



Government of **Western Australia**
Department of **Justice**
Courts and Tribunal **Services**

Review of Criminal Injuries Scheme in Western Australia

Discussion Paper

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Executive Summary

The Western Australian community recognises that crime takes an enormous physical, financial and emotional toll on its victims. Western Australia has laws to ensure that victims are treated with compassion and respect for their dignity. These laws also provide victims with redress for the harm they have suffered, by providing access to the criminal justice system, compensation and access to services to promote their recovery.

The Office of Criminal Injuries Compensation is established pursuant to the *Criminal Injuries Compensation Act 2003* to compensate eligible applicants for injuries and some losses suffered as a consequence of a criminal offence. Compensation can be awarded for bodily harm, mental and nervous shock and pregnancy suffered as a consequence of an offence. Compensation is available for pain and suffering, loss of enjoyment of life, loss of income, the cost of reports, some personal items and treatment expenses. The maximum amount payable is \$75,000 for an offence committed in Western Australia after 1 January 2004 and lesser amounts for offences committed before then.

1 Introduction

The Attorney General, the Hon. John Quigley MLA, has requested the Department of Justice (the Department) to prepare a full consultative business case for a streamlined Criminal Injuries Compensation scheme for Western Australia that in its processes are both effective in timeliness and the cost to Government.

The Department has no preconceived position on what changes should or could happen with the existing Criminal Injuries Compensation scheme in Western Australia and as such, this Discussion Paper has been prepared to give stakeholders an overview of the existing Western Australian scheme and provides information of other schemes operating in Australia.

Throughout the Discussion Paper, questions have been posed to elicit discussion with stakeholders and enable the Department to form a position and make recommendations to the Attorney General whether it is appropriate to make any changes to the current Western Australian scheme.

2 Terms of Reference

In carrying out its review, the Department will consider:

- a) any areas where the Act can be improved;
- b) any changes to jurisdiction, practice and procedures of the Chief Assessor and the office that would better serve the needs of the community;
- c) where the Western Australian scheme sits in relation to other Australian jurisdictions; and
- d) any other related matter.

3 Office of Criminal Injuries Compensation

3.1 Introduction

The *Criminal Injuries Compensation Act 2003* (the Act) establishes the Office of Criminal Injuries Compensation (OCIC) in Western Australia.

3.2 Establishment of the OCIC

The Act established the OCIC as the body to hear and determine applications for criminal injuries compensation made by victims of crime.

The Act prescribes the functions, powers and procedure of the OCIC and requires that in all matters before it, the OCIC:

- determine compensation applications expeditiously and informally having regard to the requirements of justice and this Act; and
- in deciding a compensation application an assessor is not bound by rules or practice as to evidence or procedures but may inform himself or herself in any manner he or she thinks fit.

3.3 The structure of the OCIC

The OCIC currently has 15.7 full-time equivalent positions that manage the applications received for criminal injuries compensation and once an award is made, manage the recovery process.

3.4 The procedure and process of the OCIC

The OCIC is not a court, OCIC hearings are less formal than court hearings and the OCIC is not bound by the rules of evidence.

The OCIC procedure, however, remains a legal process, which is bound by the provisions of the Act.

As noted above, in deciding applications made by victims of crime, the OCIC has a duty to determine compensation applications expeditiously and informally having regard to the requirements of justice and this Act.

Figure 1 below outlines the OCIC process.

The assessment time of applications reported in the 2016-17 annual report was 12.5 months, with a statement that this is significantly contributed to by the volume of work in the OCIC.

3.5 Eligibility for assistance by the OCIC

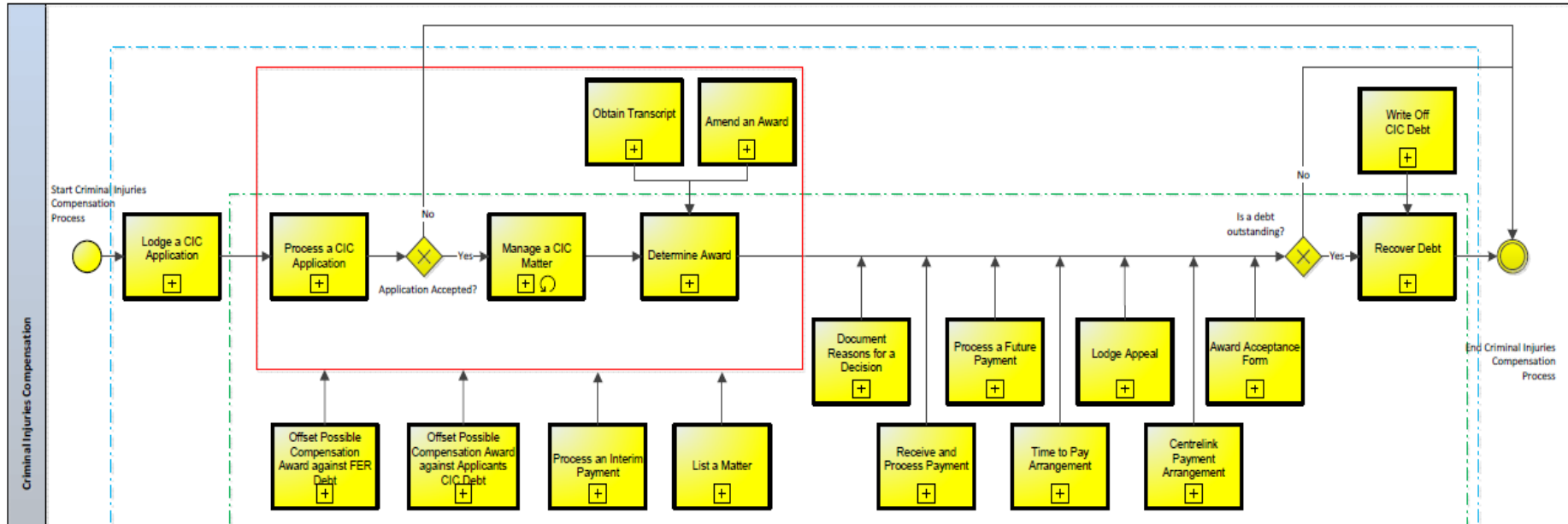
Persons are eligible to make an application to the OCIC under the following circumstances:

- where there is a proven offence;
- an alleged offence where there has been an acquittal;
- an alleged offence where there has been an acquittal due to unsoundness of mind;
- an alleged offence where the accused is not mentally fit to stand trial;
- an alleged offence where the charge not determined; or
- an alleged offence where no person charged.

The Act outlines the circumstances for each of the above as to how a person may apply to the OCIC.

Figure 1

Criminal Injuries Compensation Process (Proposed process from 27 November 2017)



4 Role of Assessors

A person is qualified to be appointed under the Act as the Chief Assessor or as an Assessor if the person is an Australian lawyer and has had at least 8 years legal experience.

The Chief Assessor may allocate compensation applications among Assessors to be dealt with in accordance with the Act.

The OCIC is currently overseen by the Chief Assessor and two additional full-time Assessors.

Annual Reports of the Office of Criminal Injuries Compensation tabled during the periods 2012-13 to 2015-16 stated that a decision was made to reduce the time spent on the reimbursement process was taken by the Chief Assessor in response to the pressure on Assessors and staff to deal with the increasing rate of new applications.

5 Overview of Operational Costs

The number of applications received at the OCIC has increased significantly over the past six financial years. The table below outlines the figures as reported by the Chief Assessor in her publicly-available Annual Reports during the periods of 2011-12 to 2016-17.

The average award has fluctuated over the past six financial years; however the most recent data from the 2016-17 financial year indicates that whilst the average award was \$17,454, the majority of awards given in the period sat within the \$5,001 - \$10,000 range.

Description	11/12	12/13	13/14	14/15	15/16	16/17
New Applications	2031	2180	2391	2700	2769	3189
Applications Accepted	1872	2154	2342	2765	2734	3167
Applications Finalised	1809	1897	1927	2057	2262	2585
Number of Awards	1624	1675	1679	1789	1987	2279
Total of Awards (\$)	32,463,313	32,661,320	34,040,473	33,113,804	39,973,822	39,777,383
Average of Awards (\$)	19,990	19,499	20,274	18,510	20,118	17,454
Applications Refused	126	171	180	189	222	226
Hearings Held	19	19	7	8	10	3
Family & Domestic Violence Applications	no data	no data	no data	945	982	1308

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¹ Data sourced from Office of Criminal Injuries Compensation Annual Reports 2011/12 to 2016/17

Description	11/12	12/13	13/14	14/15	15/16	16/17
Fund 01 Recurrent (expenditure)	1,843,204	1,794,606	1,763,379	1,775,150	1,952,053	1,850,394
Fund 02 Special Acts	903,568	915,213	958,854	964,201	1,028,698	1,137,146
Fund 11 Special Acts	31,432,324	30,759,696	33,299,063	25,603,599	42,909,519	38,209,884
Fund 01 Recurrent (award recovery and other revenue)	1,700,486	1,657,019	1,742,621	1,716,691	1,702,640	1,778,330
Total Operational Costs	32,478,610	31,812,496	34,278,675	26,626,259	44,187,630	39,419,094

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6 Recovery of Awards

The current scheme enables the WA Government to recover from the offender any amounts of compensation awarded under the Act. This is not a responsibility that falls to the Chief Assessor. The Chief Executive Officer (CEO) of the Department of Justice may request the offender to reimburse the compensation if –

- a compensation award is made in respect of any injury or loss suffered as a consequence of an offence; and
- a person is convicted of the offence.

Compensation awards are not automatically recovered from the offender. Under the Act, at any time after a compensation award is made in relation to an offence, the CEO may apply to the Chief Assessor for a compensation reimbursement order against a person who has been convicted of an offence. It should be noted that the dollar amount of reimbursement ordered for recovery may not necessarily be the full amount awarded in compensation.

Awards for compensation to victims of a crime are paid out the Consolidated Revenue Fund. The current process is that notices of award are sent internally to a recovery team, which manages the recovery of the award until all attempts have been exhausted. Following a financial assessment of the amount owed and the costs to initiate legal proceedings, the reimbursement order may then be referred to the State Solicitor's Office for recovery by civil litigation.

The table on the below notes the recovery over the past six financial years (2011/12 to 2016/17). The recovery rate of awards is minimal. Over this period, only 4.86% of awards have been recovered. The Annual Reports for the period 2012/13 to 2015/16 notes that Assessors have continued to reduce hours spent on recovery of awards, due to the increase of applications since that time.

Description	11/12	12/13	13/14	14/15	15/16	16/17
Total of Awards (\$)	32,463,313	32,661,320	34,040,473	33,113,804	39,973,822	39,777,383
Total Recovery (\$)	1,700,486	1,657,019	1,742,621	1,716,691	1,702,640	1,778,330
Total Recovery (%)	5.24	5.07	5.12	5.18	4.26	4.47
Cost to Government (\$)	30,762,827	31,004,301	32,297,852	31,397,113	38,271,182	36,421,670

² Data sourced from Office of Criminal Injuries Compensation Annual Reports 2011/12 to 2016/17

7 Victim Compensation Schemes operating in Australia

Three types of schemes are in operation across Australian jurisdictions:

- court or tribunal based schemes (operating in South Australia and Victoria);
- administrative schemes (operating in New South Wales, Northern Territory, Queensland and Western Australia); and
- the scheme in Tasmania which is based on appointment of legal practitioners and judicial officers as Criminal Injuries Compensation Commissioners.

7.1.1 Australian Capital Territory scheme

The *Victims of Crime (Financial Assistance) Act 2016* provides that victims injured as a result of a violent crime are eligible to apply to the Commissioner for Victims of Crime for an award of financial assistance. Established in mid-2016, under the new Financial Assistance Scheme, the Victims of Crime Commissioner decides on applications and take on the responsibility of administration. The new scheme provides assistance for the relatives of people who die as a result of a homicide and for homicide witnesses who are injured as a result of the crime. Primary victims of crime can still apply for a maximum total of \$50,000 of financial assistance. Victims of crime will be able to access immediate needs payments to ensure they receive support when they need it most. A simplified application process ensures these payments are made as quickly as possible. For instance, this means that someone who is assaulted and requires urgent dental treatment but cannot afford to pay for it could apply for an immediate need payment. The Victims of Crime Commissioner will also be able to pay a provider to have home security installed for a victim of domestic violence who has been threatened with further harm by the perpetrator. Victims of sexual assault will retain eligibility for expenses, loss of wages and lump sum recognition payments based on the type of offence the injury was caused by and any aggravating factors.

7.1.2 New South Wales scheme

The *Victims Rights and Support Act 2013* provides that victims who receive a compensable injury or die as a direct result of an act of violence are eligible for statutory compensation with the amount being determined by assessors primarily in accordance with a schedule of injuries with a set amount or range for each type of injury or offence.

7.1.3 Northern Territory scheme

The *Victims of Crime Assistance Act 2006* provides that victims who receive a compensable injury or die as a direct result of an act of violence are eligible for statutory compensation with the amount being determined by assessors primarily in accordance with a schedule of injuries with a set amount or range for each type of injury or offence.

7.1.4 Queensland scheme

The *Victims of Crime Assistance Act 2009* commenced on 1 December 2009 and established an administrative scheme where applications for financial assistance are decided on by a government assessor from within Victim Assist Queensland. Victim Assist Queensland has two roles: coordinator and source of information for victims; and the agency processing applications for victims' assistance. Victim Assist Queensland delineates these roles and staff do not work across the two areas.

7.1.5 South Australia scheme

The *Victims of Crime Act 2001* provides for an immediate victim of an offence causing injury to claim statutory compensation for the injury and for other persons to claim for grief, financial loss and funeral expenses. Initial application made to Crown Solicitor and, if not settled by agreement, can apply to the District Court for an order. The objects of the South Australian legislation is to provide from public funds, limited monetary compensation to victims most directly affected by criminal offending

7.1.6 Tasmania scheme

The *Victims of Crime Assistance Act 1976* provides that a person can apply for an award of compensation where injured as a result of an offence or in assisting police to be determined by the Criminal Injuries Compensation Commissioner. The scheme provides for victims of violent crimes to claim for financial assistance through the Tasmanian Government if they are unable to recover monies from the offender.

7.1.7 Victoria scheme

The *Victims of Crime Assistance Act 1996* provides that a victim injured as a direct result of an act of violence can apply to the Victims of Crime Assistance Tribunal for assistance, including special financial assistance. A review of victims' compensation in 2010 resulted in amendments to the Act to allow the Chief Magistrate to delegate powers to judicial registrars and create a new assistance award category of safety related expenses. Assistance is not intended to reflect the level of compensation victims may be entitled at common law or otherwise and the scheme is to support other Government services for victims. The Victorian scheme is currently subject to a review by the Victorian Law Reform Commission that is expected to be completed late in 2018.

The Department has prepared a comparative table of the victim compensation schemes operating in Australia. See Appendix A.

Appendix A

Victim Compensation Schemes operating in Australia - Comparative table

	Western Australia	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria
Legislation	<i>Criminal Injuries Compensation Act 2003 (WA)</i>	<i>Victims of Crime (Financial Assistance) Act 2016 (ACT)</i>	<i>Victims Rights and Support Act 2013 (NSW)</i>	<i>Victim of Crime Assistance Act 2006 (NT)</i>	<i>Victims of Crime Assistance Act 2009 (QLD)</i>	<i>Victims of Crime Act 2001 (SA)</i>	<i>Victims of Crime Assistance Act 1976 (TAS)</i>	<i>Victims of Crime Assistance Act 1996 (VIC)</i>
Eligibility	Victims of an offence and close relatives of a person who dies as a result of an offence.	Primary victims, related victims and homicide witnesses.	Primary victims, secondary victims and family victims.	Primary victims, secondary victims, family victims and related victims.	Primary victims, parent secondary victims, witness secondary victims and related victims.	Immediate victims, parent/ spouse/ domestic partner/ child of victims of homicide and dependent of immediate victims who die.	Primary victims, secondary victims, related victims.	Primary victims, secondary victims and related victims.
Proof / evidence of offence	Offences for which a person has been convicted ('proved offences'). But the Act also applies to 'alleged offences' in certain circumstances.	No charge or conviction required— must be satisfied on the balance of probabilities about any matter relevant to application including whether an offence occurred.	No charge or conviction required— documentary evidence must support that act of violence occurred on the balance of probabilities.	No charge or conviction required.	No charge or conviction required— must be satisfied on the balance of probabilities that the person is eligible for the assistance.	Offence must be proved beyond reasonable doubt. But there are certain circumstances where there has been no conviction, in which the Attorney-General has the discretion to make an ex gratia payment.	No charge or conviction required —must be satisfied on the balance of probabilities that the death or injury was the result of criminal conduct.	No charge or conviction required - question of fact decided on the balance of probabilities.
Types of crimes covered	Crimes, misdemeanours and simple offences that are 'proved' (i.e. the offender has been convicted) or, in certain circumstances, that are 'alleged'.	'Act of violence'. Offences resulting in injury or death. Includes offences against the person, sexual offences, robbery and female genital mutilation. Also includes specific 'family violence offences', such as property offences and breach of family violence order.	'Act of violence'. Violent offences resulting in injury or death. Specifically extends to domestic violence.	'Violent Act'. Criminal acts that result in injury to a person.	'Act of violence'. Means crimes against the person and domestic violence, including non-criminal forms of abuse that results in death or injury.	Offences involving the use of violence, threat of violence or creates a reasonable apprehension of imminent harm, sexual offences and offences that cause death or physical injury.	Violent offences, including sexual offences, abduction, kidnapping and stalking.	'Act of violence'. Violent offences resulting in injury or death. Includes assault, sexual offences, stalking, child stealing and kidnapping.

	Western Australia	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria
Legislation	<i>Criminal Injuries Compensation Act 2003 (WA)</i>	<i>Victims of Crime (Financial Assistance) Act 2016 (ACT)</i>	<i>Victims Rights and Support Act 2013 (NSW)</i>	<i>Victim of Crime Assistance Act 2006 (NT)</i>	<i>Victims of Crime Assistance Act 2009 (QLD)</i>	<i>Victims of Crime Act 2001 (SA)</i>	<i>Victims of Crime Assistance Act 1976 (TAS)</i>	<i>Victims of Crime Assistance Act 1996 (VIC)</i>
Is there a requirement for "injury"?	Either 'injury' (including bodily harm, mental or nervous shock and pregnancy) or financial 'loss'.	Yes—'injury' means physical injury, mental illness and mental disorder. But recognises further injuries for family violence and sexual offences, including unplanned pregnancy, violation, reduced sense of self-worth, increased fear/insecurity.	Yes—'injury' means actual bodily harm, grievous bodily harm and psychological or psychiatric harm.	Yes—'injury' means physical illness or injury, recognisable psychological or psychiatric disorder and pregnancy. But there is no requirement of injury for certain sexual offences ('compensable violent acts').	Yes—'injury' means bodily injury, mental illness/ disorder, intellectual impairment, pregnancy and disease. But recognises further injuries for domestic violence and sexual offences including violation, reduced self-worth, increased fear/insecurity, adverse impact.	Yes—for an immediate victim must be physical or mental injury, including pregnancy, mental shock and nervous shock. Grief is required for close family members and financial loss for dependents.	Yes—'injury' means impairment of bodily or mental health and pregnancy.	Yes - 'injury' means actual physical bodily harm, mental illness or disorder and pregnancy. Can be 'significant adverse effect' for primary victims claiming special financial assistance.
Are specific classes of victims recognised under the Act?	No.	Yes—victims of domestic violence, victims of sexual assault, child victims (under 18), elderly victims (over 65), victims with impaired physical, psychological or intellectual capacity, pregnant victims, victims of an offence perpetrated by someone in a position of power, influence or trust over them, victims of a series of offences, victims of an offence involving an offensive weapon and victims who suffer a very serious injury that is likely to be permanent.	Yes—victims of domestic violence, victims of sexual assault and victims of child sexual abuse.	Yes—victims of domestic violence, victims of sexual assault, victims of child abuse and victims of a pattern of abuse.	Yes—victims of domestic violence, victims of sexual assault, child victims (under 16), elderly victims (over 60), victims with impaired capacity, victims of an act of violence perpetrated by someone in a power, influence or trust over them, victims of a series of related acts of violence, victims of an act of violence involving deprivation of liberty and victims who suffer serious injury/very serious injury/very serious disease.	No.	Yes—victims of more than one offence.	Yes—child victims (under 18), elderly victims, victims with an impairment, victims of an act of violence perpetrated by someone in a power, influence or trust over them, victims of a series of related criminal acts, victims of a series of acts involving indecent assault or sexual penetration, victims of an act of violence involving deprivation of liberty, victims who suffer serious injury/very serious physical injury/very serious disease.

	Western Australia	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria
Legislation	<i>Criminal Injuries Compensation Act 2003 (WA)</i>	<i>Victims of Crime (Financial Assistance) Act 2016 (ACT)</i>	<i>Victims Rights and Support Act 2013 (NSW)</i>	<i>Victim of Crime Assistance Act 2006 (NT)</i>	<i>Victims of Crime Assistance Act 2009 (QLD)</i>	<i>Victims of Crime Act 2001 (SA)</i>	<i>Victims of Crime Assistance Act 1976 (TAS)</i>	<i>Victims of Crime Assistance Act 1996 (VIC)</i>
Category of awards for primary victims	Compensation for the injury and any loss suffered.	Financial assistance for immediate needs and economic loss. Can also be awarded a 'recognition payment', which is a lump sum that varies according to the type of offence.	Counselling, financial assistance for immediate needs in order to secure victim's safety/health/well-being, and financial assistance for economic loss. Can also be awarded a 'recognition payment', which is a lump sum that varies according to the type of offence. Expressly excludes property loss/damage.	Financial assistance for financial loss and counselling. Can also be awarded a lump sum for certain 'compensable injuries' and 'compensable violent acts'.	Counselling, medical expenses, incidental travel expenses, report expenses as part of application, loss of earnings, damage to clothing worn at the time, and expenses to assist in recovery in exceptional circumstances. Can also be awarded 'special assistance', which is a lump sum that varies according to the type of offence. Expressly excludes property damage.	'Compensation for the injury arising from the offence.' Includes financial and non-financial loss.	Expenses incurred as a result of the injury, medical, dental, psychological and counselling services required in the future, loss of wages or salary, pain and suffering. Expressly excludes property loss/damage.	Counselling, medical expenses, loss of earnings, loss/damage to clothing worn at the time, safety-related expenses and, in exceptional circumstances, expenses to assist in recovery. Can also be awarded 'special financial assistance', which is a lump sum that varies according to the type of offence. Expressly excludes property loss/damage.
Quantum of awards for primary victim - maximum amount	\$75,000 for offences committed after the commencement of the Act.	Total maximum of \$50,000. Includes a maximum of \$10,000 for immediate needs, \$30,000 for loss of earnings and a 'recognition payment' of up to \$26,250. But for a primary victim of a 'domestic violence offence' only, the total maximum award is \$10,000. These amounts are subject to indexation.	A maximum of \$5,000 for immediate needs, \$5,500 for counselling services, \$30,000 for economic loss, and a 'recognition payment' of up to \$10,000.	\$40,000, including a maximum of \$40,000 for a single 'compensable injury' or a single 'compensable violent act'.	\$75,000 plus \$500 for legal costs. This includes a maximum of \$20,000 for loss of earnings and 'special assistance' of up to \$10,000.	\$100,000, including a maximum of \$100,000 for non-financial loss. Amounts prescribed in the Act are subject to indexation.	\$30,000 for a primary victim of a single offence and \$50,000 for a primary victim of multiple offences.	\$60,000 plus \$10,000 'special financial assistance'. Includes a maximum of \$20,000 for loss of earnings.
Are related criminal acts treated as a single criminal act?	Yes.	Yes, if they are likely to form a single ongoing offence or if assistance would be disproportionate if treated separately. Notice must be given to the applicant. But a series of offences is a 'circumstance of aggravation', which can result in a higher 'recognition payment'.	Yes, unless in the circumstances they ought not to be. But a higher 'recognition payment' is available for a series of related criminal acts in certain circumstances.	Yes. But if the related acts occur in the context of domestic violence, the victim is eligible for a lump sum for 'domestic violence injuries'.	Yes. But if the related acts occur in the context of domestic violence, the victim is eligible for a lump sum for 'domestic violence injuries'.	Yes.	Yes. But a higher maximum award is available for a victim of more than one offence.	Yes, unless in the circumstances they ought not to be. But a higher maximum award of 'special financial assistance' is available for a series of related criminal acts in certain circumstances.

	Western Australia	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria
Legislation	<i>Criminal Injuries Compensation Act 2003 (WA)</i>	<i>Victims of Crime (Financial Assistance) Act 2016 (ACT)</i>	<i>Victims Rights and Support Act 2013 (NSW)</i>	<i>Victim of Crime Assistance Act 2006 (NT)</i>	<i>Victims of Crime Assistance Act 2009 (QLD)</i>	<i>Victims of Crime Act 2001 (SA)</i>	<i>Victims of Crime Assistance Act 1976 (TAS)</i>	<i>Victims of Crime Assistance Act 1996 (VIC)</i>
Time limit	3 years after the date of the offence. But an extension of time may be granted 'if it is just to do so'.	3 years after the act of violence or the day the child victim turns 18. But time limit can be extended in certain circumstances, having regard to factors such as whether the alleged offender was in a position of power, trust or authority.	2 years after the act of violence or the day the child victim turns 18. But time limit is 10 years for victims of domestic violence, child abuse or sexual assault. No time limit for a child victim of a sexual offence. Time limit can also be extended if primary victim subsequently dies as a direct result of the act of violence.	2 years after the violent act or the day the death or injury occurs. But time limit can be extended in certain circumstances, having regard to factors such as whether the alleged offender was in a position of power, trust or authority or where the injury or death occurred as a result of sexual assault, domestic violence or child abuse.	2 years after the violent act or the day the death or injury occurs. But time limit can be extended in certain circumstances, having regard to factors such as whether the alleged offender was in a position of power, trust or authority or where the injury or death occurred as a result of sexual assault, domestic violence or child abuse.	3 years after the offence or, if the application relates to a death, 12 months from the death. May extend the time limit for 'any proper reason'.	3 years after the offence or the day the child victim turns 18. May extend the time limit if 'special circumstances' justify the extension.	2 years after the act of violence. But time limit can be extended in certain circumstances, having regard to factors such as whether the offender in position of power, influence or trust.
Can a failure to report to Police lead to a refusal of an application?	No specific provision. But failure to report to police may constitute a failure to assist police (see below).	Yes—failure to report to police can lead to a refusal of application. But 'special reporting class victims' can report to other professionals, including doctors, counsellors and government agencies instead. Special reporting class victims include child victims, victims of sexual offences and victims of an offender who was in a position of trust, influence or power.	Yes—must consider whether reported to police within reasonable time. May have regard to the nature of the relationship between the victim and perpetrator. Can also consider whether the act of violence was reported to a health or other relevant agency.	Yes—failure to report to police within a reasonable time can lead to a refusal of application, unless the circumstances prevented the report from being made.	Yes—failure to report to police within a reasonable time can lead to a refusal of application, unless the circumstances prevented the report from being made.	Yes—failure to report to police within a reasonable time and 'without good reason' can lead to a refusal of application.	No specific provision. But failure to report to police may constitute a failure to assist police (see below).	Yes—failure to report to police in a reasonable time results in mandatory refusal, unless special circumstances exist.

	Western Australia	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria
Legislation	<i>Criminal Injuries Compensation Act 2003 (WA)</i>	<i>Victims of Crime (Financial Assistance) Act 2016 (ACT)</i>	<i>Victims Rights and Support Act 2013 (NSW)</i>	<i>Victim of Crime Assistance Act 2006 (NT)</i>	<i>Victims of Crime Assistance Act 2009 (QLD)</i>	<i>Victims of Crime Act 2001 (SA)</i>	<i>Victims of Crime Assistance Act 1976 (TAS)</i>	<i>Victims of Crime Assistance Act 1996 (VIC)</i>
Can a failure to assist / cooperate with Police lead to a refusal of an application?	Yes—mandatory refusal if the applicant failed to reasonably assist in the identification, apprehension or prosecution of alleged offender.	Yes—mandatory refusal if applicant has unreasonably failed to give assistance to police.	Yes—in determining whether or not to grant the application/ the amount of the award, Commissioner must have regard to failure to assist police.	Yes—mandatory refusal if applicant failed without reasonable excuse to assist the police in a material way in the investigation or prosecution of the offender.	Yes—mandatory refusal if applicant has not given reasonable assistance to police and that failure prevented the arrest or prosecution of the offender. However, domestic violence is a factor to which the decision maker must have regard in deciding whether the victim had a reasonable excuse not to assist police.	Yes—mandatory refusal if applicant refused or failed to provide information, give evidence or to cooperate in the investigation or prosecution of the offence without reasonable excuse.	Yes—mandatory refusal if the applicant failed to reasonably assist in the identification, apprehension or prosecution of alleged offender.	Yes—failure to assist police results in mandatory refusal, unless special circumstances exist.
Can an applicant's contributory conduct lead to refusal of an application?	Yes—award for mental shock must be refused if the victim was committing a separate offence at the time or if there is a relationship or connection between the victim and the offender and the award is likely to benefit the offender. Can also refuse/ reduce award if the behaviour, condition, attitude or disposition of the victim directly or indirectly contributed to the injury/ death.	Yes—award must be reduced if applicant contributed to the injury, participated in or assisted in the act of violence, encouraged someone else to assist in the act of violence or failed to mitigate extent of the injury.	Yes—must consider whether victim contributed/ encouraged/ assisted the act of violence, any behaviour (including past criminal behaviour) if it directly or indirectly contributed to the applicant's injury/ death or whether victim failed to mitigate injury (i.e. by not seeking medical treatment). But can consider dynamics of sexual assault/ domestic violence in relation to mitigation of injury.	Yes—award must be refused if the applicant made the application in collusion with the offender or the injury/ death occurred during the commission of an indictable offence by the applicant.	Yes—award must be refused if the applicant conspired with the perpetrator or if the main reason for the act of violence was the primary victim's involvement in criminal activity (including previous involvement in criminal activity).	Yes—award must be refused if the claimant was engaged in conduct constituting an indictable offence and that conduct materially contributed to the claimant's risk of injury, unless failure to compensate would be unjust in the circumstances. In determining the award, the court must also have regard to any conduct on the part of the claimant that directly or indirectly contributed to the offence or injury.	Yes—in determining whether to refuse/ reduce an award, must have regard to any behaviour, condition, attitude or disposition of the victim that appears to have directly or indirectly contributed to the injury/ death.	Yes—in determining whether or not to make an award, must consider whether the applicant 'provoked' the act of violence, any condition/ disposition of the applicant that contributed to injury/ death or whether the perpetrator will benefit from the award. Mandatory refusal if the application is made in collusion with the alleged offender.
Can an applicant's character / behaviour lead to refusal of an application where it did not contribute (either directly or indirectly) to the act of violence or injury / death	No.	No.	No.	No.	No.	No.	No.	Yes—in determining whether or not to make an award, must consider the applicant's character, behaviour (including past criminal behaviour) or attitude of the applicant 'at any time'.

	Western Australia	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria
Legislation	<i>Criminal Injuries Compensation Act 2003 (WA)</i>	<i>Victims of Crime (Financial Assistance) Act 2016 (ACT)</i>	<i>Victims Rights and Support Act 2013 (NSW)</i>	<i>Victim of Crime Assistance Act 2006 (NT)</i>	<i>Victims of Crime Assistance Act 2009 (QLD)</i>	<i>Victims of Crime Act 2001 (SA)</i>	<i>Victims of Crime Assistance Act 1976 (TAS)</i>	<i>Victims of Crime Assistance Act 1996 (VIC)</i>
Perpetrator notification	Yes—discretionary.	Yes—discretionary.	Perpetrator only notified if a provisional restitution order is made.	Yes—discretionary.	Perpetrator only notified if the State subsequently intends to recover from him or her.	Yes—mandatory unless the offender's identity or whereabouts is unknown.	Perpetrator only notified if a provisional order made that directs the offender to pay the Crown the compensation awarded.	Yes—discretionary.
Judicial or administrative?	Administrative— assessors appointed by the Governor for a 5 year term.	Administrative— Victims of Crime Commissioner (head of Victim Support ACT).	Administrative— Commissioner for Victims Rights (head of Victims Services, NSW Justice Department).	Administrative— assessors appointed by the Minister.	Administrative— government assessor chosen by the scheme manager.	First administrative, then judicial— claimant must first apply to Crown Solicitor. If no agreement is reached within 3 months, claimant may apply to District Court.	Administrative— independent Criminal Injuries Compensation Commissioners.	Judicial—Magistrates sitting as members of the Victims of Crime Assistance Tribunal.
Hearings	Hearings if the Assessor requires	No hearings	No hearings	No Hearings	No hearings	Hearings only when applicant applies to the District Court	Hearings if applicant elects or Commissioner requires	Hearings if applicant elects or Tribunal requires
Is there a victims' levy?	No	Yes	Yes	Yes	Yes	Yes	Yes	No
Are awards recovered from the offender?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No, Act is silent
Average Amount of Award								
2014-2015	\$18,510	Act commence in 2016	\$4,070	\$20,828	This scheme is significantly different to the WA scheme and payments cover services not included in the WA scheme.	This scheme is significantly different to the WA scheme and payments cover services not included in the WA scheme.	\$13,366	\$7,639
2015-2016	\$20,118	Act commence in 2016	\$4,617	\$28,276			\$14,210	\$7,784
2016-2017	\$17,454	\$3,474	\$4,524	\$10,056			\$14,880	\$7,983
Total Amount Awarded								
2014-2015	\$33,113,804	Act commence in 2016	\$22,343,500	\$2,978,430	This scheme is significantly different to the WA scheme and payments cover services not included in the WA scheme.	This scheme is significantly different to the WA scheme and payments cover services not included in the WA scheme.	\$5,092,660	\$47,600,000
2015-2016	\$39,973,822	Act commence in 2016	\$19,111,000	\$3,341,906			\$3,566,797	\$46,300,000
2016-2017	\$39,777,383	\$212,331	\$22,962,500	\$1,156,522			\$3,705,245	\$53,900,000

8 Discussion Questions

1. Is the current Criminal Injuries Compensation scheme appropriate for victims in Western Australia?
2. Is the current scheme achieving outcomes for victims that:
 - a) are fair, equitable and timely?
 - b) are consistent and predictable?
 - c) minimise trauma for victims and maximise the therapeutic effect for victims?
3. If you have answered no, to any of the questions posed in question 2, please outline how you would suggest changing the current scheme for Western Australia.
4. Where does the responsibility for the Criminal Injuries Compensation scheme belong in the jurisdictional hierarchy of Western Australian courts and/or tribunals?
5. Western Australia has the second highest maximum amount awardable for primary victims. Should consideration be given to amending the Criminal Injuries Compensation Regulations 2003 to include scheduled amounts for injuries?
6. Is the current scheme efficient and sustainable for the State?
7. Schemes operating in other Australian States run under a financial assistance scheme, which for victims of crime is timelier and gives quicker access to funding to assist with their rehabilitation. Given the benefits that a financial assistance scheme could provide to victims of crime, should consideration be given to the scheme for Western Australia being changed to a financial assistance scheme?
8. Could compensation/financial assistance be determined in the pre-sentencing process rather than post sentencing?
9. If there were no changes recommended to the current Western Australian scheme, could applications for compensation be completed in a timelier manner if consideration was given to all Magistrates in the State being appointed as additional Assessors?
10. Is there a need for Assessors to, when requested, provide written reasons for a decision to make an award?

11. In respect of the recovery of awards or recovery of financial assistance, should this scheme be adopted in Western Australia, should
- a) awards or financial assistance be recovered; and if so, should
 - b) recovery of the total amount of an award or financial assistance from the offender be mandatory?
12. The Australian Capital Territory, New South Wales, Northern Territory and South Australia have levies in places, some of which is funding or partially funding victim compensation schemes. Should consideration be given to implementing a victims' levy for Western Australia?
13. Is there anything further that you would like to provide comment on that you believe would improve the Criminal Injuries Compensation scheme for Western Australian victims of crime?