

**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

FRIDAY, 23 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 11.32 am.

JON STANHOPE,

ELIZABETH KELLY and

NICOLA CLARK

were called.

THE CHAIR (Mr Stefaniak): Chief Minister, Ms Kelly and Ms Clark, I thank you for attending. Chief Minister, you have received a letter from us in relation to some queries we had, including a number of options. Perhaps we should go the letter first and then have a few questions on the bill.

We have posed a couple of options. The first relates to the removal of eligibility for special assistance of up to \$50,000 for the occupational categories and the victims of sexual offences, as proposed in the bill, together with making the definition of “extremely serious injury” less restrictive by removing “permanent” from the definition. We wanted an idea of how much that removal would cost the scheme, if it is at all possible to ascertain that.

The second option was to retain the eligibility for special assistance of up to \$50,000 for police officers, firefighters, ambulance officers and sexual assault victims and to extend the provision to victims of domestic violence and homicide, as happens in New South Wales. How much would that cost as an option?

We also wanted to know how many applications for special assistance had been made since December 1999. We do know that six awards have been made, but we do not know whether there have been any applications that have been unsuccessful.

For the record, I ask everyone to state their name and the capacity in which they appear when they start speaking. Also, I have to formally warn you that these proceedings are legal proceedings of the Assembly, protected by parliamentary privilege. That gives you certain protections and responsibilities. You are protected against certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Do the three of you understand that.

Mr Stanhope: We do. The government acknowledges that this inquiry into how victims of crime in the ACT are supported is important. The first issue you raised concerned the class of potential applicants and the prospects for change, rather than taking the approach that the government has taken of removing some special classifications of victims of crime from the scheme. You have also asked about issues in relation to cost. Of course, the two are inextricably linked.

I think that it is important to understand the philosophical position that underpins the legislation. I acknowledge that the legislation was introduced by the previous government and I acknowledge that at the time the then opposition—my party, the

current government—essentially supported the philosophical underpinnings of the new scheme and new approach in relation to financial assistance to victims of crime.

I think that we need to have any discussion around the victims of crime financial assistance scheme in the context of the essential philosophy of the scheme that we acknowledged as a parliament. This legislation was, at the time, Liberal government legislation which was essentially supported by the then opposition, the Labor Party, with some differences of opinion around some issues. We undertook at the last election to seek to address some of those issues and this is the fruit of that.

I will not go into a discussion around the philosophy, but it is focused not so much on compensation as on rehabilitation. You go to the issue of a category of client that is still able to access compensation for pain and suffering and the category currently included is very limited, essentially members of the ACT police force, emergency services personnel and people who have been subjected to sexual abuse or crimes.

I do not want to go into it or be political about it, but we all know the background to the inclusion of those provisions. They are essentially political categories. They are categories that were not developed or divined on the basis of any assessment of what was necessarily more socially appropriate if one were to concede that there should be categories of exemption.

The government's position is that there should be no special category or distinction in relation to a capacity to access compensation for pain and suffering. Our position, as reflected in the legislation, is to remove those, acknowledging the very special case that you touch on in your question around sexual abuse and domestic violence. I will ask Ms Kelly to go to it, but I understand that one of the suggestions put is that, rather than removing the exception, we should seek to be more rigorous in the identification of categories; so, rather than excluding members of the police force or the emergency services or people who have been subjected to sexual abuse, violence or crime, we should look to ensuring that the category of potential clients is broadened to reflect what is done in other jurisdictions.

I reject that. Accepting the legitimacy of the claim that is made and the extent to which the payment of compensation might have some ameliorating impact—I do not dispute or diminish the seriousness of the harm and the pain and suffering caused or endured—there is overriding that, I believe, in fairness and equity no reason thereby to necessarily exclude everybody else in the community that is a victim of crime. That is the government's position.

Rather than asking about including victims of domestic violence—I will ask Ms Kelly to touch on that issue—the government does not accept that we should be broadening the categories. The government's position, a position we took after serious consideration, is that we would remove what we regard as the discriminatory inclusion of certain categories of people within the legislation. So we have adopted a different approach which we believe is consistent with the previous government's intention and the philosophy underpinning the legislation when first introduced by Mr Humphries, a philosophy that we have essentially accepted. I do not believe that there is any case for abandoning what was the then government's essential position and which was the position that we, as an opposition, took at that time.

I have to confess to you, Mr Stefaniak, that I am not particularly au fait with interstate experience, but I am more than happy for Ms Kelly and Ms Clark to touch on that. You asked about the inclusion of victims of domestic violence.

THE CHAIR: Yes. Basically, we wanted to know how much, as much as anything, it would cost.

Mr Stanhope: We have a letter for you on the costs. I have just signed it, Mr Chair. It is to you as the chair of the committee and it includes some costings. I would like to table it.

THE CHAIR: Thank you.

Ms Kelly: My name is Elizabeth Kelly. I am the acting chief executive. In relation to the specific requests for information that you made, Mr Stefaniak, it is not possible to quantify, to reliably estimate, the cost of either of the options that you have put. The information that we have been able to put together is information from past reports of the victims of crime support program.

The first option, which is about the removal of the permanent aspect of the definition of “extremely serious injury”, is one that is not possible. Removing permanence as a concept from the definition of “extremely serious injury” is not an amendment; in fact, it is the fundamental concept underlying the definition. Permanency is the thing that defines extremely serious injury. Without it, there is nothing to define extremely serious injury; so the game is open again.

Our only advice to you is that it would be likely to see a considerable increase in expenditure on the scheme. Unless we have information provided about the specific concept that would underline the revised definition, it is not possible to provide anything with any greater certainty. As I said, the thing about the definition of “extremely serious injury” is that it rests on permanence—permanent disfigurement, permanent injury—and rehabilitation is not possible.

The second option is about extending special assistance to victims of domestic violence and homicide. As the letter from the Attorney-General sets out, there already is special assistance in the sum of \$30,000 available to a close family member, dependant or intimate partner of a homicide victim; so the issue of homicide is already catered for under the current act. I should add in relation to that that in the past two financial years \$114,118.27 has been awarded under the homicide category.

In relation to domestic violence, it is not possible to reliably estimate that, but if we did extend the scheme to domestic violence victims we may see a similar number of awards as are currently awarded to victims of sexual offences. Over the past two years, that has been \$1,517,849.63. A total of \$1,710,302.15 has been awarded to the occupation class and sexual offence victims over the same period. The cost over two years would be \$3,228,151.78.

THE CHAIR: I have a few questions on the cap on legal fees. We have had a fair bit of evidence in relation to that. What do you see as the problems with making legal fees

recoverable by the victim? Also, what would be the problem with giving the court the power to extend the cap if it felt that the circumstances were sufficient to warrant it?

Ms Kelly: In what sense do you mean recoverable by the victim?

MR HARGREAVES: In the sense that if there were no cap and a victim made application for costs so that the court had the opportunity to top up the award with an order for costs.

Ms Kelly: Then the cost of the scheme would increase by that amount.

THE CHAIR: I suppose Mr Hargreaves is saying that if a victim were awarded, say, \$8,500 and there were special legal costs involved which were justifiable over and above the \$800 cap and the court thought that another \$1,500 was awardable, the total award would be \$10,000. You are simply saying that it would just add to the cost of the scheme.

Ms Kelly: The capping system allows you to regulate the price. If you were going to provide a discretion at the top end, you would also have to provide a discretion at the bottom end because there are many of these applications that, quite frankly, would not cost the amount in fees of the current cap. There would need to be scope at both ends. The system is designed to regulate the market, acknowledging that there will be some matters that can be done below the cap and some matters that will be done above it. But there is only one source of money for paying the legal fees; so any increase in the cost of legal fees increases the cost of the scheme to government.

THE CHAIR: It has been suggested to us that there could be a separate fund marked for the legal fees, for example, the proceeds of crime fund, which, with the new legislation passed last year, should start getting considerably more moneys into it. It has been suggested that that fund could be utilised for paying legal fees. It might also have been put on the basis of using it to pay victims generally under this scheme.

Ms Kelly: There are no guarantees in relation to the quantum of that fund. There are a number of properties currently under restraint, I understand, but there is no certainty as to the outcome. It would not be a secure source of revenue and there would have to be a system perhaps of the amount that went to victims being dependent upon the amount in that fund. It would not be appropriate that more would be available, depending upon the amount in the fund.

THE CHAIR: No, it would be more on the basis of using the moneys in that fund first and extra moneys could be called on as general revenue. But these non-government funds could be used for at least some of it. I think that that was the basis on which it was put.

Ms Kelly: There are other purposes specified for the use of those moneys as well, in terms of drug rehabilitation.

Mr Stanhope: It is a question in relation to all decisions that governments take about the expenditure of funds. The point that Ms Kelly makes is essentially the basis of the decision. We have developed a scheme in relation to people that are victims of crime.

We have constructed it in a certain way, with a certain philosophical underpinning, and I do not think that it is our intention and I do not believe that it was the intention of the previous government that it be a scheme, in the first place, designed to encourage an adversarial or lawyer-based approach.

THE CHAIR: No, that is true.

Mr Stanhope: As to any move away from the system we currently have of a cap, we are proposing that it go to \$800. In the context of legal costs, we know that that is a reasonably modest cap. But there are aspects of the application process that are not overly complex. We are more inclined to encourage people that seek to use the scheme to use their own resources to the extent they can and then to go to a lawyer. You and I know that any other scheme or approach essentially encourages the use of a lawyer, encourages adversity, and that inevitably will lead to a burgeoning of costs in the scheme.

We do not go to the issue of costs, particularly in terms of the decision on our commitment to victims, but—and this was the basis upon which Mr Humphries moved the amendment with which we agreed—at the time these changes were first made the scheme was costing, I believe, over \$6 million and climbing inexorably and steadily and there is a significant issue for the community in relation to that level of expenditure, particularly when this government accepts, as was the position of the previous government, that an adjustment to the scheme in the way that has been achieved, with a focus on rehabilitation, support services and counselling, would be fairer across-the-board to a greater number of people that are victims of crime and produce better and more lasting outcomes for those persons in terms of their capacity to deal with the trauma of their crime than just a cash payment.

Again, I am not trivialising the importance of an acknowledgment through cash or compensation of the loss and trauma that people suffer as a result of crime, but we are grappling for better ways. Bluntly, we believe that the previous government struck on a model that was better and we supported it. We are seeking to adjust it, refine it and make it fairer, but we have no desire to move away from the model.

THE CHAIR: I have a question for Ms Kelly. Do you have a figure for the percentage of people who do not bother using or do not need to use solicitors in this regard and who basically do the applications themselves? Do you have a figure for the percentage of victims who use lawyers?

Ms Kelly: I do not have that figure and I am not sure whether we would be able to generate it within a reasonable time. It would require perhaps a manual examination of the files.

THE CHAIR: I appreciate that. I would not expect it for this inquiry, which we are trying to finish fairly quickly. It would be interesting to have it. I note that the government has proposed a modest increase in the cap, but that would be an interesting figure for future reference. Could you provide it to the committee, even though we do not expect to get it until after we complete this inquiry, yours being the last lot of evidence?

Ms Kelly: I will make inquiries as to how we could obtain that figure. That has been the

thrust of the simplification of the forms. We did that on the expectation that we would increase the number of people that were able to complete the application process without assistance; so it will be important for us to try to track that. I will get back to the committee about whether we are able to provide it.

MR HARGREAVES: Chief Minister, a change would be to go to an injury-based approach, a victim approach, rather than an employment classification approach, which is where we have the police and the emergency services people. It seems to me that one of the planks is to remove that approach. It has been put to the committee with respect to the police, however, that they have a unique position in society in the office of constable, which requires them to put themselves in danger whether they are on duty or not. That does not exist for the other people. I am interested in your view on that. One of the things I am struggling with is whether that unique position justifies special treatment under a scheme such as this one or whether that uniqueness and that speciality ought to be reflected more in the initial workers compensation legislation. I do not think that it is. If I could have your views and those of Ms Kelly on that.

Mr Stanhope: I think that you have summarised the direction in which we are seeing the move. These are difficult decisions for government to make. I think we probably at one level all regret the amendments that were made to the legislation, without reflecting. I think we probably do regret some of the amendments that were made. Of course, they were made in the context of minority government and in the context of the then government's desire to deliver a package of reform.

As I have indicated previously, the then opposition, namely, the Labor Party, supported the vast majority of the government's amendments. There were a number that we did not support, but a number of those were supported by the crossbench of the day. The government felt that it was important to maintain those aspects of the bill that the then opposition opposed. We supported, I think, 80 or 90 per cent of the bill as introduced, but we had some issues with some provisions. We did not support the change and I think that the then government, in its heart, did not support the amendments in relation to the employment-based approach that was adopted, but we all understand that there were some political realities. It is difficult now from this distance to remove those changes. It looks very much like—it is, in effect—removing a benefit that has been provided, and that is always a very difficult thing to do, but we believe it is the right and appropriate thing to do.

MR HARGREAVES: It is the removal of a positive discrimination almost?

Mr Stanhope: It is, that is exactly what it is, but in our view one that should never have been granted. I do not know some of the aspects around how workers compensation operates in these situations. I will ask Ms Kelly to expand on that. But I take the point—I think it is a fundamentally important point—that, if there is a particular issue in relation to particular risks, they need to be dealt with in the first instance through operational procedures and other forms of assistance and recognition of those work-based losses that people may suffer.

Ms Kelly: In relation to the issue that you raised at the public hearing several weeks ago, I have reflected further on that. As I said at the time, we have no information that the special nature of the office of constable has been a feature of any of the claims made

under the scheme. Of course, workers compensation is not within the portfolio responsibility of the Attorney-General, but what is within this portfolio and within my responsibility is responsibility for policing services and we would be very concerned if police officers performing duties as a constable outside their regular hours were not covered by the workers compensation scheme, which is a Commonwealth scheme over which we have no control.

I will be making inquiries formally to determine whether that is the case. I would find it extraordinary if it were not because that is such a fundamental part of the policing role of the office of constable. The scheme would be constructed in such a way as to include that role. But I will formally make those inquiries and ensure that that is the case, because it could be a significant gap. But to attempt to plug that by access to the victims services scheme would be inadequate because it would not cover the many other employment-related consequences of an injury that workers compensation should be covering in a comprehensive way.

THE CHAIR: Thank you very much for your attendance and your assistance to the committee.

The committee adjourned at 11.56 am.