has been lost, damaged or taken in the course of an offence?
87. Do stakeholders support the inclusion of a list of factors that the court should take into account in making a restitution or compensation order? If so, what factors should be included in the list?
88. Should the *Sentencing Act* include an express provision to the effect that when making a restitution or compensation order, the court should provide the offender with an opportunity to be heard in relation to the making of that order?
89. Should the *Sentencing Act* include an express requirement for the court to give reasons for its decision to make or decline to make an order for compensation or restitution?
90. Should the court be required to specify, at the time of making a restitution or compensation order, whether the order is to be enforced by the court or the Fines Recovery Unit? If not, is there a better way to more clearly distinguish between the two enforcement mechanisms in the legislation?
91. In circumstances where an order is to be enforced by the court, should the court be required to set a future date, to facilitate greater management of restitution and compensation orders and increase the level of compliance? If not, is there a better way to facilitate greater management of restitution and compensation orders to increase the level of compliance?
92. Do stakeholders support the proposal to provide the court with greater flexibility to vary the terms of such orders, including by extending the time for compliance?

93. Do stakeholders consider that a period of imprisonment served by an offender for failing to comply with a restitution or compensation order should discharge the offender's liability to make restitution or pay compensation?
94. Do stakeholders consider that section 76(1A) of the *Fines and Penalties (Recovery) Act* should be repealed? Do stakeholders consider that the victim's consent should be obtained prior to directing that an unpaid restitution or compensation order be enforced by way of a community work order?