

EIGHTH REPORT

of

THE NORTHERN TERRITORY LAW REVIEW COMMITTEE

to

THE ATTORNEY-GENERAL FOR THE NORTHERN TERRITORY

LAW RELATING TO CRIMINAL INJURIES COMPENSATION

DARWIN
AUGUST 1981

MEMBERS OF THE NORTHERN TERRITORY LAW REVIEW COMMITTEE:

The Honourable Mr Justice J.L. Toohy (Chairman),
the Honourable Mr Justice J.H. Muirhead,
Mr B. Martin (Solicitor-General), Mr G. Galvin, S.M.
Messrs T. Coulehan, J. Dorling, D. Mildren,
A.R. Miller, A. Oakey, J. Reeves, T. Riley and M. Ward.

REPORT AND RECOMMENDATIONS OF THE NORTHERN TERRITORY LAW
REVIEW COMMITTEE, RELATING TO CRIMINAL INJURIES COMPENSATION
LEGISLATION IN THE TERRITORY

To: The Honourable P.A.E. Everingham,
Attorney-General for the Northern Territory of Australia

Dear Mr Attorney,

This Committee has conducted an examination of the existing law and that proposed in the Territory, the laws of the States, and of certain other jurisdictions. It has had the benefit of papers prepared by individual members, and one prepared by the Department of Law. We now report and recommend as follows:-

1. There are significant differences (basic and procedural) to be found in this type of legislation throughout Australia. The present Northern Territory legislation was enacted approximately five years ago and the number of claims has been limited, probably because the citizen so injured seldom has the support or advice of a solicitor, union or employer. Generally he or she finds himself or herself basically ignored after giving evidence, and seldom is advised to pursue a claim.
2. This Committee has considered criminal injuries legislation in the States and notes differing approaches to matters many of which are essentially political. It is not therefore proposed to deal with the legislation of other jurisdictions in this report. Particulars are available if required.

3. The Committee has considered recommendations of the Australian Law Reform Commission which break much new ground. While there are strong arguments for a liberal approach to compensating victims of crime, the wide benefits envisaged in some suggestions (for example extending an "offence" to include a "tortious act") - would inevitably increase Government commitments to an extent which encroached upon Commonwealth responsibilities to the disabled or incapacitated. Whether or not such a wide cover is feasible is a question of a political and financial nature, a question for national debate. The need for restitution (in various forms) is becoming increasingly apparent, as is rehabilitation of those convicted of crimes.
4. The Committee recognises that there are financial constraints upon any scheme for compensation. A prime object should be to encourage simplicity and expedition, to enable a victim of crime who has a remedy to bring it to simple and speedy finalisation. We therefore set out our recommendations.

RECOMMENDATIONS

- a) Simplicity and expedition of remedy are of paramount importance.
- b) The establishment of a special tribunal is not supported, mainly because a suitable forum already exists, and a further administrative structure would be an expensive and unnecessary complication.
- c) A Local Court presided over by a single magistrate should have jurisdiction (including powers in respect of contempt of court) to entertain all claims under the legislation. The applicant should quantify the amount claimed in his application.
- d) There should be a general right of appeal from decisions of the court under the Local Courts Act.

- e) There should be a limit on total benefits payable under the legislation inclusive of compensation for injury, loss of wages and expenses. The maximum award should be substantially more than the present limit and if possible it should incorporate a rational and readily ascertainable factor for inflation. The Committee does not suggest any particular limit but is prepared to make a recommendation if thought appropriate. In the case of injury caused by several joint offenders that sum should remain as the total amount payable, the offenders to be jointly and severally liable. Several persons injured by one offender should each be entitled to the full benefit of the Act.
- f) Access to the court must be as simple as possible. The Committee recommends simple rules setting out the form of application specifying points of claim and loss. The respondent will have a right to file a reply raising, if applicable, the behaviour of the victim insofar as it affects any claim.
- g) The initial application should be served on the Crown.
- h) The rules should provide for prompt hearing and for interlocutory steps (particulars, interrogatories, discovery and medical examinations) to be available only with leave. They should provide for the use of affidavit evidence, including medical evidence and reports.
- i) Applications should not be incorporated in the general listings but should comprise a separate list which the court shall deal with promptly and regularly.
- j) There should be power to close the court.
- k) The Local Court cost schedules should apply.
- l) The conviction of an offender should not be the criterion of entitlement to compensation; it should be the commission of a criminal act. The Government should be the prime source of relief with a right of subrogation from the wrongdoer if identified and available. The Crown may join the offender in the application for compensation in order to obtain indemnity from him.

- m) Benefits should extend to dependents of victims (as defined in the South Australian Act); where necessary the assessed compensation to be apportioned as the court thinks fit.
- n) Compensation awarded to infants should be invested with the Public Trustee until majority.
- o) The onus of proof of criminal act, injury and loss should be upon the applicant and it should be the civil onus.
- p) Provision to be made for certificates of conviction as proof of a criminal act according to the tenor of such certificates with further provision that the court may require a transcript of evidence where one exists and may draw such conclusions and facts therefrom as it sees fit.
- q) An applicant who has received benefits under the Act may pursue a claim for damages against the offender but allowance must be made for compensation recovered.
- r) All actions brought under this Act to be brought within twelve months of injury or within twelve months of conviction of offender whichever shall last occur.
- s) "Injury" to include physical or mental injury, pregnancy, mental shock and nervous shock. The word "injury" may also include physical indecency or sexual penetration despite the fact no immediate physical injury is then caused.
- t) The person who has committed a criminal act giving rise to a payment of compensation whether or not convicted should be liable to reimburse the Crown. The amount paid by the Crown under the legislation may be recovered by it as a simple debt due; and the defendant may raise such defences as may be appropriate if he was not served with the proceedings. (See (1)). The liability to the Crown by joint offenders shall be joint and several.

- u) A person who lawfully comes to the aid of another, the victim of an offence, and who thereby suffers injury should be regarded as a victim of the offence for the purpose of the legislation.
- v) The decision whether compensation shall be ordered should remain discretionary, as should the quantum of the assessment. The present clause 4 of the Act, which enables the court to consider the behaviour of the claimant, should be retained. No punitive or exemplary awards should be made but the court in assessing damages shall be entitled to take into account any humiliation or embarrassment suffered by the applicant.
- w) Injuries caused by offenders arising out of the use of motor vehicles should not be compensable under the Act unless the court is satisfied that the applicant will not be able to recover damages or any other compensation pursuant to the laws of the Territory.
- x) The Act should apply only to injuries suffered within the Territory or its territorial waters save where the applicant has been criminally removed from the Territory.

DATED the

20th

day of

August

1981.


Chairman.


Executive Member


Member