

ESTIMATES COMMITTEE

Question Taken on Notice

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From: Mrs Lia Finocchiaro

To: Hon Michael Gunner

Portfolio: Chief Minister

Agency: Ombudsman's Office

Subject: Ombudsman's submission to the review into the Victims of Crime Assistance Scheme

QUESTION:

Please provide a copy of the Ombudsman's submission to the Department of Attorney-General and Justice review into the Victims of Crime Assistance Scheme.

ANSWER:

Ombudsman submission on Victims of Crime Reform

Response to Discussion Paper dated November 2018

This submission seeks to identify relevant factors for Government consideration identified from dealing with approaches to the Ombudsman NT and past experience in the NT public sector.

Crimes Victims Assistance Scheme

In recent years, my Office has received a substantial number of approaches by or on behalf of applicants relating to the Crimes Victims Support Unit (CVSU). These approaches have almost entirely concerned delay in processing applications.

Previous commentary

In my 2016/17 *Annual Report*, I commented (at pp5-6):

The primary issue of complaint has been delay in processing applications, a significant number of which stretch back over a number of years. The main reasons given for delay have included:

- *delays in obtaining necessary information from NT Police relevant to the disposition of applications;*
- *delays in obtaining information from health providers;*
- *delays in securing appointments with specialist health providers to assess victims, exacerbated when an appointment is made but the claimant does not attend;*
- *the advent of fresh applications which complicate consideration of earlier applications by the same person;*
- *the build-up over time of a large and growing backlog of applications which itself takes time to manage.*

My Office has been working with the CVSU and the Department for some time in an effort to facilitate process improvements to streamline procedures and attack the backlog. CVSU has identified the following steps undertaken or in the process of implementation:

- *Worked with NT Police to improve Police response times to requests for information. NT Police has allocated additional resources which has resulted in a substantial improvement in average wait times and a substantial reduction in the number of outstanding Police requests. CVSU will continue to monitor response times and work with Police to ensure improvement continues;*
- *Processes have been reviewed in an effort to reduce the times and resources required to process applications. Measures undertaken or commenced following the review include:*
 - *introduction of a triage process;*
 - *reducing the need for full Police records in some cases;*

- *a project to close and archive files;*
- *a project to identify old files and prioritise them;*
- *introduction of regular call up process for case managers to keep applicants informed about the progress of their applications;*
- *preparation of formal case management and administrative manuals for staff, including ongoing review of these manuals;*
- *developing clearer guidance in the manual around medical assessments, including no shows;*
- *introduction of regular file audits for each case manager to ensure older and complex files are not falling between the cracks;*
- *Restructure of the office, to provide improved training, supervision and staff retention;*
- *Improving stakeholder relationships, including developing new fact sheets particularly for legal representatives;*
- *Undertaking a comprehensive business planning process for 2017/18 to identify longer term priority projects, including;*
 - *Systems mapping and improvement project;*
 - *Paperless office project;*
 - *Project to identify and implement IT solutions for a case management system.*

Even though a number of the above measures are at an early stage of development, it appears there are already signs of significant improvement with the average number of determinations growing from 18 per month in 2016/17 to 31 per month in the first quarter of 2017/18.

Ultimately, there is merit in reviewing the structure of the scheme. However, in the meantime, considerable improvements can be made through system enhancements and allocation of appropriate resources. My Office will continue to monitor the situation and work with the CVSU.

In the following year, I reiterated some of my earlier comments and went on to say (2017/18 Annual Report, pp10-11):

There were fewer complaints during the reporting period and many of the applications that gave rise to complaints have now been finalised.

CVSU has made structural improvements and streamlined processes. There has also been a notable improvement in NT Police response times for provision of information. These enhancements are illustrated by the increase in the number of decisions made. In 2016/17 there were 213 decisions made under the Act resulting in \$1.134m paid out to victims. In 2017/18 this increased to 383 decisions with \$2.783m paid to victims. Inroads have also been made into the oldest applications in the backlog.

An internal audit of the CVSU commissioned by AGD has made a number of recommendations for enhancement of structure and processes. These are currently being considered for implementation.

My Office has been given a copy of the audit report and is provided with quarterly updates of progress in resolution of applications involving Ombudsman complaints and the backlog generally. We will continue to meet regularly with the CVSU Director to monitor progress.

Even so, I believe that there is merit in reviewing the entire structure of the scheme with a view to enhancing timeliness and meeting the immediate needs of victims.

Approach numbers

The number of approaches to my Office about CVSU for each year since 2015/16 is set out below:

Year	Approaches
2015/16	3
2016/17	20
2017/18	7
2018/19 (to end Feb)	5

As can be seen from the commentary above, my Office has worked closely with the CVSU in an effort to improve processing times and address the considerable backlog of cases. The reduction in the number of approaches to my Office for 2017/18 and 2018/19 may, to some extent, be attributable to those efforts. There have certainly been a number of improvements in administration

However, there remain many inherent structural hurdles with the scheme. The reduction in numbers is largely attributable to considerably improved direct communication with stakeholders to update them on progress and apprise them of the work of the CVSU. The decrease should not therefore be seen as an indication that all outstanding issues have been, or will soon be, addressed.

General comments

The nature of any scheme is ultimately a policy decision for Government. However, past experience of this Office with this and other schemes can help inform Government deliberations.

In 2017, I completed the report, *Little Fish Are Sweet: Administration of a high volume, low value, subsidy scheme*. While that report discussed the Pensioner and Carer Concession Scheme, it included comments that have broader application to a grant scheme like the Crimes Victims Assistance Scheme.

In *Little Fish Are Sweet*, I said:

Objectives and costs

69. In a subsidy scheme of this nature, a fundamental aim must be to provide the maximum benefit to qualifying members from available funding. A core element in achieving this objective is to maintain appropriate controls to ensure that public money is being spent in accordance with the approved scheme.

70. An ongoing tension exists between the resources required to administer a scheme and the resources that find their way to beneficiaries.

71. On a simplistic view, the more that is spent on administration, the less that is available for scheme beneficiaries. There can therefore be an ongoing pressure to minimise administration in order to 'cut red tape'.

72. However, the reality is that without a reasonable level of administrative scrutiny, the community can have no level of assurance that the money it is contributing is being well spent. Providing less than a reasonable level of administrative scrutiny may ultimately mean that members receive fewer benefits as mistakes or fraud misdirect funds away from the scheme's purpose.

73. The costs of administration should be kept as low as reasonably practicable to promote the efficiency of the scheme but Government and the community must be confident that the right people are getting the right benefit.

74. Particularly in a scheme where there are many small payments for the benefit of a large number of members, involving a large number of providers and agents, finding the balance between good administration and member benefit gives rise to many challenges.

...

82. The complexity of the Scheme calls for a mix of approaches which limit the risk inherent in the Scheme (structural measures) and approaches which provide a reasonable level of scrutiny of Scheme implementation (operational measures).

83. Given the substantial administrative costs involved in operational measures, it is fair to say that the more effective the structural measures that can be reasonably employed to simplify the processes in the Scheme (and so reduce the extent of risks that must be scrutinised by operational measures), the greater the proportion of funding that can go to the benefit of the members.

84. However, in saying this, it would be counterproductive for the structure of the Scheme to be so confined that it fails to meet its policy objectives. There will always be a need to ensure balance.

The need to balance administrative burden with scheme benefits and to adopt both structural measures and operational measures is equally applicable in relation to the Crimes Victims Assistance Scheme.

With that in mind, I make the following observations about the proposed scheme that I hope will assist in Government's deliberations:

- The structure of the scheme should lend itself to straightforward administration aimed at providing relevant assistance.
- Timely assistance should be an essential element of the scheme.
- A scheme that reduces the necessity for complex investigation, analysis and decision-making to the greatest extent possible, while still maintaining the objects of the scheme, is to be preferred.

- Likewise, a scheme that reduces as far as possible reliance on professional assessment and advice, whether legal, medical or otherwise, is to be preferred.
- Informality and direct assistance to applicants about how they meet the requirements of the scheme, thus reducing the need for professional legal assistance, is to be preferred.
- The current emphasis on substantial fixed payments for particular injuries, assessed by legally qualified officers, on the basis of expert medical opinion, imposes significant barriers to timely and effective assistance.
- The greater upfront assistance that can be given, whether in terms of counselling, interim payments or recognition payments, the better.
- It is essential that the structure of the scheme supports simplified processing but it is equally important that the unit carrying out administrative and support functions is well resourced to provide efficient and timely service.

While there are many options still to be decided, the broad thrust of the proposed scheme is in line with many of those points. It simplifies administration and provides greater emphasis on a range of mechanisms for relevant and timely assistance to victims.

The introduction of case management and direct payments to third party service providers would increase the likelihood of timely and relevant assistance.

Recognition payments

Questions 36-39

The adoption of recognition payments is likely to go a significant way towards simplifying processing requirements. With regard to the specific proposals, I note:

- In relation to Category A, a broad definition of ‘close family member’ may raise issues in a Northern Territory context where familial ties may extend to a large number of people. This might lead to unanticipated resource implications for the scheme. The provision of a total pool cap as proposed would limit the extent of those implications.
- It would be important to clearly establish how that capped pool will be shared. For example, what happens if there is a partner, four children living with varying degrees of dependence, and aging parents. Some flexibility, but also substantial guidance, will need to be provided to decision makers in legislation and guidelines.
- Determining financial dependence may itself involve substantial investigation and consideration, adding a level of complexity and cost to the process.
- By the same token, requiring a level of injury for a ‘close family member’ would add another element requiring proof and judgement. This could be counterproductive for young children who will not necessarily suffer any demonstrable psychological injury from the events but will nevertheless suffer from the absence of a parent and financial support. Other dependents may also suffer substantial financial deprivation even if they do not suffer psychological harm.

- Alternatives would be to substantially narrow the definition of ‘close family member’ or require dependents beyond a narrowly defined ‘immediate family’ to establish injury.
- In relation to Category D, there is merit in considering whether the proposed amount of payment should be raised, at least to the same level as NSW. In any event, it should be reserved for less serious offences. A number of the offences currently listed in Category D would not seem to fit that description, e.g., kidnapping and robbery.

Deciding applications and review

Questions 57-64

A streamlined system where decisions are made by Director’s delegates with internal review by the Director available, is likely to speed up decision-making and reduce the administrative costs of the system.

On the other hand, providing a broad scope for appeal to the NTCAT would allow applicants to challenge decisions in a legal forum to ensure the system is being administered according to law.

This approach would provide a balance between administrative efficiency and timely disposal of matters and allowing an avenue for maintenance of applicants’ legal rights.

On question 61, the ability to pre-approve certain categories of expenditure and pay third party providers directly would appear to be a very important element of the new streamlined process. It allows for provision of timely assistance aimed directly at addressing the harm suffered by the applicant.

Other aspects of the Discussion Paper

Victims Charter and Commissioner

Questions 2-10

I note that:

- to the extent that relevant complaints involve NT Police officers, the Ombudsman has a specific statutory role (see Part 7 of the *Ombudsman Act*);
- there are some limits on the potential to complain to the Ombudsman about specific functions that may fall within the Charter, for example, actions of DPP staff regarding ‘DPP exempt matters’ and persons discharging judicial functions (see section 16(1) of the *Ombudsman Act*);
- the Ombudsman’s powers are limited to recommendation – the Ombudsman has no power to direct that particular action be taken.

Otherwise, the Ombudsman currently provides a free external forum, independent of Government, for the investigation and resolution of complaints, disputes and concerns of this nature.

It is, however, clear that the mooted role for the Commissioner would extend well beyond complaint resolution. Promotional, educational and advisory functions are not currently undertaken by the Ombudsman.

Enforcing restitution and compensation orders

Questions 90-94

Steps that better inform victims and appropriately involve them in justice processes are to be welcomed.

However, the majority of the offending population does not have the capacity to repay fines and penalties, let alone restitution or compensation orders. There is a real question as to whether the changes proposed would substantially increase the rate of recovery of restitution or compensation for victims.

Any period of time served solely in respect of failure to pay restitution or compensation has, at least in the great majority of cases, questionable policy benefit. For offenders who cannot pay, it merely serves to impede prospects of rehabilitation at significant expense to the public.

Likewise, expiation of restitution or compensation amounts through time served is of questionable value. In many cases, time served is likely to be served concurrently with time served for other offences. Whatever 'limited prospects the victim may have had of recovery will be lost without any benefit to them.

There is merit in allowing for review and potential variation or discharge of an unpaid order (either by the Court or administratively), with the involvement of the victim, if it becomes clear that the offender is unlikely to ever be in a realistic position to make payment.

While they may have superficial appeal, community work orders raise particular challenges for enforcement. The offender must be assessed as suitable and there must be suitable work available. If done at all, this is done at considerable expense to the community. The victim will see no direct benefit and the net benefit to the community as a whole is open to question.

Peter Shoyer
Ombudsman and
Information Commissioner
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