



Victims of Crime Review Report

November 2008



Table of Contents

Executive summary	3
List of review recommendations	6
1. Review Process: purpose, methodology and results of consultation	10
2. Needs of victims of crime	12
3. Current criminal injury compensation scheme	13
4. Is the current scheme meeting victims' needs?	14
5. Reforming the criminal injury compensation scheme in Queensland	16
6. Reforming the delivery of services to victims	20
7. Transition to the new scheme	27
8. Eligibility for financial assistance and maximum amounts under the victims financial assistance scheme	28
9. Payments to vulnerable people	35
10. Cost of the application	36
11. Interaction with other schemes	38
12. Recovery of amount paid to victims from offenders	41
13. Victim impact statements	42
14. Accountability under the new scheme	43
Conclusion	44

Commonly used abbreviations

DJAG	Department of Justice and Attorney-General
COVA	<i>Criminal Offence Victims Act 1995</i>
VFASS	Victims Financial Assistance Scheme
IDWG	Interdepartmental Working Group
SRG	Stakeholder Reference Group
CICU	Criminal Injury Compensation Unit
VAU	Victim Assistance Unit
VIS	Victim Impact Statement

Disclaimer

Expressions of legal opinion in this report are not intended as legal advice. Anyone needing such advice should seek assistance from a legal practitioner. This publication is copyright. For advice on how to reproduce any material from this publication contact the Department of Justice and Attorney-General.

Executive Summary

The Queensland criminal injury compensation scheme (the current scheme) operates under two legislative regimes: the *Criminal Offence Victims Act 1995* (COVA) for injuries received after 1995 and repealed provisions of the *Criminal Code 1899* (the Code) for injuries received between 1969 and 1995. The purpose of the scheme is to help victims deal with the impact of injuries sustained as a result of a crime.

The provision of compensation and services to victims of crime in Queensland has not been reviewed substantively since its introduction in 1995. The scheme is outdated and has been criticised for its complexity, cost, and delays for victims in receiving compensation. There has been widespread call for reform from victims, support groups and justice stakeholders. On 26 November 2007, the Premier and the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland announced the Victims of Crime Review (the Review) to examine how to make the scheme simpler and easier to access.

The Queensland Government currently provides a number of other forms of assistance to victims through government and funded non-government organisations, including: information and support services, crisis accommodation, legal support, and counselling. The Review has also examined whether victims' services can be more effectively coordinated.

An Inter-departmental Working Group (IDWG) and Stakeholder Reference Group (SRG) were established for the Review and have informed the recommendations. The Review has also gathered information from public submissions, comparative research on victims schemes in operation in Australia and internationally, and consultation with Victoria and New South Wales in relation to their victims schemes. Overwhelmingly, the results of consultation have shown that the government response to victims of crime should focus on the recovery of the victim. The key findings of the Review are:

- (a) the scheme should provide financial assistance to a more comprehensive range of victims through interim and final payments for specific needs related to their recovery from the effects of the crime
- (b) the scheme should be simpler and easier to access and reduce victims' costs and contact with the court and offender
- (c) services available to victims should be more coordinated to provide a continuum of care that will assist victims to recover and get on with their lives sooner.

Some stakeholders submitted that the justice system requires the victim to endure the difficult and time-consuming process of re-living the details and effects of the crime in their role as witness during court proceedings related to the offence, including facing the offender (sometimes multiple times). Then, the current criminal injury compensation scheme generally requires the victim to make an application to the District or Supreme Court for compensation from the offender (in some cases, including cross examination of the victim) or an application to the State for ex-gratia compensation (where it is not reasonably possible to recover the amount of the order from the offender or where the offender has not been convicted for specific reasons).

In short, some victims feel re-victimised through the prosecution of the offence then the complex and lengthy legal process by which they receive compensation.

There are two main types of victims' schemes in operation in Australia and in comparable international jurisdictions: financial assistance models and compensation models. The type of scheme recommended for reform in Queensland is a financial assistance scheme. Financial assistance schemes focus on victim recovery by paying for or reimbursing the costs of goods and services that the victim requires to recover from the physical and psychological effects of the crime. Financial assistance schemes provide a more tailored, needs-based response and provide for earlier intervention in the victim's recovery than compensation schemes, allowing victims to get on with their lives more quickly.

The recommended model for administering the new scheme is the Government Assessment Model (which involves an administrative application process with applications assessed by a multidisciplinary team of Government Assessors whose role and functions will be clearly set out in legislation and guidelines). The Government Assessment Model will respond to the majority of criticism levelled at the current scheme (especially regarding revictimisation). It is anticipated reviews from decisions made by the Government Assessors will be to the proposed Queensland Civil and Administrative Tribunal and victims will have their normal statutory right to apply to the Supreme Court for judicial review.

Stakeholder consultation revealed that the most urgently required reform regarding the provision of services to victims is in the area of coordination of both government and non-government services. In response, the Review recommends that a unit be established which, in addition to assessing applications for financial assistance, will be a central point for victims to access support services, victim complaints resolution, and information regarding other relevant services. It will also serve as a central point for government coordination of victim services, information, training, and policy development. This will allow for linkages with other parts of the justice system and relevant government agencies to be developed during implementation and in the future. This will ensure the efficient and effective use of government resources available to victims. More importantly, it will provide victims with the benefits of a properly integrated justice and human services response to their needs.

Eligibility will no longer primarily depend on a conviction and victims of indictable offences dealt with summarily and other victims currently ineligible for compensation will be eligible for financial assistance under the new scheme. The number of victims assisted is expected to increase to three times that assisted under the current scheme.

The Review recommends providing assistance, through interim and final awards, to primary, secondary, and related victims in the form of payment for goods and services associated with the victim's recovery as well as some payments for other out of pocket expenses resulting from the act of violence. Primary victims of serious violent acts should also be eligible for 'special financial assistance' (a lump sum payment of up to \$10,000) as a gesture of recognition by the State of the significant effects on the victim of the serious violent act.

Implementation of the recommended Victims Financial Assistance Scheme (VFASS) would be a significant demonstration of the Queensland Government's commitment to responding properly to the needs of vulnerable people in our justice system.

List of review recommendations

Recommendation 1:

The criminal injury compensation scheme that operates under COVA should be replaced with VFASS which will set out in a single piece of legislation a simplified system for the provision of financial assistance to victims of crime.

Recommendation 2:

The new scheme should be an administrative scheme with applications for financial assistance to be assessed by a multidisciplinary team of Government Assessors.

Recommendation 3:

Review of decisions made by the Government Assessors should be to the proposed Queensland Civil and Administrative Tribunal (after an internal review process has taken place).

Recommendation 4:

The Victim Assistance Unit (VAU) should be established as a central point for victims to access financial assistance, victim support services, intensive counselling during court proceedings related to their matter, victim complaints resolution, and information regarding other relevant services. This will also be a central point for government coordination of victim services, information, training, and policy development. This unit should consist of at least the following staff:

- a Victim Services Coordinator to coordinate government and non-government services available to victims of crime and ensure a more efficient and effective use of government resources
- Regional Officers to address service coordination issues specific to Indigenous, remote and rural victims of crime
- Training Officers to develop and deliver training to government and non-government employees on VFASS and the needs and rights of victims
- a Victim Support Service (staffed by counsellors and social workers, with some allocated to regional areas) to provide intensive support to victims of crime throughout criminal proceedings and complement the work of the Victim Liaison Service, Office of the Director of Public Prosecutions.

Recommendation 5:

An ongoing Inter-departmental Steering Committee and Stakeholder Reference Group should be established. These groups will continue to monitor and improve the performance of financial assistance and service delivery to victims of crime in Queensland and maintain connections between key victims' organisations.

Recommendation 6:

The Queensland Government should increase funding to non-government organisations that provide services to victims of crime.

Recommendation 7:

The new scheme should adhere to the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) (UN Victims Declaration) by maintaining in the new legislation the 'Fundamental Principles of Justice for Victims of Crime' (Fundamental Principles) currently set out in COVA.

Recommendation 8:

A mechanism should be implemented for resolving victim complaints, including complaints in relation to departures from the Fundamental Principles by government agencies.

Recommendation 9:

A Central Information Hub, consisting of a hotline and website, should be established and operate under the supervision of the Victim Services Coordinator to provide the following services:

- ensure that victims, organisations and the community understand victims' needs, rights, and eligibility for assistance under the new scheme
- provide general information about court processes
- maintain a services database regarding victim support services
- provide information about other support services and groups
- make appointments for victims with the scheme's Government Assessors and/or counsellors in the Victim Support Service.

Recommendation 10:

There should be no transitional period for victims to make applications under the old scheme once the new scheme has commenced.

Recommendation 11:

To process as many applications from the current scheme as possible prior to the introduction of the new scheme, extra staff should be employed in the current Criminal Injury Compensation Unit (CICU).

Recommendation 12:

The overarching eligibility for a victim to receive financial assistance should be if it can be proven on the balance of probabilities that there was an act of violence that resulted in the injury or death of a person.

Recommendation 13:

Primary, related and secondary victims should be eligible to receive financial assistance.

Recommendation 14:

A primary victim should be a person who is injured or dies as a direct result of an act of violence committed against him or her.

Recommendation 15:

A related victim should be a person who at the time of the act of violence was a close family member of, or a dependant of, a primary victim who dies as a direct result of the act of violence. However, a person is not a related victim if he or she committed the act of violence.

Recommendation 16:

A secondary victim should be:

- a person who is injured as a direct result of witnessing an act of violence that resulted in injury to or death of the primary victim

- the parent or guardian of a primary victim under the age of 18 who is injured as a direct result of becoming aware of the act of violence committed against the primary victim.

Recommendation 17:

The maximum amount of financial assistance that a primary victim can receive should be \$75,000. Within the \$75,000, a primary victim should be able to receive:

- financial assistance for reasonable expenses for counselling, medical costs and replacement of clothing, up to \$20,000 for loss of earnings, and (in exceptional circumstances) an amount for other reasonable expenses to assist the primary victim's recovery from the act of violence
- up to \$10,000 special financial assistance (lump sum payment) as a gesture of recognition by the State if a primary victim has suffered a significant adverse effect as result of a prescribed serious act of violence.

Recommendation 18:

The maximum pool of financial assistance available for all of the related victims of one primary victim should be \$100,000 (capped at \$50,000 per related victim, including up to \$10,000 per related victim for distress), including up to \$6,000 for funeral expenses.

Recommendation 19:

The maximum amount of financial assistance for a secondary victim should be:

- where the secondary victim witnesses a serious act of violence (such as murder or manslaughter), \$50,000
- where the secondary victim witnesses any other act of violence, \$10,000 for reasonable counselling expenses
- where the secondary victims are the parents or guardians of a primary victim under the age of 18, a pool of \$50,000 (including up to \$20,000 for loss of earnings) to be shared between all of the parents or guardians.

Recommendation 20:

The new scheme should provide for interim payments (maximum \$6,000) to victims to cover their emergency and immediate needs.

Recommendation 21:

For financial assistance, an application must be made within three years after the occurrence of the act of violence or if the primary victim is a child, an application can be made 3 years from the date the victim turns 18 years of age. In the case of an application by a related victim or a person who has incurred funeral expenses, within three years after the death of the primary victim. The Manager of the VAU will have discretion to extend the limitation period in appropriate circumstances.

Recommendation 22:

- (a) Special financial assistance payments to victims can be referred, if appropriate, to the Public Trustee for administration if the victim is under the age of 18 or the victim is an adult under a disability.

- (b) The process for determining whether a case is suitable for administration by the Public Trustee should be a joint process between the Government Assessors and the Public Trust Office (agreed process to be set out in the proposed guidelines for the assessment of applications).

Recommendation 23:

- (a) Reasonable medical fees associated with applying for financial assistance should be included in the final amount of the victim's financial assistance.
- (b) Reasonable legal fees associated with applying for financial assistance (payable by victims) should be awarded to victims in addition to the maximum amount available for financial assistance.
- (c) Amounts of medical and legal fees considered 'reasonable' should be set out in the guidelines for assessment of applications, approved by the Attorney-General.

Recommendation 24:

- (a) Victims should not be able to claim financial assistance in addition to some other form of compensation, financial assistance or insurance in respect of the same act of violence or injury.
- (b) If the victim is awarded compensation in a civil claim against the offender or is awarded compensation or restitution during sentencing in a criminal matter, then a debt is due and payable to the State to the extent that the compensation overlaps with the VFASS award.

Recommendation 25:

- (a) The new legislation should provide a mechanism for the State to have discretion to recover the amounts of awards of assistance paid to victims from convicted offenders.
- (b) Applications for financial assistance made by prisoners in relation to acts of violence committed against them should not be finalised until they are released from prison, allowing any awards made to that person's victims to be offset against their award (long term prisoners' awards should be finalised as soon as practicable after the five year anniversary of the date they submitted their application).
- (c) The Department of Justice and Attorney-General should give further consideration as to whether there should be any amendments to the *Criminal Proceeds Confiscation Act 2002* to allow the court to restrain an offender's property to satisfy any orders of compensation or restitution made under the *Penalties and Sentences Act 1992*.

Recommendation 26:

The legislative framework should be strengthened to specifically provide for victim impact statements (VIS) to be given to courts. The provisions regarding VIS should avoid being overly prescriptive so that the courts may deal with VIS in a flexible manner and avoid time and cost implications of potential delays.

Recommendation 27:

The new scheme should be independently reviewed five years after commencement and this review mechanism should be included in the new legislation.

1. Review process: purpose, methodology, and results of consultation

Purpose

COVA has been in operation for 13 years. It is appropriate to review its effectiveness, in line with recent increased emphasis on delivering better services to vulnerable people in the justice system. The COVA scheme has been criticised for its complexity, inequality, costs and delays experienced by victims of crime. The overarching goal of the Review was to ensure the Queensland Government is responding appropriately to the needs of victims. The Review was charged with considering options for reform of the criminal injury compensation scheme and delivery of services to victims with the aim of ensuring that any proposed reforms would enable victims to better deal with the impacts of crime, to recover quickly and get on with their lives sooner. The Review furthers the DJAG goal of ensuring that those who are vulnerable are supported (in line with DJAG's Vulnerable Person Policy).

Methodology and results of consultation

In November 2007, the Queensland Government commissioned a comprehensive internal government review of the provision of compensation and services to victims of crime. In accordance with directions from Government, an IDWG (with representatives from relevant government departments and agencies) was established and led by DJAG to conduct the Review.

DJAG has conducted comprehensive research to identify the best victims scheme models in use in Australia and internationally. The schemes in Victoria and New South Wales were identified as having best practice in different areas (Victoria in the provision of financial assistance and New South Wales in the coordination of its Victim Services unit).

Community consultation has also taken place as part of the Review. The *Issues Paper for the review of the Criminal Offence Victims Act 1995 (COVA) and the delivery of services to victims of crime* was released on 6 December 2007 for public consideration. The Issues Paper was available on the DJAG website and copies were sent to key stakeholders from the legal profession and victims' services. The closing date for submissions was 1 February 2008. Over thirty submissions were received from a variety of individuals, community groups, and government agencies. The submissions were analysed and taken into account in making the Review recommendations. The five key themes raised in the public submissions were:

- The current eligibility criteria for compensation are too narrow.
- Administration of the scheme should be simpler and more transparent.
- Assistance to victims needs to be timely.
- The legal and medical costs to victims of crime need to be reduced.
- There is currently poor coordination and knowledge of existing services available to victims.

In addition, the SRG was established. Non-government organisations involved in work with victims of crime, including key victim support groups and legal associations, participated in the SRG to inform the review.

The organisations represented on the SRG were:

- Queensland Homicide Victims Support Group
- Brisbane Domestic Violence Advocacy Service
- Aboriginal and Torres Strait Islander Legal Services, South East Queensland
- Women's Legal Service
- Relationships Australia
- Bravehearts Inc
- Queensland Law Society
- Bar Association of Queensland
- Queensland Advocacy Inc
- Protect All Children Today (PACT)
- Immigrant Women's Support Service (IWSS)
- Women Working with Women with Intellectual and Learning Disabilities (WWILD)
- Elder Abuse Prevention Unit
- Australian Lawyers Alliance
- Caxton Legal Centre Inc.
- Gold Coast Centre Against Sexual Violence Inc.

The Review also endeavoured to ensure that the recommendations substantially comply with the UN Victims Declaration and National Victims Charter.

2. Needs of victims of crime

Alternative methods of providing for the needs of victims of crime (NSW, 1997)

The NSW Joint Select Committee on Victims Compensation found:

- providing some form of lump sum payment compensation to priority victims is important as a public recognition of their suffering
- financial compensation is largely a salutary gesture (it was what receipt of it represented to victims, rather than the actual amounts received, which was crucial; victims did not think any amount of money could compensate for what most victims of serious crime go through).¹

Review of Victims of Crime (South Australia, 2000)

In 1999 - 2000, the South Australian Government released a series of 3 reports following a comprehensive review of victims' rights and the criminal injury compensation scheme. The survey involved telephone interviews with 222 victims, selected randomly. The survey results demonstrated that:

- victims wanted a blend of support, counselling and access to compensation
- 90% indicated the scheme was an important way of helping a victim adjust
- 90% of victims indicated it was important that monetary compensation cover the costs associated with physical injury
- 80% of victims said it was important that compensation cover pain and suffering.²

The South Australian Review came to the conclusion that a combination of monetary compensation and victim services was essential. This is the minimum standard supported by Article 12 of the UN Victims Declaration (Australia is a signatory).

Promoting balance in the forensic mental health system – Final Report – Review of the Queensland Mental Health Act 2000 (2006) (Report on the Butler Review)

Brendan Butler AM SC reported that:

- needs of victims vary widely and a range of services should be available (p.38)
- basic forms of assistance at an early stage such as information about support services and money for immediate out of pocket expenses can be a significant aid to recovery (p.39)
- research supports early intervention to identify and respond to any adverse effects before they manifest into more severe problems (p.39)
- victims have a fundamental need for their own recovery to tell their story and for the impact to be acknowledged and affirmed (p.61).³

Conclusion on the needs of victims of crime

The review has concluded, based on research and consultation, that victims' needs centre around recovering from the effects of the crime, as well as receiving symbolic recognition of the impacts of the crime. Responding properly to these needs involves financial assistance or compensation as well as the provision of adequate services.

¹ New South Wales Joint Select Committee on Victims Compensation, *Alternative methods of providing for the needs of victims of crime*, May 1997, pages 11-12.

² Justice Strategy Unit, South Australian Government, *Review of Victims of Crime, Report 3*, October 2000, pages 82-83.

³ Promoting balance in the forensic mental health system – Final Report – Review of the Queensland Mental Health Act 2000 (2006), pages 38-39.

3. Current criminal injury compensation scheme

Government assistance for victims of violent personal crime in Queensland is currently provided through a legislative criminal injury compensation scheme and a range of victim services provided or funded by the Government. The current COVA scheme has been in operation since 1995. COVA introduced a new compensation scheme to replace the original compensation scheme under the Code which commenced in 1969. However, the repealed Code provisions continue to apply to offences which occurred prior to the introduction of COVA. The purpose of the COVA scheme is to recognise the impact of crime on victims and help with the financial cost of injuries. However, as in all other jurisdictions, it is not intended to reflect the amount of compensation a victim may receive at common law.

COVA introduced many improvements on the Code and provided a new regime to compensate dependants of homicide victims. Victims are generally compensated under COVA for injuries sustained as a result of a personal indictable offence committed against them. Compensation awards made to victims by the State have totalled approximately \$20 million per year for the last ten years with total payments being \$17.8 million in the 2007-08 financial years.

There are two types of applications. Firstly, a victim can make an application to the District or Supreme Court for compensation from the offender if they have suffered a physical injury or mental or nervous shock as a result of the offence and the offender has been convicted. Then, if it is not reasonably possible to recover the amount of the compensation order from the offender, the victim can make an application to the State for an ex-gratia payment up to the amount of the Court order. There are significant costs incurred by applicants in obtaining legal representation and lodging an application for compensation with the District or Supreme Court.

Secondly, a victim can seek an ex-gratia payment from the State without first making an application to a Court if a personal indictable offence was committed but no conviction has been secured. Generally, the legislation requires that the offender has not been convicted for specific reasons (for example: the offender was not identified or found, was of unsound mind, was under the age of 10, or was unfit to stand trial). The Attorney-General (for COVA matters) and the Governor in Council (for Code matters) are responsible for deciding if the state will make a payment and how much compensation is to be awarded. Assessment of these matters is conducted by the CICU, DJAG. For COVA matters, there is a table of 30 injuries which lists amounts that can be awarded for specific injuries as percentages of the maximum award (the maximum for primary victims is \$75,000). Deductions are made if the applicant has received other compensation for the injury (for example: workers' compensation).

4. Is the current scheme meeting victims' needs?

The current scheme has been criticised for its inadequacy in responding to the needs of victims in terms of its complexity, inequalities, and the costs and delays to victims. This discussion on the results of consultation demonstrates the need for reform.

Results of community consultation

The five key themes raised in the public submissions were:

(1) *The current eligibility criteria for compensation are too narrow:*

Victims are not entitled to compensation where the offence is dealt with summarily rather than on indictment; the offender is a juvenile dealt with under a diversionary option; or the offender is found but a prosecution does not proceed.

(2) *Administration of the scheme should be simpler and more transparent.*

The eligibility criteria are complex. The two-stage process for matters successfully prosecuted is confusing and lengthy (it involves: (1) obtaining a court order for compensation against an offender; and (2) establishing the offender does not have assets and applying to the State for an ex-gratia payment).

(3) *Assistance to victims needs to be timely.*

Whether it is court ordered or not court ordered (for example: where the offender cannot be found), compensation is generally paid years after the crime.

(4) *The legal and medical costs to victims of crime need to be reduced:*

These costs generally take up a large proportion of victims' awards and can be prohibitive for victims of low socio-economic backgrounds trying to access this part of the justice system.

(5) *There is currently poor coordination and promotion of existing services available to victims.*

At the first SRG meeting, the SRG reiterated concerns raised in the public submissions about the narrow eligibility criteria (especially regarding victims of indictable offences dealt with summarily being ineligible for compensation). The SRG also made it clear victims need immediate and flexible financial assistance rather than lump sum compensation years later. The SRG was of the view that legal and medical costs are too high. It was unanimous that recovery from offenders of the amount paid to the victims by the State should be pursued by the State. The group acknowledged that there must be some limitation on government liability through a time limit on making applications. However, there were concerns about specific cases (such as child sexual assault) which led to general agreement that there should be a wide discretion to grant an extension of time. The SRG agreed services to victims of crime need to be properly coordinated (to ensure appropriate referrals) with information about services made available to both victims and organisations. At the second SRG meeting, overall feedback from the victims groups and legal organisations was that implementation of the proposed scheme would be supported as it took into account concerns about the current scheme raised by these stakeholders.

Results of government consultation

Thorough government consultation on the options for reform has taken place through the IDWG. The IDWG generally supports the transition to a financial assistance scheme, administered by Government Assessors, with increased coordination of services to victims of crime. IDWG discussions affirmed that the five key themes in the public submissions and issues raised by the SRG are relevant to the experience of government agencies that provide services to victims of crime.

5. Reforming the criminal injury compensation scheme in Queensland

Recommendation 1:

The criminal injury compensation scheme that operates under COVA should be replaced with a new Victims Financial Assistance Scheme (VFASS) which will set out in a single piece of legislation a simplified system for the provision of financial assistance to victims of crime.

Recommendation 2:

The new scheme should be an administrative scheme with applications for financial assistance to be assessed by a multidisciplinary team of Government Assessors (including senior legal officers).

Recommendation 3:

Review of decisions made by the Government Assessors should be to the proposed Queensland Civil and Administrative Tribunal (after an internal review process has taken place).

Compensation or financial assistance?

Every state and territory in Australia has a compensation or financial assistance scheme. None of those schemes are designed to fully compensate victims and financial awards are not intended to reflect what may be obtained at common law. There are essentially two main styles of payment schemes for victims of crime:

- compensation: limited to certain maximums and/or paid on a discretionary basis (as in Queensland, New South Wales (NSW), Tasmania, South Australia (SA), and Western Australia (WA))
- financial assistance: the focus is to redress the impacts of crime through payments for goods and services (as in Victoria, Australian Capital Territory (ACT), Northern Territory (NT)), rather than compensation.

Compensation

The current scheme in Queensland is a compensation scheme. Like most compensation-based schemes, it focuses on compensating a victim with a lump sum payment. It is generally awarded after a lengthy court process that can exacerbate the effect of the crime on the victim. Compensation is based on the victim's injury (using a table with set percentage amounts of the maximum amount for each injury). The victim is awarded a cash amount out of which they must then pay their legal fees and disbursements (including medical reports for evidentiary purposes). The current scheme generally requires the victim to make an application to the court, attend court, and confront the offender again (victims groups use the term 'revictimisation'). The victim generally has to wait for a few years before they finally receive the amount awarded to them (either from the offender or as an ex gratia payment from the State).

Financial assistance

Financial assistance models focus on victim recovery by paying for or reimbursing the costs of goods and services the victim requires to recover from the physical and psychological effects of the crime. These schemes are dedicated to early intervention in treatment and other assistance to allow victims to recover more quickly and get on with their lives sooner.

It is recommended that a financial assistance scheme should be introduced in Queensland and that it should cover the cost of services and goods required as a result of injury or death resulting from a crime. Reimbursement for other out of pocket expenses resulting from the act of violence, such as loss of earnings. Interim awards should be made (for example: for urgent funeral, medical and counselling expenses) to ensure early intervention. There is a significant body of research which demonstrates that early intervention increases the likelihood of recovery and generates higher levels of satisfaction for victims in their dealings with the justice system.⁴ It will ensure that assistance is delivered quickly and is targeted to the victim's needs. The primary goal of the scheme would be to assist victims to deal with the impacts of crime (a needs based approach), rather than provision of a general award of compensation based on the type of injury they suffered (as is the case now).

A financial assistance scheme, compared to the current compensation scheme, will increase some victims' awards but decrease others. However, the simplicity, speed of the scheme, and coordination with victim support services should deliver greater satisfaction to victims and address criticisms of the current scheme. It is anticipated that most victims will have a greater chance of recovery from the effects of the crime through: early payment (including interim or immediate payments) for services and goods needed to recover from the crime; reimbursement for loss of earnings up to \$20,000; and a lump sum payment of special financial assistance as a symbolic gesture from the State for primary victims of serious offences. The proposed model will almost triple the number of victims assisted per year.

Victims groups and relevant government departments have been involved with the development of this change in focus towards early support and treatment and away from purely lump sum payments and are overwhelmingly supportive of it. The proposed scheme embodies best practice treatment of victims of crime based on research and cross jurisdictional comparisons. Details of the eligibility criteria, categories of victims, types of assistance, and maximum amounts available under the proposed scheme are set out in Chapter 7.

How should VFASS be administered?

The administrative process for assessing compensation or financial assistance claims varies across the different jurisdictions. The NT, Tasmania, WA and NSW all use an administrative process generally conducted by government employees. The ACT and Victoria use magistrates (in Victoria, magistrates constitute the Victims of Crime Assessment Tribunal) and SA uses the District Court. There is no consistency across jurisdictions in the method used to decide the amount to be paid to the victim.

Potential models for assessment of claims

Three potential models for reforming administration of the victims' scheme in Queensland have been analysed:

- financial assistance to be determined by Government Assessors with review available to a tribunal (Government Assessment Model)
- financial assistance to be determined by the Magistrates Court with appeals available to the District Court (Magistrates Court Model)

⁴ Wemmers, *J Victims in the Criminal Justice System*, Kruger Publications, Amsterdam/New York, 1996.

- financial assistance to be determined by a tribunal with judicial review to the Supreme Court (Tribunal Assessment Model).

The following is a summary of the analysis conducted of the potential models for assessing claims under VFASS.

Government Assessment Model

Under the Government Assessment Model, Government Assessors would be appointed to process applications and determine the interim and final amounts of financial assistance awarded. Using Government Assessors to determine claims will be faster and more economical than using the Magistrates Court or a tribunal. Applications will be made directly to the State, reducing victim contact with the court and the offender (this would respond to criticisms of the current scheme). The process will also be simplified so the majority of victims will be able to complete the application process themselves and not have to engage a lawyer (although, victims can engage a lawyer if they so choose). This will reduce costs to victims.

The most recently reformed scheme in Australia is the NT financial assistance scheme which is administered by Government Assessors. These assessors are appointed by the Minister, situated in the Crime Victims Services Unit in the Department of Justice, and their roles and functions are set out in the legislation.

The majority of public submissions, the SRG and the IDWG broadly support an administrative scheme as the preferred option for reform over and above a court or tribunal-based scheme based on reduced costs to victims and the administrative process being less daunting for victims than a court or tribunal process.

Magistrates Court Model

Under a Magistrates Court Model, magistrates would determine applications and the respondent would be the State. Magistrates would make final determinations of awards without the formal rules of evidence applying. Court registrars would determine interim awards up to the \$6,000 limit. Additional magistrates, court registrars and administrative staff would need to be employed. Government staff would also need to be employed to administer payments and appear in some court matters to represent the State. Although this model would be viewed as more independent than the Government Assessment Model and would address the needs of some victims to have their claim heard in a formal court setting, consultation revealed that the majority of victims would prefer a less formal process with little or no contact with the court and offender. A costs analysis of the Magistrates Court Model compared with the Government Assessment Model was conducted. The Magistrates Court Model would cost double compared to the Government Assessment Model.

Tribunal Assessment Model

In general, a tribunal is an independent body established by legislation that hears and determines disputes between parties. Tribunal members are generally lawyers or experts in a particular field. One of the advantages of a tribunal is that it is more likely to be viewed by the public as an independent and impartial decision-maker. The Gold Coast Centre Against Sexual Violence Inc and the Queensland Law Society advocated for a Tribunal Assessment Model in their submissions to the Review. However, it was decided that the Tribunal Assessment Model would not be as fast at

processing applications as the Government Assessor Model and a tribunal may be more daunting for victims than going through the application process with a government officer.

The recommended model

The most appropriate model for assessment of applications under VFASS is the Government Assessment Model. It is cost-effective and will address many criticisms of the current court-based system. The Government Assessment Model will be a simpler, cheaper, less daunting, and faster way for victims to have their applications assessed. The Government Assessment Model would bring the Queensland scheme more in line with the National Victims Charter, which specifies:

- *inconvenience to victims of crime should be minimised and their privacy respected*
- *a victim of crime should be afforded all necessary protection from violence and intimidation by the accused.*

Functions of Government Assessors

Under the Government Assessment Model, eligibility of a victim for financial assistance will be assessed by Government Assessors. The assessor will also decide on the amount of assistance to be awarded to the victim (based on an assessment of their need for goods and services related to their recovery from the effects of the crime). Details of the eligibility criteria and maximum amounts of financial assistance under the proposed scheme are set out in Chapter 7. Assessors will be responsible for making interim and final assessments, producing written decisions and processing payments (for the provision of services to the victim) in a timely manner. The government assessor role will be set out in the proposed legislation, supplemented by appropriate guidelines, checklists and forms (similar to compensation assessors in NSW). The proposed assessment process is a case management type of approach. This approach was developed in response to issues raised by the IDWG in relation to the need to provide a continuum of care for victims. It is recommended that the Government Assessors be located in the proposed Victim Assistance Unit (see discussion below).

Appeal or review processes

COVA does not currently contain a mechanism for the review of decisions on payments made to victims by the State, except for judicial review of questions of law. This has been criticised and a number of public submissions have included recommendations for a wider appeal mechanism to exist. The types of bodies they have recommended to consider appeals vary, ranging from an Administrative Tribunal to a District Court or Supreme Court judge.

It is anticipated, after an internal review process has taken place, review of government assessor decisions will be to the proposed Queensland Civil and Administrative Tribunal (QCAT). This review mechanism will be less daunting for victims than applying to a court for a review of a decision made by a government assessor. A review by QCAT will not impact on a victim's right to seek judicial review from the Supreme Court.

6. Reforming the delivery of services to victims

Recommendation 4:

The Victim Assistance Unit (VAU) should be established as a central point for victims to access financial assistance, victim support services, intensive counselling during court proceedings related to their matter, victim complaints resolution, and information regarding other relevant services. This will also be a central point for government coordination of victim services, information, training, and policy development. This unit should consist of at least the following staff:

- a Victim Services Coordinator to coordinate government and non-government services available to victims of crime and ensure a more efficient and effective use of government resources
- Regional Officers to address service coordination issues specific to Indigenous, remote and rural victims of crime
- Training Officers to develop and deliver training to government and non-government employees on VFASS and the needs and rights of victims; and
- a Victim Support Service (staffed by counsellors and social workers, with some allocated to regional areas) to provide intensive support to victims of crime throughout criminal proceedings and complement the work of the Victim Liaison Service, Office of the Director of Public Prosecutions.

Recommendation 5:

An ongoing Inter-departmental Steering Committee and Stakeholder Reference Group should be established. These groups will continue to monitor and improve the performance of financial assistance and service delivery to victims of crime in Queensland and maintain connections between key victims' organisations.

Recommendation 6:

The Queensland Government should increase funding to non-government organisations that provide services to victims of crime.

Recommendation 7:

The new scheme should adhere to the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) (UN Victims Declaration) by maintaining in the new legislation the 'Fundamental Principles of Justice for Victims of Crime' currently set out in COVA.

Recommendation 8:

A mechanism should be implemented for resolving victim complaints, including complaints in relation to departures from the Fundamental Principles by government agencies.

Recommendation 9:

A Central Information Hub, consisting of a hotline and website, should be established and operate under the supervision of the victim services coordinator to provide the following services:

- ensure that victims, organisations and the community understand victims' needs, rights, and eligibility for assistance under the new scheme;
- provide general information about court processes;
- maintain a services database regarding victim support services;
- provide information about other support services and groups; and
- make appointments for victims with the scheme's Government Assessors and/or counsellors in the victim support service.

Issues regarding current services provided to victims of crime

Public submissions and the IDWG raised the need for substantial reform of the coordination of services to victims. There was general agreement that services need to be properly coordinated (to ensure appropriate referrals) with information about services available to victims and organisations through a central hub.

The breadth of services provided to victims of crime varies across jurisdictions. However, Australian best practice in the area of service delivery involves coordination with the payment scheme, with an emphasis on early intervention to better manage the physical and psychological impact of violent acts. In comparison to Queensland, other Australian jurisdictions adopt a more co-ordinated approach to the delivery of services to victims of crime (for example: NSW has a coordinated Victims Services Unit within the Attorney- General's Department).

Addressing the current lack of coordination of victims services through the Victim Assistance Unit

To ensure that there is a whole-of-government service delivery strategy for victims of crime, the proposed financial assistance and service delivery systems should be linked in an effort to provide seamless service delivery to victims of crime. A central point should be established for victims to access:

- financial assistance
- victim support services
- victim complaints resolution
- information regarding other services that they may wish to utilise.

Further, it is considered the central point for these matters would be best placed to also be the central point for coordination of government services, information, training, and policy development.

For these reasons, the Review recommends that the VAU be established and that, in addition to the Government Assessors, it should include the following sub-units:

- Victim Services Coordination Unit
- Victim Services Information Hub (Hotline and Website)
- Victim Services Training Unit
- Victim Support Service (counsellors and social workers, mostly assisting victims through the prosecution process).

Victim Services Coordination Unit

The majority of stakeholders have indicated support for a new scheme where the services and financial assistance components are strongly connected. To make the most of existing victim services, and establish necessary links between the services, there should be a Victim Services Coordination Unit (VSCU). The VSCU should ensure service delivery is better coordinated across government and non-government agencies. This will ensure more effective use of government and non-government resources for victims and that victims receive a coordinated response to their needs.

The current lack of coordination of victims' services has a relatively greater impact in rural, regional and remote communities (including remote Indigenous communities). There are a number of services available to residents of these communities, usually on a scheduled, 'fly in / fly out' basis. Better communication of information regarding services and better coordination of those services will be instrumental to ensuring the success of the new scheme for victims in rural, regional, and remote communities. To ensure that the needs of these victims are met, regional service coordination officers should be engaged to liaise with victims services in those areas on an ongoing basis.

Training Unit

Throughout consultation with the IDWG, a recurrent theme has been the lack of information provided to front line officers who first see victims after the act of violence against them (for example: police and health workers) on the needs and rights of victims of crime and appropriate referrals. It is recommended the development and delivery of training to Government and non-government agencies on the new scheme and the rights of victims of crime should be conducted through the VAU. Training will include: how to deal with victims immediately after a crime; minimum standards for treatment of victims under the Fundamental Principles; and how to refer victims to the VAU to ensure they are channelled through this new central point for the financial assistance and service systems.

Court support for victims

Current victim court support in Queensland

The Victim Liaison Officers (VLOs) from the Office of the Director of Public Prosecution (ODPP) provide information and, where possible, court support to victims of crime whose matters are the subject of proceedings before the District, Supreme and Mental Health Courts. The ODPP employs 16 VLOs state-wide to provide support to the approximate 4500 victims of crime for charged indictable offences. They provide information to victims about the progress of their case, when they are required to attend court, and assist victims to prepare for their role as witness for the prosecution.

The state-wide Queensland Health Victim Support Service (QHVSS) was established as a result of recommendations made in the Report on the Butler Review. The QHVSS provides information, court support and initial counselling to victims of crime whose matters are diverted to the Mental Health Review Tribunal. The QHVSS is based in Brisbane. It also has an office in Townsville, and visits Cairns.

For both the ODPP's VLOs and the QHVSS, small numbers of staff cover a large number of criminal proceedings, often across large geographic areas. The support

provided by the two services is limited both in the number of victims supported, and the amount of support provided to those victims. Adequate support would require court familiarisation as well as assistance and counselling throughout the court process, often over several years from charge to sentence and possible appeal.

Court support for victims in other Australian jurisdictions

Victim support services are provided in a variety of different ways in each Australian jurisdiction. In almost all jurisdictions, the public prosecution agency provides a coexisting witness support service and provides information on court dates to victims.

Some jurisdictions fund non-government organisations to provide victim support services. For example, in South Australia, the government-funded Victim Support Service Inc. provides a range of support services for victims and their families including: free counselling, advocacy, court support (including linking in with in-court support provided by volunteer agencies), and coordination of support groups.

The following jurisdictions provide a victim support service within government:

- ACT (Department of Justice)
- Tasmania (Department of Justice)
- WA (Department of Attorney-General).

In the ACT, the service provides general victim support and in-court support for cases that need to be dealt with more intensively. In WA, the service provides general victim support with longer-term in-court support provided by volunteers.

A victim support service for Queensland

Consideration has been given to how to deliver victim court support in Queensland. The delivery of this service by government is the more desirable option in terms of business efficiencies associated with locating the service in the VAU and achieving the goal of creating a central access point for victims. It is recommended a Victim Support Service (VSS) be situated within the VAU. Some VSS staff should be allocated to regional areas to ensure the needs of victims in those areas are met.

Relationship of victim support service with ODPP Victim Liaison Service and QHVSS

This service will not replace or overlap with the ODPP's VLOs or QHVSS. Rather, the new VSS will complement their work and fill the gaps identified in consultation. The ODPP VLOs and the new VSS will work closely to ensure there is seamless service delivery to victims in the court process. The ODPP VLOs, the QHVSS and the VSS will have to ensure they make appropriate referrals to one another and that victims are directed to the VAU so that they can access the new financial assistance scheme.

Supporting the non-government sector

The Queensland Government currently provides a pool of \$1.4M for non-government organisations who provide services to victims of crime. It is proposed that the VSCU will manage these funds including: contract management for the current contracts, an evaluation of the best use of the funds, and the tender process for engaging service providers through future contracts.

During consultation, various gaps in services available to victims were identified, including:

- limited services for male sexual assault victims
- few services for females over 14 years of age that deal with recent sexual assault (rather than sexual assaults experienced as children)
- limited or intermittent services for rural and remote areas (including discrete Indigenous communities).

The needs of particular cohorts of victims vary widely. Non-government organisations are needed to address specific needs that cannot be addressed through a more general unit such as the VAU. It is recommended that the pool of funding for non-government victim support organisations be increased to ensure that these needs continue to be met and that any gaps in service delivery can be minimised.

Victims' rights and information

The Fundamental Principles of justice for victims of crime

Currently the Fundamental Principles are set out in Part 2 of COVA. The Fundamental Principles include (but are not limited to):

- a victim should receive fair and dignified treatment
- public officials responding to victims needs should be assisted by guidelines that give effect to the principles
- the welfare of a victim should be considered at all appropriate stages of the investigation and prosecution of crimes
- a victim should be advised, on request, of information about the progress of the investigation and prosecution
- a victim who is a witness in the trial regarding the crime should be informed by the prosecution about the trial process and the victim's role as witness
- a victim should have access to information about available welfare, health, counselling, medical, legal help and victim-offender conferencing services responsive to their needs
- a victim should have access to information about how the victim may obtain compensation or restitution for injury, loss or damage caused by the crime.

The Fundamental Principles originated in the UN Victims Declaration and were adopted in Australia through the National Victims Charter. All Australian states and territories, except Tasmania, have implemented the National Victims Charter in legislation or by declaration. In implementing the charter, some jurisdictions have revised the manner in which the principles are made relevant to agencies and their practices. Also, some jurisdictions have made more use of the Fundamental Principles to achieve better recognition of victims' needs and role in the justice system.

Several respondents to the review stated that the Fundamental Principles set out in COVA should be retained and/or strengthened. It is considered that the new scheme should incorporate, recognise and require adherence to the UN Victims Declaration. Accordingly, the provisions regarding the Fundamental Principles in COVA should be maintained, subject to any adjustments necessary to ensure consistency with best practice in other Australian jurisdictions⁵.

⁵ The principle that a prosecutor should inform sentencing courts of the appropriate details of harm caused to victims of crime (set out in section 14, Part 2, of COVA) will have to be considered in light of any legislative changes that are made with respect to victim impact statements (see below).

Responding to victims' complaints

The National Victims Charter has been strengthened in some jurisdictions, so that there is a process for making and resolving complaints for a victim who is not treated in accordance with the principles in the charter (there are also varying levels of discipline that government employees may be subject to for non-compliance).

In Victoria the Victims' Charter Enquiries and Complaints Line handles complaints from victims, including that an agency has not upheld the Victims Charter Act 2006 (Vic). This unit mediates a resolution between the victim and the agency. The NSW Victims Bureau performs a similar function.

There is currently no formal complaints handling process regarding departures from the Fundamental Principles in Queensland. Arguably, disciplinary action could be taken against public service officers regarding failure to deal with victims in accordance with the Fundamental Principles⁶. However, there is no evidence that any such disciplinary action occurs. The preferable approach is to have a complaints resolution mechanism separate and distinct from general public service disciplinary action processes. It is envisaged that the VSCU will be responsible for resolving and reporting on victims' complaints regarding breaches of the Fundamental Principles. Where the agency is a Government agency or receives funding from the Queensland Government, the agency will be contacted and the VSCU will facilitate resolution of the issue. Where the complaint is against a non-government agency that does not receive Government funding, the agency will be notified of the complaint.

A central information hub

To overcome the current lack of coordination of victims' services, a number of submissions have recommended that a centralised hub (consisting of a telephone hotline and website) be established to provide information about services offered to victims of crime around Queensland such as counselling and crisis accommodation and refer victims to services when appropriate. The VSCU, within the VAU, should oversee the central information hub which will perform the following functions:

- ensuring victims, organisations and the community understand victims' needs, rights, and eligibility for assistance under the new scheme
- providing general information about court processes
- maintaining a services database regarding victims support services that will include information about the functions of different victims services (Government and non-government) and the capacity of services to take on new clients
- providing information about other support services and groups that victims may wish to contact.

The hotline component of the VAU would provide this information and make appointments for victims with Government Assessors and VSS counsellors. The hotline should not provide counselling, as doing so could interfere with the victim's care by health professionals. However, staff will be trained to be alert to the sensitivities of responding to the needs of victims. The website component will provide the relevant information in an easily accessible format.

⁶ Pursuant to Chapter 6 of the *Public Service Act 2008* and Part 7 of the *Police Service Administration Act 1990*.

Situating the victims hotline in the VAU would achieve business efficiencies, in terms of shared resources, consistency in training and culture, information sharing and provision of advice and support for staff. An in-house victims hotline would be consistent with the victims hotlines provided by the NSW and Victorian Governments which fulfil similar functions.

7. Transition to the new scheme

Recommendation 10:

There should be no transitional period for victims to make applications under the old scheme once the new scheme has commenced.

Recommendation 11:

To assess as many applications from the current scheme as possible prior to the introduction of the new scheme, extra staff should be employed in the current Criminal Injury Compensation Unit.

Should there be a transitional period?

A transitional period would involve victims who are eligible to apply for compensation under COVA being able to make COVA applications after commencement of the new scheme until the COVA three year time limitation period expires. The following organisations advocated for the provision of a transitional period in their submissions to the Review: Queensland Police Service, Aboriginal & Torres Strait Islander Legal Service (Qld South) Ltd, Queensland Council for Civil Liberties, and the Queensland Police Union of Employees.

However, it was decided that the disadvantages of a transitional period outweighed the advantages. If rights under the current scheme were to continue in effect under the new scheme, there would effectively be three schemes in operation: the Code, COVA, and VFASS. This would perpetuate the current confusion, complexity and delays.

It is proposed that the right of a victim to make an application for compensation under all Code and COVA provisions will cease the day before the new scheme commences. No rights of victims to apply for compensation under the Code or COVA schemes will be continued after commencement of the new scheme even if the act of violence and/or injury occurred before commencement of the new scheme. Victims who do not make their Code or COVA applications before the commencement of VFASS (and are within the three year time limitation on making applications) will be eligible to apply for financial assistance under VFASS. This group will have two options: lodge a claim for compensation under the old scheme prior to introduction of the new scheme or lodge a claim for financial assistance under the new scheme. These victims will be given plenty of notice of their options during promotion of the new scheme.

Not having a transitional period will allow quicker processing of claims so new victims will receive assistance in a timely manner. New victims have the most acute needs and should arguably be the focus of government resources available to victims.

Processing claims under COVA before VFASS commences

In consultation, the COVA scheme was criticised for its delays and the effects that this has on the victim who is trying to recover and return to life as normal. Processing the backlog of COVA and Code claims should be fast tracked so that as many applications from the current scheme as possible are assessed prior to the introduction of the new scheme.

8. Eligibility for financial assistance and maximum amounts under the victims financial assistance scheme

Recommendation 12:

The overarching eligibility for a victim to receive financial assistance should be if it can be proven on the balance of probabilities that there was an act of violence that resulted in the injury or death of a person.

Recommendation 13:

Primary, related and secondary victims should be eligible to receive financial assistance.

Recommendation 14:

A primary victim should be a person who is injured or dies as a direct result of an act of violence committed against him or her.

Recommendation 15:

A related victim should be a person who at the time of the act of violence was a close family member of, or a dependant of, a primary victim who dies as a direct result of the act of violence. However, a person is not a related victim if he or she committed the act of violence.

Recommendation 16:

A secondary victim should be:

- a person who is injured as a direct result of witnessing an act of violence that resulted in injury to or death of the primary victim; or
- the parent or guardian of a primary victim under the age of 18 who is injured as a direct result of becoming aware of the act of violence committed against the primary victim.

Recommendation 17:

The maximum amount of financial assistance that a primary victim can receive should be \$75,000. Within the \$75,000, a primary victim should be able to receive:

- financial assistance for reasonable expenses for counselling, medical costs and replacement of clothing, up to \$20,000 for loss of earnings, and (in exceptional circumstances) an amount for other reasonable expenses to assist the primary victim's recovery from the act of violence; and
- up to \$10,000 special financial assistance (lump sum payment) as a gesture of recognition by the State if a primary victim has suffered a significant adverse effect as result of a prescribed serious act of violence.

Recommendation 18:

The maximum pool of financial assistance available for all of the related victims of one primary victim should be \$100,000 (capped at \$50,000 per related victim, including up to \$10,000 per related victim for distress), including up to \$6,000 for funeral expenses.

Recommendation 19:

The maximum amount of financial assistance for a secondary victim who witnesses an act of violence should be:

- where the secondary victim witnesses a serious act of violence (such as murder or manslaughter), \$50,000;
- where the secondary victim witnesses any other act of violence, \$10,000 for reasonable counselling expenses; and
- where the secondary victims are the parents or guardians of a primary victim under the age of 18, a pool of \$50,000 (including up to \$20,000 for loss of earnings) to be shared between all of the parents or guardians.

Recommendation 20:

The new scheme should provide for interim payments (maximum \$6000) to victims to cover their emergency and immediate needs.

Recommendation 21:

For financial assistance, an application must be made within three years after the occurrence of the act of violence or if the primary victim is a child, an application can be made 3 years from the date the victim turns 18 years of age. In the case of an application by a related victim or a person who has incurred funeral expenses, within three years after the death of the primary victim. The Manager of the VAU will have discretion to extend the limitation period in appropriate circumstances.

Current eligibility requirements

Under the current COVA scheme, an applicant is only eligible for compensation where an indictable personal offence has occurred and it has been either successfully prosecuted in the District, Supreme or Childrens Courts (see section 24 of COVA) or the alleged offender has not been convicted for certain limited reasons or where no offender has been convicted or identified (as set out in section 33 of COVA).

If the matter falls within section 33 of COVA, the State may make an ex-gratia payment of all or part of the amount requested up to the amount that could have been ordered to be paid under a compensation order if the person who committed the offence was convicted on indictment.

If the matter is dealt with summarily (in the Magistrates Court), by youth justice conference, or alternative dispute resolution the victim is ineligible to apply for compensation under COVA or the Code provisions. Compensation determined through these processes cannot be paid by the State under COVA. The victim is left to rely on the prosecutor seeking limited compensation and/or restitution under the *Penalties and Sentences Act 1992* at the time of sentencing. Entitlement to compensation being linked to conviction which disadvantages victims, particularly those listed here and victims of sexual assault where reporting and conviction rates are low.

Overarching eligibility criteria for the new scheme

Community consultation strongly supported a broadening of eligibility for victim assistance in Queensland. In most states and territories (Victoria, NSW, ACT, NT and Tasmania) eligibility for compensation or financial assistance is not linked to a conviction and a person is eligible to claim financial assistance or compensation if they can establish they are the victim of an act of violence. Most jurisdictions define an act of violence by linking certain offences which would clearly impact upon the victim.

To address criticisms about current eligibility criteria and to ensure that a broader group of victims receive assistance, it is recommended that eligibility be linked to an act of violence, injuries sustained and the impact of the crime rather than on the conviction of the offender. It is recommended, under the new legislation for VFASS, a wide definition of 'injury' be adopted for which assistance is provided. Relevant injuries would include actual physical bodily harm, mental illness or disorder, or an exacerbation of a mental illness or disorder, or pregnancy. This definition largely accords with the COVA scheme.

The widened eligibility will ensure that victims who are currently excluded from the scheme will be eligible for financial assistance (for example: victims of indictable offences dealt with summarily and secondary victims). The number of victims assisted is expected to increase. Based on Victorian financial assistance statistics applied to the Queensland population, it is anticipated the number of victims assisted per year will almost triple from around 850 to approximately 2500.

Categories of victims eligible for financial assistance and maximum amounts for each category

Primary victims

Under the current COVA scheme, primary victims are compensated but this term is not specifically defined. The Review recommends that this category of victim be defined under the proposed scheme as 'a person who is injured or dies as a direct result of an act of violence committed against him or her'.

The maximum amount of compensation a primary victim can receive under COVA is \$75,000. In consultation, many organisations raised the issue that \$75,000 is 'not enough'. However, as articulated in the legislation in most jurisdictions, neither compensation nor financial assistance can ever truly reflect or erase the effects of the crime on the victim. Financial assistance will provide practical assistance to victims and an acknowledgement by the government that the person has been wronged. It is recommended that the current maximum amount of \$75,000 for primary victims be retained. Queensland has (and will continue to have) the highest maximum amount of compensation or financial assistance for primary victims in Australia (equal to WA).

Types of financial assistance available to primary victims

Within the \$75,000 maximum, primary victims may be awarded:

- financial assistance for expenses associated with their recovery
- special financial assistance.

- Financial assistance for expenses associated with recovery
This could include:
 - reasonable counselling services
 - medical expenses (including dental and optical)
 - loss of earnings (up to \$20,000) suffered as a direct result of the act of violence
 - loss of or damage to clothing worn at the time of the commission of the act of violence.

In exceptional circumstances, an award may be made (within the \$75,000 limit) for other expenses actually and reasonably incurred, or required by the primary victim to assist his or her recovery from the act of violence. These items could include crime scene clean up, home security, removalist expenses, or remedial tutoring.

- Special Financial Assistance
Although the proposed new scheme is a financial assistance scheme, it is recommended that primary victims of prescribed serious violent acts should be eligible for 'special financial assistance' (a lump sum compensation payment of up to \$10,000) as a gesture of recognition by the State of the significant effects on the victim of the serious violent act. This is consistent with the Victorian financial assistance scheme awards prescribed amounts of 'special financial assistance to primary victims for significant adverse effects of crime'.⁷

Related victims

Under section 35 of COVA, where a primary victim dies in circumstances constituting murder or manslaughter, a dependant of that primary victim may apply for payment of an amount up to the prescribed amount (currently \$30,000, to be divided between all dependents). A dependent may also apply for payments up to the prescribed amounts for funeral expenses (\$6,000) and ancillary expenses (\$3,000). Therefore, the current maximum amount for dependant victims is \$39,000 (to be shared between all dependants). A member of the primary victim's family, who was *not* a dependant, may only apply for funeral and ancillary expenses.

Dependency payments are only available where the relative can prove that they were financially dependent on the deceased. This has been criticised on the grounds that there should be greater acknowledgement of other types of related victims. In community consultation, a strongly expressed view was that compensation for related victims was too narrow. In response to these criticisms, the Review recommends that close family members and dependants should fall within the related victim category but that there be a priority system so that the family members most in need receive more assistance (in many cases this will be children of the primary victim who are under 18 years of age).

The current maximum for dependency claims is \$39,000. This has been criticised as \$39,000 is less than the maximum payable to related victims in all other jurisdictions except for Tasmania and the NT. It is recommended the total maximum amount that

⁷ s 7 *Victims of Crime Assistance (Amendment) Act 2000* (Vic).

may be awarded to all the related victims of a primary victim should be \$100,000 capped at \$50,000 per related victim (consistent with the Victorian scheme).

The amount awarded to a related victim should be made up of amounts for: counselling services; distress experienced, or reasonably likely to be experienced, by the related victim as a direct result of the death of the primary victim (to a maximum of \$10,000 per related victim); funeral expenses; and loss of money that, but for the death of the primary victim, the related victim would have been reasonably likely to receive or benefit from. The maximum amount available for claims in relation to loss of money is \$20,000 (within the \$100,000 overall which is maximum capped at \$50,000 per related victim).

A person, whether related to the victim or not, who has incurred funeral expenses as a direct result of the death of a primary victim may be awarded assistance for the funeral expenses actually and reasonably incurred by that person. The maximum amount available for funeral expenses is \$6,000 (this is within the \$100,000 maximum pool available to all related victims in relation to the death of the one primary victim).

Secondary victims

Under the current Queensland scheme, secondary victims are not entitled to compensation. There has been public support for the introduction of secondary victims as a category eligible to receive financial assistance. Public submissions sought a range of people to be included in the category of secondary victims:

- parents or carers of children who have been sexually abused
- witnesses to murder or manslaughter (they may suffer injury to a higher degree than many primary victims to less serious offences and have the burden of providing evidence in the homicide investigation and the prosecution of the alleged offender)
- carers and extended family, taking into account cultural definitions of family.

In Victoria, NSW, Tasmania and the NT, secondary victims are eligible for financial assistance and are defined as persons:

- who have suffered injury as a result of witnessing an act of violence that resulted in the injury to, or death of, the primary victim
- a parent or guardian of a primary victim who is a child (under 18 years of age at the time of the act of violence) who suffered injury as a result of subsequently becoming aware of the act of violence against the child.⁸

Amounts of financial assistance for secondary victims vary between the jurisdictions.

The Review recommends that the following secondary victims be entitled to the following amounts of assistance under the new scheme:

- (1) A person who is injured as a direct result of witnessing a prescribed serious act of violence, for example: murder or manslaughter (reasonable expenses associated with the recovery to a maximum of \$50,000, including loss of earnings of up to \$20,000).
- (2) A person who is injured as a direct result of witnessing any other act of violence that resulted in injury to or death of the primary victim (counselling services to a maximum of \$10,000).

⁸ See, for example, section 8 of *Victims Support and Rehabilitation Act 1996* (NSW).

- (3) The parents or guardians of a primary victim under the age of 18 who are injured as a direct result of becoming aware of an act of violence committed against the primary victim (a pool of \$50,000 maximum per family, including loss of earnings up to \$20,000). This will include a person who, under Aboriginal or Torres Strait Island custom, is regarded as a parent or guardian.

Interim payments

Currently, compensation is paid to victims any time from 12 months after the offence to some 6 years later. There are no interim awards.

One of the key findings of the Review was that the scheme should focus on providing a broad distribution of financial assistance through interim and final payments for specific financial needs. One of the five key themes identified in public submissions to the Review was that assistance to victims needs to be more immediate. The IDWG is also in general agreement that victims should be provided with interim payments to address their immediate and emergency needs and facilitate early intervention.

The Victorian financial assistance scheme, on which the recommended financial assistance scheme is based, allows for the provision of 'Interim Awards'. In Victoria, there is no limit on the amount the tribunal can award as an Interim Award. However, the registrars to whom the tribunal delegates some powers are limited to a cumulative maximum of \$5,000 for Interim Awards. The NT, which reformed its scheme in 2007 to implement a financial assistance scheme, has a limit of \$5,000 on 'Immediate Financial Assistance'. It is preferable set a limit to ensure the focus of interim awards is the emergency or immediate out of pocket expenses of victims and that their longer-term needs are assessed more rigorously in the final assessment.

As the focus of a financial assistance scheme is to respond to the needs of victims and produce efficiencies and effectiveness associated with early intervention, it is recommended that the new scheme provide for interim payments to victims to cover urgent and immediate expenses. It is recommended the maximum amount for an interim award of financial assistance should be \$6,000.

Time limitations on making a financial assistance application

Section 40 of COVA generally provides that the time limitation for making an application is three years from the date of:

- the end of the convicted person's trial (for applications to the court)
- the offence or death (for applications to the State for ex-gratia payments)
- if the offence was committed against a child, the child becoming an adult.

Applications to the State for an ex-gratia payment under section 32 of COVA (where there has been a court order for the offender to pay compensation to the victim and it is established that the offender does not have the means to pay) must be made within six years from the date of the court order. Extensions of time are governed by the *Limitation of Actions Act 1974* (LAA). The victim is required to identify a material fact of a decisive character of which they were not aware and the period within which the application must be made is extended for only one year from the date the fact becomes known. So, the CICU has had little flexibility to accept out of time claims.

Stakeholder consultation was conducted on the length of the limitation period and what, if any, extensions should apply. Some stakeholders considered that the three year limitation period should remain (Queensland Council for Civil Liberties, a

member of the public, Queensland Homicide Victims Support Group). Some SRG members (including Bravehearts) considered that, if a person was a child at the time the offence was committed against them, they should be able to make claims up to around 26 years of age. There was also some discussion amongst the SRG that there should be no time limit on the reporting of sexual offences and that the extension of time provisions in the LAA relating to disability should apply to criminal injury compensation applications. SRG members recognised the State is entitled to have an end point to claims to ensure resources are available to adequately assist new victims.

In Victoria, there is a two year limitation period on applications for financial assistance. The criteria for extensions are set out in the legislation. In NSW, applications for compensation must be lodged within two years after the act of violence occurred. Applications lodged out of time may be accepted with the leave of the Director of Victims Services, NSW. NSW policy provides that leave should be given in cases of sexual assault, domestic violence or child abuse unless the Director is satisfied there is no good reason to do so.

The Review explored the possibility of moving to a two year limitation period for various reasons including consistency with the other states. A two year period would emphasise the efficient and timely assistance to be provided under the new scheme. It may improve Government Assessors' ability to assess claims on the balance of probabilities, while evidence is fresh. However, the advantages of moving to a two year limitation period do not outweigh the disadvantages. As most actions and claims that the public would be familiar with have three year limitation periods, it would be inconsistent and confusing.

It is recommended that, for financial assistance, an application must be made within three years after the occurrence of the act of violence. If the primary victim is a child, an application can be made 3 years from the date the victim turns 18 years of age. In the case of an application by a related victim or a person who has incurred funeral expenses, applications must be made within three years after the death of the primary victim.

Based on the issues raised in consultation, it is recommended that grounds to extend the time to make an application should include:

- the age of the applicant at the time of the act of violence
- whether the applicant has an intellectual disability or mental illness
- whether the person who allegedly committed the act of violence was in a position of power, influence or trust in relation to the applicant
- the physical or psychological effect of the act of violence on the applicant
- whether the delay in making the application undermines the possibility of a fair decision
- whether the applicant was a child at the time of the act of violence.

The Manager of the VAU will have authority to grant extensions of limitation period. If a victim's application is assessed as being out of time, the victim will still have access to the victims hotline and website and be referred to appropriate services.

9. Payments to vulnerable people

Recommendation 22:

- (a) Special financial assistance payments to victims can be referred, if appropriate, to the Public Trustee for administration if the victim is under the age of 18 or the victim is an adult under a disability.
- (b) The process for determining whether a case is suitable for administration by the Public Trustee should be a joint process between the Government Assessors and the Public Trust Office (agreed process to be set out in the proposed guidelines for the assessment of applications).

The payment of expenses for goods and services required as a result of the injury or death will remove some of the dangers associated with lump sum payments of compensation. Under the current compensation scheme, some offenders stand to gain from compensation paid to their victim (especially where the victim and offender are related). The victim may be at risk of psychological and/or physical abuse or violence by the offender. The CICU currently tries to identify these cases and refer them to the Public Trustee for administration. The implementation of a financial assistance scheme would largely remove this danger as the victim would generally have the expenses related to their recovery paid for them (rather than a large lump sum). The payment of expenses also ensures that funds are used to aid the victim's recovery rather than allowing for the possibility of some victims using their compensation to exacerbate their problems (for example, through gambling or substance abuse). Therefore, the move away from compensation to a financial assistance scheme should reduce the need for administration of awards to be administered on behalf of vulnerable victims.

There may still have to be administrative arrangements for some victims awarded special financial assistance (up to \$10,000). Public submissions to the review considered that the Public Trustee is the appropriate mechanism for administering moneys on behalf of vulnerable victims. It is recommended that special financial assistance payments to victims be referred, if appropriate, to the Public Trustee for administration if the victim is a minor or an adult under a disability. The process for determining suitability of a case for administration by the Public Trustee should be a joint process between the Government Assessors and the Public Trust Office (agreed process to be set out in the proposed guidelines for the assessment of applications).

10. Cost of the application

Recommendation 23:

- (a) Reasonable medical fees associated with applying for financial assistance should be included in the final amount of the victim's financial assistance.
- (b) Reasonable legal fees associated with applying for financial assistance (payable by victims) should be awarded to victims in addition to the maximum amount available for financial assistance.
- (c) Amounts of medical and legal fees considered 'reasonable' should be set out in the guidelines for assessment of applications, approved by the Attorney-General.

Current costs to victims of making an application for compensation

One of the five key themes raised in consultation was that legal and medical costs incurred by victims need to be reduced. The high legal and medical costs to victims were heavily criticised by victims groups and government agencies in terms of fairness and access to justice. For compensation hearings in the District or Supreme Court, preparation is costly and expenses are fully borne by the victim. Legal and medical fees consume a substantial amount of compensation. A submission to the Review from a member of the public stated the amount of compensation he was awarded was \$30,000 and his legal costs were \$18,000. Legal Aid Queensland currently represents a large proportion of applicants and requires a contribution towards legal costs from the compensation. The maximum contribution is \$4,400 or, if the award is less than \$20,000, no more than 20% of the amount received. It is common for private law firms to charge more. For payments made by the State, applicants generally use lawyers to make the application and specialist medical reports are required. These costs are not included in the compensation payment.

Addressing cost issues under the victims financial assistance scheme

VFASS will involve a much more user-friendly application and assessment process. Submissions to the Review from legal organisations indicated that using Government Assessors to collect the majority of documentation needed to process the claim will minimise victim reliance on lawyers. It will reduce the need for most victims to engage a lawyer and, where the applicant believes they need representation, reduce legal costs. However, some submissions and the SRG made it clear that victims should not be prevented from engaging a lawyer. Therefore, under VFASS, victims may engage a lawyer if they so choose.

Under the Victorian scheme, legal fees approved by the tribunal are paid in addition to the award of assistance. The Governor in Council has the power to prescribe a scale of costs for this purpose.⁹ Disbursements (for example: for medical reports) are paid by the tribunal as part of the victim's award. In the NT, regulation 12 of the *Victims of Crime Assistance Regulations 2007* provides that the Territory will pay the reasonable expenses of person giving information or documents that they are required to provide under specified sections of the *Victims of Crime Assistance Act 2006* (NT).

⁹ Section 46 of the *Victims of Crime Assistance Act 1996* (Vic).

Under VFASS, reasonable legal fees should be awarded to victims in addition to the maximum amount available for financial assistance and reasonable medical fees associated with applying for financial assistance should be included in the final amount of the victim's assistance. The amounts considered 'reasonable' should be set out in guidelines for assessing applications, approved by the Attorney-General.

11. Interaction with other schemes

Recommendation 24:

- (a) Victims should not be able to claim financial assistance in addition to some other form of compensation, financial assistance or insurance in respect of the same act of violence or injury.
- (b) If the victim is awarded compensation in a civil claim against the offender or is awarded compensation or restitution during sentencing in a criminal matter, then a debt is due and payable to the State to the extent that the compensation overlaps with the VFASS award.

Legislation regarding interaction of VFASS with other schemes

In many situations involving an act of violence, there will be other schemes through which compensation or assistance may be available to a victim. The VFASS legislation will need to set out the relationship between VFASS and other schemes.

Victoria's legislation provides that financial assistance *must* be reduced by any common law damages, compensation, assistance, payments, or financial assistance for transport accidents that the victim has received in relation to his or her injuries, and *may* take into account any compensation, assistance or payments (including those relating to transport accidents, workers' compensation, insurance policies and superannuation schemes) that the victim has not received, but is entitled to receive¹⁰. If a victim receives such damages, compensation, assistance or payments *after* the victim has received financial assistance under the victim's scheme, then the victim must refund the amount of financial assistance paid (if it is less than or equal to the damages, compensation, assistance or payments) or the damages, compensation, assistance or payments (if the financial assistance paid is the greater amount)¹¹.

ACT legislation provides that a victim cannot receive financial assistance if the injury arose out of the use of a motor vehicle.¹² Financial assistance must be reduced by the aggregate of any damages, amounts payable under other laws, reparation ordered during criminal sentencing, Medicare benefits, amounts payable under contracts of insurance, and any pensions or allowances paid by Centrelink, that the victim has received, or is entitled to receive, regarding expenses or pecuniary loss.¹³ Special assistance must be reduced by the aggregate of any damages or amounts payable under other laws (except in relation to expenses or pecuniary loss) that the victim has received, or is entitled to receive.¹⁴ If a victim recovers either damages or amounts under other laws, the victim is liable to pay the damages or amounts under other laws (if the financial assistance is a greater amount) or the financial assistance (if it is less than or equal to the damages or amounts under other laws).¹⁵

NT legislation provides that an award must be reduced if the victim has received a payment for the injury, including an interim payment that the victim was not entitled to, compensation or damages, private medical insurance benefit, payment under an agreement or insurance policy, or a benefit, compensation, damages or other award

¹⁰ Section 16 of the *Victims of Crime Assistance Act 1996* (Vic).

¹¹ Section 62 of the *Victims of Crime Assistance Act 1996* (Vic).

¹² Sections 12 and 18 of the *Victims of Crime (Financial Assistance) Act 1983* (ACT).

¹³ Sections 35 and 40 of the *Victims of Crime (Financial Assistance) Act 1983* (ACT).

¹⁴ Sections 36 and 41 of the *Victims of Crime (Financial Assistance) Act 1983* (ACT).

¹⁵ Section 53 of the *Victims of Crime (Financial Assistance) Act 1983* (ACT).

under another law¹⁶. The victim may be required to refund an amount to the Territory if the victim has received such a payment or payments¹⁷.

Should VFASS require that a victim attempt to recover by other schemes first, before the victim can apply to VFASS for financial assistance?

Interaction with victims schemes in other jurisdictions

VFASS should not affect the operation of victim compensation or assistance schemes in the other Australian jurisdictions which may be handling applications involving the same victims, offenders, and/or acts of violence. Accordingly, if a victim is entitled under another jurisdiction's victim compensation scheme, they should be excluded from eligibility under the financial assistance component of the VFASS scheme.

Workers' Compensation

In relation to workplace injuries resulting from a violent criminal act, where the worker is a victim with an eligible claim, the Review considers that the claim for workers' compensation should be made before an application is made under VFASS. Workers' claims under VFASS would be limited to types of assistance that are not available to them under workers' compensation (for example reimbursement for the costs of damaged clothing as a result of a violent act). Further, the workers' compensation claim should be finalised before the VFASS claim is finalised.

Priority needs to be given to the workers' compensation application because:

- payment under VFASS could pre-empt a later workers' compensation claim
- cost shifting from the relatively well funded WorkCover scheme to the more limited VFASS should be avoided
- receiving monies for the same treatment from two different schemes effectively results in 'double dipping'.

The Review determined the workers' compensation scheme should be the primary means to assist employees who are also victims of crime to recover and rehabilitate because the employer has a duty of care to the employee and workplace injuries should be addressed through the legislative workers' compensation scheme (underpinned by employers' insurance contributions). Under workers compensation, an injured worker may receive benefits (for example: lost wages, medical treatment, rehabilitation and return to work services). In addition, the worker may receive a lump sum through statutory 'no fault' compensation or by pursuing a common law claim.

It is recommended that this issue be further explored prior to the Bill for the new legislation being finalised to ensure employees who are victims of crime are not disadvantaged by having to wait until the workers' compensation matter is finalised before they can have their VFASS claim finalised. Employees who are victims of crime will still be able to access court support and associated counselling through the VAU while the offender is being prosecuted for the offence.

Medicare, private health insurance, and travel insurance

If the victim has access to Medicare, private health insurance, travel insurance, income protection, or insurance under a superannuation scheme, the Review recommends VFASS should only pay financial assistance that is not paid by

¹⁶ Section 42 of *Victims of Crime Assistance Act 2006* (NT).

¹⁷ Section 47 of *Victims of Crime Assistance Act 2006* (NT).

Medicare or the insurance. Medicare and the insurer have prime responsibility to pay for health related expenses under the Commonwealth Medicare scheme and the contract of insurance respectively.

Other common law claims, compensation and restitution orders

In relation to other common law claims, compensation orders, and restitution orders, the Review considers that generally a victim should apply to VFASS first as it will provide faster assistance. Common law and restitution claims will only be possible later and will take longer due to the time required for them to be heard by the courts.

What should happen when a victim receives amounts under other schemes to cover goods or services for which VFASS has earlier provided financial assistance?

Victims should be able to take action under other schemes and under common law for amounts already covered by financial assistance. To avoid 'double-dipping', the Review recommends that if the victim does have a successful common law claim or is awarded compensation or restitution then a debt is due and payable to the State to the extent that the award overlaps with the VFASS award.

12. Recovery of amounts awarded from offenders

Recommendation 25:

- (a) The new legislation should provide a mechanism for the State to have discretion to recover the amounts of awards of assistance paid to victims from convicted offenders.
- (b) Applications for financial assistance made by prisoners in relation to acts of violence committed against them should not be finalised until they are released from prison, allowing any awards made to that person's victims to be offset against their award (long term prisoners' awards should be finalised as soon as practicable after the five year anniversary of the date they submitted their application).
- (c) The Department of Justice and Attorney-General should give further consideration as to whether there should be any amendments to the *Criminal Proceeds Confiscation Act 2002* to allow the court to restrain an offender's property to satisfy any orders of compensation or restitution made under the *Penalties and Sentences Act 1992*.

Victims groups suggested increased focus by the State on recovering the amount of financial assistance provided to a victim from the offender would be a positive symbolic gesture. Similar views were expressed by the IDWG and in a number of public submissions. NSW, WA, the ACT, and Tasmania have a mechanism for the State to recover assistance paid to the victim from the offender where the offender was convicted of an offence that relates to the victim's financial assistance payment. It is recommended the new legislation provide a mechanism for the State to have discretion to recover the amounts of awards paid to victims from convicted offenders.

NSW, WA, the NT, and Tasmania provide that where a victim may receive financial assistance, but that victim is also an offender regarding another victim who has received assistance, the amount of financial assistance the first victim may receive is reduced by the amount paid to the second victim.¹⁸ The CICU currently adopts this approach. VFASS should continue this approach. Generally, applications for financial assistance made by offenders for acts of violence committed against them while in prison or prior to entry into prison will not be finalised until the offender is released. If victims of the prisoner make an application while the offender is in prison, the amount of financial assistance awarded to the prisoner may be reduced by the amount awarded to the victim. For long term prisoners, their applications will be finalised as soon as practicable after the five year anniversary of the date of their application.

Under the *Criminal Proceeds Confiscation Act 2002* (CPCA), property that is the proceeds of crime can be required to be forfeited to the State. Under Chapter 4 of the CPCA, the Governor in Council can direct that forfeited property must be applied to satisfy an order requiring the offender to pay restitution or compensation to the victim. In Victoria, section 15(1) (e) of the *Confiscation Act 1997* provides that the court may make a restraining order to preserve property to satisfy an order for restitution or compensation. The Review has not had sufficient time to consider possible amendments to the CPCA to allow the court to restrain property. DJAG may give further consideration as to whether amendments are warranted.

¹⁸ *Victims Support and Rehabilitation Act 1996* (NSW) s 31, *Criminal Injuries Compensation Act 2003* (WA) s 43, *Victims of Crime Assistance Act 2006* (NT) s 57, *Victims of Crime Assistance Act 1976* (Tas) s 6B.

13. Victim impact statements

Recommendation 26:

The legislative framework should be strengthened to specifically provide for victim impact statements (VIS) to be given to courts. The provisions regarding VIS should avoid being overly prescriptive so that the courts may deal with VIS in a flexible manner and avoid time and cost implications of potential delays.

In Queensland, Part 2 of COVA sets out the Fundamental Principles, including the principle that ‘the prosecutor should inform the sentencing court of appropriate details of the harm caused to a victim by the crime’ (section 14). This does not provide a clear statutory basis for a victim’s VIS to be presented to the court. It is arguable that provisions in the *Penalties and Sentences Act 1992* (PSA) and *Juvenile Justice Act 1992* (JJA) may be interpreted as implicitly enabling the use of VIS in Queensland, as they provide that the court ‘must’ take into account the impact of the offence on a victim during sentencing of the offender. Consultation with legal stakeholders during this Review indicated that, in practice:

- when sentencing proceedings are heard by a Supreme, District or Childrens Court judge, the ODPP generally encourages victims to make VIS, which are tendered by the prosecutor for consideration at sentence, subject to deletion of any inflammatory or inadmissible material
- when sentencing proceedings are heard by a Magistrates or Childrens Court magistrate, the Queensland Police Service encourages victims to make a VIS when offences cause significant or serious injuries or loss.

The courts, other legal stakeholders and community groups have been consulted regarding VIS. The responses presented a wide range of views including: present arrangements work well, and the lack of legislative specificity gives the courts flexibility; provisions expressly addressing the role of VIS in sentencing should be enacted to ensure victims feel heard; and time and cost implications of potential delays caused by VIS should be avoided.

The Review recommends VIS be given to courts as follows:

- VIS may be given by primary victims and, in instances where primary victims have died as a result of the offence, the family or dependants of primary victims
- if a primary victim entitled can not give the statement because of the person’s age or an impaired capacity, another person may give a VIS on behalf of the person
- a person entitled to give a VIS may give the VIS to the *prosecutor* (not the *court*), in accordance with current practice. It will, amongst other things, enable prosecutors to ‘filter’ material in VIS where appropriate and, in doing so, minimise cross-examination of victims and it is consistent with the practice in NSW, WA, Tasmania and the NT
- it is not mandatory for persons entitled to give VIS to do so. Further, the court must not draw inferences that a crime caused little or no harm to a victim due to the victim’s reluctance to make a VIS
- victims may only be cross-examined regarding VIS with the court’s leave, and with any conditions that the court may attach
- VIS may be read out by victims during proceedings with the court’s leave.

In giving effect to the above policy, any proposed provisions should avoid being overly prescriptive so that the courts may deal with VIS in a flexible manner and avoid time and cost implications.

14. Accountability under the new scheme

Recommendation 27:

The new scheme should be independently reviewed five years after commencement and this review mechanism should be included in the new legislation.

To ensure that, under the new scheme, the provision of financial assistance and delivery of services to victims occurs, and continues to occur, at the highest possible standard, it is considered that an ongoing Inter-departmental Steering Committee and an ongoing Stakeholder Reference Group should be established. These groups would continue to monitor the performance of the victims assistance unit, and suggest ways in which such performance should be improved.

It is important for the Queensland Government to continue to ensure it is responsive to the needs of victims of crime. It is proposed that the recommended scheme be independently reviewed five years after commencement and that this review mechanism be included in the new legislation. The independent review should assess: how well VFASS meets the needs of victims of crime (including the needs outlined in this Report); the effectiveness of the legislation; and whether the scheme is adequately resourced. There should also be an intermediate internal review of operational issues (including resources) after two years of operation. For these purposes, it is important to implement adequate information systems to capture the required data and to implement mechanisms to monitor and evaluate the efficiency and effectiveness of the new scheme.

Conclusion

On the basis of public submissions to the review, the results of cross-jurisdictional consultation, research and analysis, the review recommends a reformed victims scheme that will focus on providing a broad distribution of assistance in a timely manner to allow victims to achieve a speedy recovery and get on with their lives sooner. This will be achieved through: interim and final payments for goods and services that victims require to recover from their injuries and creation of a central point for victims to access financial assistance and coordinated services.

VFASS will address many of the criticisms of the current system by:

- moving from compensation to financial assistance (allowing for quicker assistance and encouraging earlier recovery)
- expanding the eligibility criteria to include many more victims, for example, victims of indictable offences dealt with summarily and secondary victims
- simplifying the legislation and processes (with Government Assessors administering the financial assistance)
- reducing legal and medical costs to victims
- reducing victim contact with the court and the offender
- providing a hub for:
 - processing of applications
 - referral to and coordination of services
 - a victims' information hotline and website
 - training of government officers
 - victim complaints resolution.

The new scheme will be a simpler, more flexible, and responsive method of providing financial assistance to victims of crime. It will allow for linkages with other parts of the justice system and relevant government agencies, some of which are identified in this report, to be developed during implementation and continually reviewed. This will ensure the efficient and effective use of government resources. More importantly, it will provide victims with the benefits of a properly integrated justice and human services response to their needs. Implementation of this initiative would confirm the Queensland Government's commitment to responding properly to the needs of vulnerable people in our justice system, specifically victims of crime.

