

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Victims of Crime (Financial Assistance) Amendment Bill 2003)

Members:

**MR B STEFANIAK (The Chair)
MR J HARGREAVES (The Deputy Chair)
MS K TUCKER**

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 6 APRIL 2004

**Secretary to the committee:
Ms J Henderson (Ph: 6205 0199)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.35 pm.

ELIZABETH KELLY,

BRETT PHILLIPS,

NICOLE MAYO and

NICOLA CLARK

were called.

THE CHAIR: I welcome everyone here to the third hearing of our inquiry into the Victims of Crime (Financial Assistance) Amendment Bill.

You should understand that these hearings are legal proceedings of the Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means you've got a responsibility to tell the committee the truth because giving false or misleading evidence will be treated by the Assembly as a serious matter.

Please state your full names and the capacity in which you appear before this committee.

Ms Kelly: Elizabeth Kelly, Acting Chief Executive, Department of Justice and Community Safety.

Mr Phillips: Brett Phillips, Acting Executive Director, Policy and Regulatory Division, Department of Justice and Community Safety.

Ms Mayo: Nicole Mayo, Principal Legal Policy Officer, Policy and Regulatory Division, Department of Justice and Community Safety.

Ms Clark: Nicola Clark, Legal Policy Officer, Department of Justice and Community Safety.

THE CHAIR: I ask that responses to any questions taken on notice be provided to our secretary by Monday 19 April. My first question is to whoever wants to take it. We've received a number of submissions. To summarise the government submission, first, the proposed changes are to have no awards for pain and suffering of up to \$50,000 for police, firefighters, ambulance officers and victims of sexual assault, who instead will be entitled to special assistance of up to \$30,000; second, to have no requirement to report to police before being eligible for financial assistance; and, third, to raise the cap on legal fees up to \$800.

We've received substantial concerns about the need to prove extremely serious injury for someone to be eligible for special assistance and that this requirement ensures that only very few awards for special assistance are made. In other words, people are saying that the bar has been set too high. I think we've only had four cases of people qualifying.

In relation to victims of sexual offence, on page 5 of the government submission it states that many will be eligible for special assistance in the area of \$30,000, plus possible medical expenses of \$20,000, and the change may result in higher costs. How do you know that, given that figures show that the “extremely serious injury” category hasn’t been used in many cases at all?

Ms Kelly: To respond formally to your letter of 9 March to the Attorney-General, asking for details of the extremely serious injury cases, I understand that the department’s record-keeping system doesn’t allow it to readily identify those cases, but the Victims of Crime Coordinator’s office does. I understand that that information has been provided to the committee, indicating that there have been six awards under the extremely serious injury category. I will forward a formal response to your letter to the Attorney, just setting that out.

THE CHAIR: That’s six awards. When the bill was introduced in 1998 or 1999, it was estimated that it wouldn’t attract more than 20 to 30 maximum a year. But six awards seem fairly low, even on that fairly conservative estimate, when it was introduced by the then Attorney.

MR HARGREAVES: Who was it?

THE CHAIR: Humphries, I think. It wasn’t me, mate.

Ms Kelly: The difficulty in predicting the financial impact is that victims of sexual assault are currently recovering under the pain and suffering provision when they may qualify under ESI. That’s the difficulty in understanding what that crossover will be. Do you have anything to add to that, Nicola?

Ms Clark: As Elizabeth stated, because they are getting that special assistance payment, we have no idea of how to quantify how many applications we would receive under the extremely serious injury category at the moment. But we can reasonably surmise that they will be the same because the extent of their injuries will be such that they will claim and be able to be awarded in the extremely serious injury category.

MS TUCKER: What do you say about the concern that the bar’s too high and that it’s difficult to prove that, especially for sexual assault?

Ms Kelly: I think the bar is very high, and that was the policy intention when the legislation was passed. We would certainly agree that the definition of “extremely serious injury” is very limited in terms of permanence, which is really difficult to establish. I note that, so far, one of the six cases has related to psychological injury, which indicates that it is possible. But you’re absolutely right that the bar is very high.

MS TUCKER: Do you think there’s an argument, particularly for sexual assault or domestic violence, to have an accommodation of the impact of being a victim of that sort of crime?

Ms Kelly: That’s a policy decision for government. The policy decision that underlies these is—

MS TUCKER: I know. I'm interested in evidence. I don't want to ask you political questions, but I'm trying to understand this policy decision of the government to treat people all the same, regardless of the offence. What research do you know is available to inform that decision? Have you seen the evidence that's come?

Ms Kelly: Yes.

MS TUCKER: So you know that people are saying that it's much harder to establish permanent injury for certain types of offence.

Ms Clark: However, there aren't that many cases where the people have actually put applications in, from what we gather from the Government Solicitor's Office.

MS TUCKER: But is that because they think it's too hard?

Ms Clark: Any number of variables have been factored into applications. Because of the advice they are receiving, they may have formed an opinion that they're not victims in that category. We can't know who is going to apply until somebody applies for it.

MS TUCKER: That's why I'm interested to know what research has been done. Are there any people who've done studies on the impact of being a victim of particular crimes, such as sexual assault or domestic violence? Apart from this questionable need to prove that something is permanent, which has been criticised roundly for lots of reasons, we also need to understand the impact of being a victim of different crimes. Can you find any research or evidence on that?

Ms Kelly: The policy reason behind the original change to the scheme is that there was no conclusive evidence that providing the assistance provided prior to the amendments actually improved the outcome for victims, whether for a particular class of victim or for victims generally. That situation hasn't changed. The accommodation in relation to particular types of victim wasn't based on evidence that those victims would benefit more from those payments. So removing that accommodation is really going back to the policy decision that was made some time ago, in that financial assistance in the way it was provided previously was not proven to produce better outcomes for victims or particular classes of victim.

MS TUCKER: Since we've had two classes of victim—since this legislation's existed—where police officers and victims of sexual assault have received money as compensation, you've done some analysis of how receiving that money has affected their lives and you've compared that to people not receiving it.

Ms Kelly: No, we haven't done that, and we're not aware of conclusive research that indicates that there is that relationship. One of the things Dr Dare recommended in his report was that we develop an evaluation framework. It is a really difficult thing to evaluate because it requires longitudinal studies and the identification of the issues that we would wish to track through with victims who've benefited from the scheme. That's something we are now doing work on as a result of Dr Dare's report.

The VSS, the counselling component of the scheme, is putting in place an evaluation

framework. But there has never been an evaluation framework designed for the financial assistance scheme. Dr Dare said that was needed, and I think that's true. There are small numbers, and it will be difficult to design the appropriate way to evaluate the outcomes for victims and the appropriate way, in terms of not only the information but also the respect of their rights to privacy and this obviously being such a difficult time.

THE CHAIR: If you took out "permanent", would you have trouble giving us some idea of the likely effect of that?

MS TUCKER: Can I just finish my questions?

Ms Kelly: Yes, we would.

MS TUCKER: Bill, I'm on a track line here. Can I finish?

THE CHAIR: Yes, go ahead.

MS TUCKER: If I understand you correctly, you told me there's been no evaluation at this point and no evidence one way or the other that compensation assists in a rehabilitative way. Did you say that there's no evidence to say that it will make a difference?

Ms Kelly: There are a number of assertions in relation to it, but there's no conclusive evidence that this is the way to get the best results in the rehabilitation of victims.

Ms Clark: We haven't found any conclusive evidence. However, we have heard anecdotally that people have turned up to the Victims Services Scheme who were previously compensated under the Criminal Injuries Compensation Act and who now find that, having bought the new car or holiday, they're not adequately "fixed up", so to speak, or have not received the counselling on which they might have spent the money that they got under the previous scheme. We now see them coming through the VSS because they find that the new car didn't do it.

MS TUCKER: And they needed counselling. Basically, it's still very vague. You're saying that you don't know. We've got anecdotal stories going the other way: the money helped them get out of a situation where they felt unsafe. So, there are stories either way.

Ms Clark: I came across a report in relation to a New South Wales inquiry into victims of crime, where they had also shown that compensation does not necessarily benefit them. But, again, there was no conclusive evidence. It's a difficult area to obtain information about.

MS TUCKER: But you are evaluating a group of people now who have received compensation in the ACT under the current situation.

Ms Kelly: No. We're in the process of designing an evaluation framework for that group of people to commence it in the next financial year. But we need some expert assistance to design an appropriate evaluation framework. It's quite a difficult undertaking.

MS TUCKER: Yes, it is. The Institute of Criminology might be interested. From the

police force we have it that 40 people have received assistance. Was it 40?

THE CHAIR: Sixty something.

MS TUCKER: Have you got a breakdown of the nature of the offences for them?

Ms Clark: The nature of offences across the scheme?

MS TUCKER: No, for the police officers who have received special assistance.

Ms Clark: The annual report for the financial year past does contain details of a number of police officers who have received special assistance or a payment. There is an interesting quote on that figure that it doesn't appear that they've all received the special assistance payment. There are 17 police officers and the payout for special assistance was \$100,000, but the total number for awards is \$144,000. We haven't broken that down in relation to police, but should you wish us to obtain that from the Magistrates Court—

MS TUCKER: I just wondered if you had an example of how they were victims—

Ms Clark: We do have a case analysis.

MS TUCKER: and what happened to them.

Ms Clark: What happened is in the back of the annual report. You can determine that from that information, although I understand that the deputy chair briefly commented that it was a bit too detailed.

Ms Kelly: The victims of crime support program annual report has a little summary of each case that indicates the nature of the offence that led to it.

MS TUCKER: Thanks.

MR HARGREAVES: I commented on the level of detail because it seemed to me to be a particularly macabre document. It seemed most interesting for people who just wanted to get a thrill out of reading such things, but it wasn't all that much use. We could have got a much more condensed version of it merely by the numbers of category rather than going into the detail of how many bones were broken at the time.

THE CHAIR: I actually found it quite useful.

MR HARGREAVES: I rest my case.

THE CHAIR: Following Kerrie's questioning, Ms Kelly, if I heard you right, you said that in evaluating whether compensation for pain and suffering benefits a victim you haven't got evidence either way. You also mentioned counselling. Have you got any evidence that suggests that counselling will benefit a victim or otherwise, or is the jury out on that one still too?

Ms Kelly: In terms of conclusive evidence, I think it is. Certainly, the evidence that

underpinned the changes in Victoria, which have also been recently reverted, and the information coming out of the operation of the amended Victorian scheme were that it was providing more effective rehabilitation for victims.

THE CHAIR: My other question, with which I interrupted Kerrie's train of thought, related to deleting from the definition of "extremely serious injury" the word "permanent". Do you have any suggestions as to what effect that might have—whether in your view it would be desirable or it would cause problems?

Ms Kelly: Whether it is desirable is a matter for government, but it would open the class. Just deleting the word "permanent" would expand the class in a way that we aren't able to quantify at the present time. Permanent is what is really the defining characteristic of extremely serious injury. Once you remove that, you open it out to the soft tissue injuries that were so much a feature of the previous scheme, so we wouldn't be able to reliably estimate the impact.

MR HARGREAVES: Who decides whether it's a permanent injury—one doctor, a number of doctors; one specialist, a number of specialists?

Ms Kelly: It's on the basis of medical opinion. I don't know how many opinions were required under the six cases that have been established, but it is on the basis of medical evidence.

MR HARGREAVES: The court decides ultimately, doesn't it?

Ms Kelly: Yes.

MR HARGREAVES: If the court decides on the basis of the evidence, is the evidence provided by the applicant, or is it requested by the scheme? How does that work?

Ms Mayo: Section 30 of the act, where the territory is a party, enables having an applicant examined by a professional appointed by the territory.

MR HARGREAVES: How often does that occur?

Ms Mayo: I'm not aware.

Ms Kelly: Unfortunately, the mechanics of the applications are dealt with by the Government Solicitor's Office. We aren't aware of that end of the process in that sort of detail. In the usual case, though, it would be the applicant who would assert it and so they would do it on some basis.

MR HARGREAVES: There seem to be a lot of players in this game. Picking up on what Ms Tucker was saying a little earlier on, perhaps a lot of people are not applying because it's a frightful exercise to have to go through. They might seek independent legal advice that says, "You've got Buckley's chance of getting this, so I wouldn't bother." You're not going to get the stats to say how many people are not applying, because some people are just giving up before they get to the gate.

MS TUCKER: Sorry, can I ask a different question? You're on a roll there, John?

MR HARGREAVES: I'm just going along for the ride.

MS TUCKER: I'm still a bit interested in the police, or occupations. Is it the case that police officers or anyone, like a bank clerk or a person working in a supermarket, who's a victim of crime can get some compensation through workers compensation?

Ms Kelly: That's right.

MS TUCKER: Is that enough, or is it difficult to get, or is there a problem there? With this scheme generally, if we're worried about costs and we lower the bar, the argument from government might be that costs will blow out. But if there were workers compensation schemes that adequately recognised and supported workers who are victims of crime, then the cost of the scheme would be reduced to a degree. Have you done an analysis of workers compensation schemes and how adequate they are?

Ms Kelly: No, we haven't. The difference between the schemes is that under this scheme it's faster and easier to access a lump sum payment, so it would be more attractive than a workers compensation alternative to that extent. The position is that workers compensation arrangements are designed to appropriately protect employees from any injury that occurs in the course of their employment, so there's no reason that this injury should be treated differently from another injury that occurs in the course of their employment. If they're adequate for the protection from some forms of injury, then they should be adequate for the protection against this form of injury.

MS TUCKER: Is there an argument for us as a committee to say, "Well, if people find this a more desirable way to go because it's simpler, even though it seems horrendous"—under this current legislation for police it's obviously been simplified but not for any other people who are victims as a result of their occupation—"we recommend that you amend or change your workers compensation schemes to properly accommodate this circumstance"?

Ms Clark: There was one comment in relation to the Australian Federal Police. We don't have oversight of their workers compensation scheme; that's under the Commonwealth act. Even if that suggestion were able to be put, I don't see how we would be able to accommodate the police in that relationship.

MS TUCKER: I realise that it's federal jurisdiction for the police, but we're looking at a lot of different occupations and the private sector workers compensation scheme is under our jurisdiction. If the argument is there that this is what we should be doing, then we have to pressure the federal government to do the right thing with their compensation scheme as well.

I'm trying to work out what the best solution is. If we want to reduce costs for the general community, surely we've got to get the occupational people out of it, even though it does require the federal government to take an interest.

Ms Kelly: That would be consistent with the approach that particular occupations shouldn't be treated differently to other occupations.

MS TUCKER: Yes.

Ms Clark: In addition, though, if you are entitled to a workers compensation claim, that is usually taken into account in an application for financial assistance.

Ms Kelly: My attention has just been drawn to section 13 of the act, which, if the injury arises out of your employment, requires you to exhaust your workers compensation avenues and set those off.

MS TUCKER: So you weren't able to get support until you tried to go through the whole process with your workers comp?

Ms Mayo: That's right.

MS TUCKER: That's different from what Elizabeth just said. It isn't that you could get it more quickly; what you're saying is that you had to go through all those other channels first.

Ms Kelly: Perhaps my misunderstanding was mistaken.

MS TUCKER: That's fine. The question still is: why is it necessary, if you go through your workers compensation, to still go then to this other scheme as a victim of crime? Surely that's still pointing to the fact that the workers compensation scheme is inadequate. It's an injury like any other, so why do they have to seek redress from a totally different scheme, when it's a work-related injury?

Ms Mayo: I would say in response to that that I understood that this scheme and others—some of the other jurisdictions differ in whether you can make a claim that is subject to you exhausting your other remedies or in addition to exhausting your other remedies—were supposed to be provided for people who had nothing else available to them.

Some of the other jurisdictions refer to the payments as *ex gratia* type payments when there's nothing available to people. Some of them require you to have exhausted all other civil avenues, whether they are common law damages or workers compensation schemes. Some of them require you to take into account other payments that you may have received through insurance policies and the like. So there is a difference between the schemes. I understood that the majority of them were supposed to be there as a fallback position for those people who really had nothing else available to them—as a last resort rather than a first resort.

MS TUCKER: Therefore, that doesn't support people who are hurt in the course of their work accessing it?

Ms Mayo: That's right. The majority of them shouldn't be.

MR HARGREAVES: My understanding is that workers compensation very rarely gives money for pain and suffering.

Ms Kelly: That's right.

MR HARGREAVES: If I was a clever enough little chappy I would take my workers compensation, get my rehabilitation and my counselling paid for and then hit you blokes for \$20,000 worth of pain and suffering as well. Perhaps we're seeing a bit of that.

Ms Kelly: Accessing the lump sum is what this scheme offers, which is not available under the workers compensation scheme, and the lump sum would be the pain and suffering component.

THE CHAIR: Elizabeth, are you saying that police and some ambulance officers—because a couple of them have been injured—would have to take their workers comp first—

Ms Kelly: Yes.

THE CHAIR: and, if they weren't successful there, would have to apply under this?

Ms Kelly: Even if they were successful, it wouldn't preclude them—

THE CHAIR: It wouldn't preclude them, and they might get a little bit more—

Ms Kelly: That's right.

THE CHAIR: over and above what they're entitled to for workers comp.

Ms Kelly: Yes. Workers compensation would pay for their rehabilitation expenses and some treatment costs. If they weren't recovering under workers' compensation, those would be recoverable under the financial assistance provisions if they weren't in an employment context. If it was a workers compensation case, they would recover those expenses there. The parts that weren't recoverable under workers compensation—namely, the pain and suffering lump sum—would be where they went to this act.

Ms Clark: They would also be able to claim reasonable expenses that arise out of the injury.

THE CHAIR: Under what?

Ms Clark: Under the financial assistance scheme.

THE CHAIR: Yes, yes.

Ms Mayo: Sections 35 and 36 of the act also deal with set-offs to any award. The workers compensation amount received would be deducted from any amount. It would only be where there was a difference in what they were entitled to.

THE CHAIR: That would be a similar sort of situation—more so than the old scheme. If someone was entitled to \$20,000 expenses out of the \$50,000 and the government got \$5,000 through taking the defendant to court—the defendant wasn't a man of straw and had a little bit of money—and the state got \$5,000, that would be deducted from the \$20,000 the victim gets. In other words, the state pays \$15,000 rather than \$20,000

because you get \$5,000 off the defendant under that section.

Ms Mayo: That's right. The way the scheme operates is that the territory pays the money and then seeks to recover the money from the defendant rather than having two separate—

MR HARGREAVES: I'll talk about the police officers for a second because they're a unique little category. We seem to be hearing from some people that the removal of the employment categories was because we were talking about the scheme being injury based and not work classification based. It's all about the injuries people sustain as a consequence of criminal activity, as opposed to the type of job you've got.

We heard the special case that AFPA put to us: the office of the constable, a unique office, under common law. I wasn't very sympathetic to the argument when I heard it, but a question is starting to pop up in my mind about it. If workers compensation is going to be the go for, let's say, an ambulance officer, that's not a problem because an ambulance officer is only going to get injured on the job. But working out if a police officer is on the job for the purpose of workers compensation would be a nightmare.

One assumes that this office of special constable at common law means that 24 hours a day this bloke is a police officer. Therefore, the workers compensation stuff may very well kick in when he's rostered on for duty but won't necessarily apply when he's so called "off duty", but he has an obligation to stand between the criminal activity and citizens when he is both on and off duty. In your mind, does that give weight to leaving police officers in the scheme as a special category?

Ms Kelly: To the extent that they would be entitled to recover reasonable expenses associated with the injury under the financial assistance provisions, even if it were not covered by workers compensation. That wouldn't change. I'm not aware that any of the claims from police officers have arisen from incidents that have occurred when they have not been on duty, when they've been exercising duties as special constables. So I'm not sure if that would be—

MR HARGREAVES: By the same token, schemes such as this are really insurance policies in the event of something happening. We don't go back and say that we're only going to do things that have happened, so we're making provision for a possibility—not what's happened. Is that sort of vagary what the intent of the special assistance is all about—something's extensive here, but it's out of the ordinary as well? One could, for example, assume that, if police officers have a greater chance of copping something like this and are in reasonable danger, workers comp won't kick in, but the special assistance will.

Ms Kelly: What the extremely serious injury component is about is: if you've been injured by a criminal offence and you're left permanently damaged, then it's appropriate to give you an amount of money to assist you to recover from that, in addition to your reasonable expenses and your rehabilitation and treatment. But for less than that it's not appropriate to give you a lump sum; it's appropriate to assist you with rehabilitation and your treatment expenses.

The distinction is: if you're left with a permanent injury, rather than dealing with a one-

off, exceptional case, the concept is actually quite narrowly defined. It is the concept of being left with something permanent that you can never recover from.

MR HARGREAVES: So we go back to the concept that the scheme is all about the extent of injury as a result of criminal activity. It's got nothing to do with how you came about it in terms of your employment. It's all about the injury you sustained as a result of that criminal activity.

Ms Kelly: Yes.

MS TUCKER: If you look at the question of costs to government, why should the government have to pay, under this scheme, for an occupationally caused injury?

THE CHAIR: Given that belting police is actually against the law, I wouldn't say that it's part and parcel of their occupation to get thumped.

MS TUCKER: It's not okay for a bank clerk to be shot either. That's not on the job description of a bank clerk.

THE CHAIR: I agree with that, and it's not really in the job description of a police officer, either.

MS TUCKER: I know it isn't, but that's not the point. The point is: it's happened during work.

MR HARGREAVES: The AFP said it was, though. The AFP actually said that it was in the job description—

THE CHAIR: You're more likely to have it happen.

MR HARGREAVES: because of the office of the constable. That's where the AFP said it is in the job description of a police officer.

THE CHAIR: Particularly in terms of workers comp.

MS TUCKER: If you are arguing that, you should argue it for the bank clerk too. We know how often banks get robbed. Either way, I don't see that you can separate it. Certain occupations make you very vulnerable. Nurses are becoming more and more vulnerable to physical assault.

MR HARGREAVES: Yes. Prostitutes would be in that group, wouldn't they?

MS TUCKER: Prostitutes would be in that group.

MR HARGREAVES: Yes, absolutely.

MS TUCKER: Violence that occurs when you're on the job is all we're talking about; I don't think the likelihood of it should be the issue.

MR HARGREAVES: I come back to the point again. The scheme makes no distinction

about how you came to be in it; the scheme is about the fact that criminal activity is going on and you sustained a permanent injury out of it. Full stop.

THE CHAIR: I'm going to put a few scenarios to you now. I'd like you to outline the pros and cons of each of these suggestions. There are four of them, and I'll give them one at a time. They are propositions that have been put to this committee. The first one is the proposition of making awards for pain and suffering available to all, with a lower threshold test attracting a proportionately lower special assistance payment.

MR HARGREAVES: It's essentially the cost-driven proposition.

Ms Kelly: It's important that the policy seeking to be achieved by the suggestion be identified. Is it that we think all victims of a lesser injury should receive a small payment as we think that will achieve the best outcome for the victim? If that's the underlying policy there, I'm not aware of any evidence that suggests that that's the case and, to some extent, that devalues the experience of victims who have a permanent injury following from the offence.

Implicit in that is that all victims who suffer something less than a serious injury get a small payment of an amount of money. Because you'd be opening the class so much, the amount of money would be very small and would be ineffective in dealing with the trauma that victims suffer and in assisting them to rehabilitate and recover. I'm not aware of anything in relation to that.

As for the pros, it may well be that it broadens the class of people who can access a lump sum payment, albeit a smaller payment, and that may be well received in some places. But as I said, the disadvantages would be the devaluing of the people with serious permanent injuries and the decrease in their ability to access a larger lump sum.

MS TUCKER: But it can be a payment that's proportional to the seriousness of the crime, so you've still got that graduation.

Ms Kelly: A table of maims style approach?

MS TUCKER: Yes, that's one example.

Ms Kelly: Yes. That's possible, but obviously the costs associated with that, if we're still hoping to have a significant payment at the top, would be quite considerable and certainly more than the current scheme.

THE CHAIR: Given that introducing a table of maims along the lines of New South Wales was one of the suggestions made, could you give the pros and cons of that?

Ms Clark: The con of that is that it recognises the injury rather than the victim, which is one of the reasons why it was abandoned in the consideration of these amendments. The pro is that people know what they'll get. I imagine that one of the attractions at a number of agencies who have proposed a table of maims is that, if you say you've lost an arm, you get \$7,000. The main con is that it talks about the injury, not the victim. It may not assist the victim in rehabilitating or recovering from that injury.

THE CHAIR: On the table of maims—

MS TUCKER: Can I just follow that up? Sorry, you're still on it.

THE CHAIR: I was just going to ask the same thing. Compared with our scheme as it stands now, how expensive is the New South Wales table of maims?

Ms Clark: We've not made an assessment of that. You'll have to bear in mind that the New South Wales scheme is a larger scheme. It's better funded than the territory.

THE CHAIR: I appreciate that. But pro rata, given that we're a much smaller territory.

Ms Clark: We've made no assessment of a pro rata comparison.

Ms Kelly: It's safe to say that it's a more generous scheme than ours.

THE CHAIR: Right. Kerrie?

MS TUCKER: I didn't quite understand that argument, and I would like you to explain a bit more why you think it's not in the interests of the victim to have degrees of harm—unless you were just talking about a table of maims. There are other ways that you can have a graduated dispensation, so it's not just about a table of maims. What exactly were you saying about the table of maims? Is it the table of maims that you think doesn't work, or are you saying graduated dispensation is not workable either?

Ms Clark: I think you're focusing on the suggestion of the joint submission from the Women's Legal Centre—

MS TUCKER: No, I'm just looking at what they do in South Australia. They have 0 to 50 and somewhere else they have a table of maims. I'm just interested in the general concept of being able to take account of how serious the impact is and having a graduated payment. You were saying it wouldn't be in the interest of the victim to lose an arm or something. I didn't understand that.

Ms Clark: There are a number of different schemes. Some have the maims approach: you have this injury; therefore we will compensate you for that injury.

MS TUCKER: Yes, I understand that.

Ms Clark: Some will have a scheme where they factor in the seriousness of that injury—

MS TUCKER: A different way of assessing the impact.

Ms Clark: Different ways of assessing it. There are so many different approaches. We could look at them again—

MS TUCKER: But I was trying to understand the argument you were putting that it wouldn't be in the interest of the victim to do a certain thing. I didn't understand what you said using an example of an arm.

Ms Clark: What I said is that the table of maims approach recognises the injury, but it doesn't recognise the victim. That was in one of our submissions.

MS TUCKER: The impact of the injury, you mean?

Ms Clark: The impact on the victim. The New South Wales approach looks at what the injury is.

MS TUCKER: Yes—or South Australia.

Ms Clark: But it doesn't recognise what the victim's harm is. All it does is say, "You've lost your arm; therefore you get this much."

MS TUCKER: So that's a criticism of the table of maims, particularly as a measure.

Ms Clark: That's the criticism of the table of maims.

MS TUCKER: Okay, that's all I wanted to clarify: it's not an argument against graduated payment.

Ms Clark: As I said, there are a number of schemes.

THE CHAIR: Another suggestion made to us was to introduce the concept of significant adverse impact, such as in Victoria, where victims of crime can receive a payment of \$7,500 as additional assistance and recognition that they've been wronged. Could I hear your pros and cons on the concept of significant adverse impact?

Ms Kelly: I don't know that any of us are familiar enough with the concept of significant adverse impact to be able to assist you on that, but we're happy to look at it and take it on notice and get back to you.

THE CHAIR: That would be good. Rather than extremely serious injuries, you've got to get adverse impact, and any definitions of—

MR HARGREAVES: Wasn't that to substitute for permanent?

THE CHAIR: I think it might have been.

Ms Mayo: I have found some notes that might be of some assistance, and the significant adverse impact was to acknowledge the impact of sexual crimes—to acknowledge that that sort of violation has a special impact on you that other crimes don't. It includes things like a reduction in a feeling of self-worth and an inability to maintain sexual relations. It is acknowledging specifically an injury that you can't really diagnose in the terms of a medical diagnosis.

The rates range. Once again, this has quite an arbitrary categorisation. It uses classing the crime—an A, B, C or D crime, as I understand it—with the amount that you can actually obtain, which is anything from \$100 up to—

MS TUCKER: Is that categories like penetration, et cetera?

Ms Mayo: That's right.

MS TUCKER: A child is A and penetration—

Ms Mayo: Yes.

MS TUCKER: The government's current bill puts everyone on an equal footing in one way. I'm still not quite clear about what your response is to the argument that sexual assault and domestic violence are particular crimes. How do you respond to the assertion that they need a special accommodation?

Ms Kelly: The response is that extremely serious injury is a category that was designed to cater for people who have permanent injury, whether it be psychological or physical, and we believe that it was designed to encapsulate people who are victims of sexual assault and family violence, as well as other crimes. That was the intention behind that category. It's been put forward that we cater for those groups by the definition of "extremely serious injury", insofar as they're left with a permanent condition, either psychological or physical.

MS TUCKER: You don't agree with the evidence that suggests that that is harder to prove?

Ms Kelly: No, I think it's very difficult to prove. The cases thus far indicate that it's difficult to prove.

MS TUCKER: So what's the solution to that? Do we need to change the definition, or do we need to keep a special group there?

Ms Kelly: Or do we need to have another look at permanence? Permanence is the hurdle that's difficult to cross for any victim. Would you agree with that, Nicole?

Ms Mayo: Yes, I think so. And I'm sorry, adverse impact is in Queensland, not Victoria; I may have just given some misinformation to you there. The A, B, C, D thing applies to the Victorian pain and suffering awards, and adverse impact is referred to in the Queensland legislation, which is a slightly different approach.

THE CHAIR: Significant adverse impact.

Ms Mayo: That's right.

THE CHAIR: If you could elaborate a bit more on that, it would be of great assistance to us as well. I am now told that it is significant adverse "effect", not "impact".

The final proposition we received is to remove special treatment for police victims of sexual offences et cetera, removing the requirement that special assistance only be available to those that retain extremely serious injuries and giving the court the discretion to make awards proportional to the degree of seriousness of the injury, with a maximum award of \$30,000. The suggestion is basically: (1), remove your special treatment categories (2), remove the requirement for special assistance only to be given to those

who retain extremely serious injuries and (3), give the court discretion to make awards proportional to the degree of seriousness of the injury up to a maximum of \$30,000. I'd like your suggestions for the pros and cons of that proposition to the committee.

Ms Clark: This is the idea that you can still have something similar to a pain and suffering payment for any person who is not suffering from a serious injury?

THE CHAIR: It says, "Removing the requirement that special assistance only be available to those who retain extremely serious injuries." That would mean: don't have any categories, take away the requirement of it only being available to people with extremely serious injuries—in other words, ditch that—but give the court the discretion to make an award proportional to the degree of seriousness of the injury. A minor injury might still get \$1,000.

Ms Kelly: Is it just a capped pain and suffering payment?

THE CHAIR: Basically, yes—capped up to the maximum of \$30,000. That would be very expensive, I take it.

Ms Kelly: That would be very expensive. That would considerably expand the class of person who could access those payments.

MR HARGREAVES: Is it inherent in this legislation that we don't agree that pain and suffering payments necessarily affect closure in a lot of these cases?

Ms Kelly: That was the policy underlying the original amendments to the scheme, and that hasn't changed.

MS TUCKER: But there's no real evidence there for it either way, is there?

Ms Kelly: I think that's right.

MS TUCKER: Can I ask a question about something else? The territory Bar Association talked in their submission about simplification of the actual process. They were claiming that the simplification of application procedures was making it even more complicated. What's your response to that one?

Ms Clark: I'm sorry. I didn't quite catch your question.

MS TUCKER: The territory Bar Association claimed that this new system was actually making the application process more complex, not less, and they think it needs to be made less because that's a barrier.

Ms Clark: Is this in relation to the amendment of any other documents?

MS TUCKER: I don't know. Let me find it.

Ms Clark: I think that they were making that comment in relation to—

MR HARGREAVES: It's not only that; it's also that all of these complicated hoops that

you've got to jump through are a disincentive for people to apply for their rights under this legislation—in addition to what you've just said.

MS TUCKER: It says:

The Dare Report recommended that application procedures be simplified...

However, by s12 of the Bill, which inserts a new s27(1)(b)(vi) in the primary Act, the Bill further complicates the application process by adding to the classes of documents which an applicant MUST attach to their application. This brings to 7 (including the statutory declaration) the mandatory classes of documents...

Ms Clark: In relation to the Bar Association's comment, the reason we included the "any other document" amendment to the act is to assist people who make applications to turn their mind to that. We no longer require a police report and, if they had made a police report, there is nothing there to tell them that they need to. They can attach the police report to tell the court that they did actually take that step.

As to the suggestion that saying "any other document" is a more onerous requirement, we're not entirely clear as to the argument that the Bar Association put. When a person puts in an application, they are required to put in an application form. That is a simplified form now because one of the recommendations of Dare was to amend that application form. It is now available on the legislation register and is part of a package of documents that is given by the Victims of Crime Coordinator and handed out by the registrar of the Magistrates Court.

It is a fairly simple process for most people to put in an application form. They can do it themselves without legal advice. It had been suggested that some people aren't able to do that, but that is a discretionary choice of any individual. I have seen the association's submission, and I'm not entirely clear as to what their argument is.

MS TUCKER: They're saying that the Government Solicitor has to look at the application first anyway so, if there are documents missing, then they can request—

Ms Clark: the applicant for further information.

MS TUCKER: Yes.

Ms Clark: It is not always the case that the Government Solicitor's Office will intervene in a matter. There is a discretionary power in the act for them to allow the court to decide on the application. The reason the applications are forwarded to the Government Solicitor's Office is so that we know that there is an application before the Magistrates Court. It is at the discretion of the Government Solicitor's Office to challenge it.

MS TUCKER: They do talk about the "any other document", which you've spoken to. But before that, to me they seem to imply there was an additional document, although I don't understand what that is. They said that by inserting new section 27 (1) (b) (vi) into the primary act, "the bill further complicates the application process by adding to the classes of document". That's the section on any other document that is relevant.

Ms Clark: Relevant to the application?

MS TUCKER: Have they also added something else that they have to have? It says it brings that to seven. Bringing it to seven is actually about the any other document—no, it wouldn't be, because any other document could be any number of documents.

Ms Clark: The amendment to the act states that other documents relevant to the claim—and this will be inserted in the application for information if this bill is passed—can be a photograph of injuries or damaged property—

MS TUCKER: That's the any other document?

Ms Clark: dental records or statements of witnesses at the scene of the crime.

MS TUCKER: That's six, okay. I don't know what they mean then.

MR HARGREAVES: There seems to be a consensus about that.

THE CHAIR: Yes, there's a consensus about that it seems.

MS TUCKER: Do you understand what it is?

Ms Clark: They're taking the words of the act to say that they "must"—or—"shall" include with their application form a statutory declaration, the application forms and other matters. It is our view, though, that section 27 (1) (b) (vi) turns an applicant's attention to the possibility of any other document that might be useful to their application. The view is that, if you put in an application for financial assistance, you need to put your best case forward and this is the best opportunity to do so.

MS TUCKER: An applicant "shall".

MR HARGREAVES: We'll move on then.

THE CHAIR: I have a quick question while they're working that one out. One submission stated that the VSS caseworkers have been instructed to not assist clients to access financial assistance schemes. Is that the case? Do you have any knowledge about that at all?

Ms Clark: The VSS are not a legal advisory service. And we have had a representation from the Victims of Crime Coordinator about that issue. The situation is that, whilst we would have looked at other manners in which they can provide that assistance, the VSS are not a legal advice service and therefore we have advised them that they can provide assistance to obtain or can obtain application forms and perhaps give clients information about what they need to do, but they cannot actually do the form for them, because that's legal advice.

THE CHAIR: Others have argued that the proposed cap of \$800 won't solve the problem of victims having to find a lawyer to assist them. What's your rationale for raising the cap from \$650 to \$800, and what's your comment in relation to those people who say that it's simply far too low a figure and it's not going to assist?

Ms Kelly: We recognise that it's a compromise, but it was an attempt to bring us on a par with New South Wales. We recognise that it is a compromise, but the things that we're balancing are the desire to have access to the scheme and the desire not to diminish to the minimum extent possible the payment that goes to the victim. We recognise that it's a compromise, but it's certainly an improvement on the previous position, and it puts us on a par with New South Wales.

THE CHAIR: So the victim would have to pay \$800 over and above whatever they got from the scheme.

Ms Kelly: It would be swings and roundabouts. There would be a number of cases where you could do it for a lot less than \$800, and there would be a number of cases where it would cost more. It would be a swings and roundabouts proposition.

THE CHAIR: What do you say to suggestions that the cap's far too low and should be increased to something like \$1,500 or removed? Even New South Wales have a slightly higher cap, don't they?

Ms Clark: The New South Wales cap is \$750.

THE CHAIR: Yes, but there's a scale up there. There's some provision for—

Ms Clark: I'm not aware that they have a scale in New South Wales.

MR HARGREAVES: Perhaps our lawyers are more impoverished than the ones in New South Wales and need the extra money to raise their children and feed their families.

MS TUCKER: What about giving the court discretion to extend it?

Ms Kelly: The concern would be that the amount comes out of the victim's payment. If there was the ability to increase the amount that comes out of the victim's payment, that's not a desirable result.

MS TUCKER: If that cap's not workable and people aren't able to get legal representation because the lawyers or barristers don't think it's workable, then that's not helping either, is it?

Ms Kelly: It's hard to understand how a lower cap is workable elsewhere and it isn't workable here.

MS TUCKER: Fair enough.

THE CHAIR: Aren't there instances where the lawyer will claim their cap—currently \$650; now maybe \$800—and actually charge the client extra? Are you aware of any abuses of the current scheme in relation to legal fees—of people not doing the right thing?

Ms Clark: We're not aware of any situations where clients have been charged. In any case, that would be contrary to the regulations, which say they can only charge \$650 for that service. It seems contrary to Law Society rules, if a regulation states that you can

only charge that amount, and a complaint should have been made to the Law Society in that matter.

THE CHAIR: I'm not saying it's happened; I just asked if it has.

Ms Clark: We've not been made aware of any situations.

THE CHAIR: Any other questions? Kerrie? John?

MR HARGREAVES: No, I think it's been rather good. I've enjoyed it this afternoon. Thank you very much.

Ms Kelly: Our pleasure.

MS TUCKER: Just as long as you're having fun, John.

THE CHAIR: There are a couple of things on notice there, if you could get those in. There's not much. So ladies and gentleman, thank you very much for your attendance and assistance to the committee.

The committee adjourned at 3.35 pm.