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REVIEW OF THE VICTIMS COMPENSATION FUND CORPORATION

Features of 1993-94

- ❑ *The potential for substantial increases in the number of compensation claims received each year raises concern as to the future viability of the Compensation Fund Corporation unless amendments are made to the Victims Compensation Act.*
- ❑ *Significant weaknesses were noted over the control and collection of restitution payments that are ordered to be paid by offenders. Debtors in this category are now being recognised as \$67.6m, with many more potential debts not yet recognised. Of the debtors recognised, \$63.1m are provided for as doubtful.*
- ❑ *As a result of weaknesses noted in the debtors system (including a 20 month delay before an offender is pursued for recovery) there is potential for improvement in the rate of recovery from Victims Compensation Fund Corporation Debtors.*

The Victims Compensation Fund Corporation (the Corporation) was constituted under the *Victims Compensation Act 1987* for the purpose of compensating victims of crime for injuries resulting from acts of violence. Witnesses of such acts and close relatives of deceased victims are also entitled to compensation.

Victims Compensation Payments

The Victims Compensation Tribunal may award up to \$40,000 for each act of violence, although additional amounts may be awarded to cover resultant expenses or loss of personal effects up to a maximum total award of \$50,000.

The cost of victims compensation for 1993-94 as per the Attorney General's Department's financial statements was \$61.1m. This figure includes Compensation Determinations awarded but not paid. Actual compensation paid during the year totalled \$55.2m in relation to 5,149 claims processed during the year at an average of \$10,720 per claim. Although the number of claims processed has increased by 15% from the previous year (4,483), the total number of claims received has increased by 34% from 5,349 in 1992-93 to 7,169 claims this year. Claims pending for which no compensation determination has been made have more than doubled from 3,096 last year to 6,482 as at 30 June 1994 and these represent a contingent liability of \$69m given an average payout of \$10,720 per claim. These statistics are consistent with the general upward trend in the number of claims received each year.

The Corporation conducted a review utilising information from the Bureau of Crime Statistics for 1993 which indicated that approximately 8% of victims estimated to be eligible to apply for compensation proceeded with a claim. This illustrates the potential for growth in the number of claims and may also be indicative of the need for improved public awareness.

Approximately \$4000 was spent on publicity for the year. This included printing information pamphlets which are distributed to police stations, courts and victim agencies which in turn distribute the pamphlets directly to victims of crime. The Corporation may need to allocate more resources and play a more active role towards creating greater public awareness. Adequate publicity is necessary if the Corporation is to achieve its objective of assisting all eligible victims.

The future viability of the Corporation needs to be reviewed given the continued upward trend of claims received when combined with the significant increase in claims which is likely to occur as a result of better public awareness. The Corporation conducted a review which estimated that in 1993, 47,734 crimes were reported to police for which there is likely to be victims eligible for compensation. At an average compensation pay-out of \$10,720, this represents potential claims of \$511.7m for that year. Assuming the same level of crime and average pay-out figure, claims totalling \$2.5 billion could potentially be paid out in compensation over the next 5 years. The Corporation would require large increases in funding and other resources to enable it to process and pay the claims made each year.

Given the potential for growth in the number of claims received, amendments to the *Victims Compensation Act 1987* need to be urgently considered if the compensation scheme is to remain financially viable. The options for consideration could include:

1. Increasing the threshold at which compensation is payable (currently \$200). This may also free up resources to enable the Corporation to focus on compensation in cases of more serious injury.
 2. Reducing the types of acts of violence subject to compensation under the Act, for example, violent crime only. The Audit Office review noted that one woman was awarded \$50,000 after a stranger made indecent remarks to her on a number of occasions. Police apprehended the offender and although he was subsequently charged with possession of drugs, no charges were laid in relation to the harassment for which compensation was paid.
 3. Restricting the categories of victims who can be compensated, e.g. various types of secondary victims and victims such as police officers and prison officers injured in the course of employment and who are also entitled to workers compensation.
 4. Establishing maximum awards for varying degrees of injury. This would involve excluding the application of common law principles to the Act.
 5. Limiting the ability of a victim to make several claims in respect to separate acts of violence where there is a continuing relationship between the victim and the offender. For example, in one victim's compensation case which was appealed to the District Court, a girl who was repeatedly indecently assaulted by her step-father was awarded \$112,000 on the basis that there were separate acts of violence.
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A special review of the Act, instituted by the Attorney General, was conducted by Mr C. Brahe, Deputy Chief Magistrate and former Chairperson of the Tribunal in March 1993. The review included suggestions for improving the operations of the Corporation and made recommendations for amending existing legislation. An amendment Bill incorporating many of the findings and recommendations from Mr Brahe's review was brought before Parliament earlier this year, however, the Bill has not proceeded to law.

The appeals process by which victims appeal to District Courts when not satisfied with the Tribunal's determination is also of concern because an increasing number of victims are successfully appealing the Tribunal's decisions. Statistics provided by the Corporation for the year indicate that the District Courts are awarding substantially higher compensation awards for cases appealed. During the year compensation awards totalling \$1.7m (an average of \$6,615 per claim) were successfully appealed in the District Court. For the same claims the District Court awarded \$5.3m (an average of \$20,512). As discussed further below legal costs awarded by the District Court are also substantially higher than those awarded by the Corporation. Given these statistics, there appears to be a strong motivation to have matters appealed.

The Corporation is holding approximately \$290,000 in compensation awards dating back to 1991 because the relevant victims have not submitted applications for payment. Reminder letters have only recently been sent out to these victims (June 1994) and it appears that the Corporation is now having difficulty contacting certain victims.

Costs of Legal Representation

Legal costs applicable to claims are awarded by the Tribunal subject to a scale of costs prescribed under the Regulations of the Act. Legal costs are often paid in respect of claims which have been dismissed by the Tribunal. Total legal costs paid for the year was \$4.9m. The most common scale of cost paid is \$605 per application. There have been discussions at the Corporation in regard to a number of legal practices focusing on victims compensation matters and the validity of some of the claims received.

Officers of the Corporation have advised that Complaints have been received from victims complaining of poor service from solicitors. Victims have also complained that they have been billed by their solicitors where, for the same matter, the same solicitors have been paid by the Corporation. This is prohibited by the Act.

Legal costs awarded by the District Court for appealed cases have always generally been higher than those awarded by the Tribunal. In December 1993, the District Court Rules were amended such that legal costs of \$2,600 are awarded for each victim's compensation claim successfully appealed. This change of Rules may provide further incentive for solicitors to have a matter determined by the District Court.

Restitution

Pursuant to an award of compensation, a restitution hearing may be held against a person who has been convicted of certain offences arising from substantially the same facts as those on which the award of compensation was based. At such hearing, a restitution order may be raised against that person to pay to the State an amount not exceeding that awarded in the related compensation determination. Alternatively the Victims Compensation Tribunal may enter into an arrangement for restitution with the person convicted without raising a restitution order.

These restitution procedures were first implemented in May 1990 after amendments were made to the Victims Compensation Act allowing the recovery of debt to become enforceable.

The Corporation's restitution debtors total \$67.6m with a total provision for doubtful debts of \$63.1m.

Debtors include amounts owing to the Crown under the former *Criminal Injuries Compensation Act 1967* totalling approximately \$31.6m at 30 June 1994. Due to the nature and age of these debts and the insignificant amounts recovered each year, the full amount of these debts is included in the provision for doubtful debts.

Another \$30m in debtors is being pursued by the Crown Solicitor's Office on the Corporation's behalf and these are discussed further below. The Corporation is itself administering recovery on another \$6m worth of debtors.

The amended Act allowed for the recovery of debts where restitution proceedings had commenced within two years of the compensation payment. Accordingly in 1990, restitution proceedings were commenced in relation to compensation determinations dating back to 1988 in order to enable recovery action pursuant to the amended Act. In the meantime, 1990 compensation determinations were not pursued. This created a time lapse of approximately 24 months from the time a compensation payment was made to the time the offender was first pursued for restitution. This time lapse still exists although it has been reduced to 20 months.

The delay in effecting amendments to the Act (to allow for restitution action) and the possible consequences of that delay were commented on in the Auditor-General's Report for 1990.

Considering that expenditure for victims compensation over the last two financial years has amounted to \$118.6m and given that in 51% of claims received an offender is convicted, the time lapse in restitution action effectively means that there is approximately \$60m worth of potential debt which has not yet been pursued. It should be noted that the actual collections likely to result from these potential debts may be substantially lower given the nature and circumstances of the debtors.

The major concern in relation to the time lapse is that it may be reducing the recovery rate of restitution debts. By the time offenders are pursued for restitution, many have changed addresses and cannot be located. This slows down the recovery process which in turn delays the Corporation from attending to the recovery of current compensation determinations on a timely basis. The Corporation is caught up in a cycle which is resulting in lost restitutions and which appears to be creating an unnecessary level of recovery work.

The Corporation might benefit by undertaking restitution proceedings when compensation payments are made (whilst continuing to commence proceedings for all older compensation payments). Extra resources may be needed if this is to be achieved.

Restitution matters totalling \$30.3m were referred to the Crown Solicitor's Office for debt recovery (\$30m receivable as at 30 June 1994). These have been recognised as debtors in the accounts for the first time this year. This created an abnormal item of \$1.3m in the accounts representing the net increase in debtors after \$28.7m in debts were provided for as doubtful.

These matters related to restitution orders raised during 1993 against offenders who had not responded to restitution proceedings in the past either because they could not be located or because they had neglected to reply.

Although the Crown Solicitor's Office has had some limited success in recovering these matters, the majority of these debtors (\$28.7m) are not expected to be recovered. The abovementioned time lapse can be said to have contributed to the difficulty in obtaining a response in relation to these matters.

It should be noted that the above restitution matters only relate to compensation awards made between 1988 and 1991 and accordingly, there are many more restitution matters for which no response has been received and for which no restitution orders have been raised. These are expected to be referred to the Crown Solicitor's Office in the near future.

Another major difficulty affecting restitution is the inadequacies of the computerised debtors system. Major problems have been experienced with the system due to the increased restitution activity. The system appears to be only partially automated and to be incapable of providing information on a timely basis.

The major concern in relation to the inadequacies is that debtors who fall behind in their repayments or do not make any payment after a restitution order is made, currently are not being pursued by the Corporation. This effectively means that at the present time an offender may decide not to make any payment or stop repayments without any follow-up action being taken by the Corporation. The Corporation basically relies on offenders making the right repayments on their own initiative and accordingly the process of recovery is more a reactive rather than a pro-active function. This problem affects debtors for which recovery is currently being administered directly by the Corporation (\$6m) and does not include those cases referred to the Crown Solicitor's Office. Officers of the Corporation have advised that in the future, debts requiring follow-up action may be referred to the Crown Solicitor's Office for enforcement.

To illustrate the extent of the general problems in restitution, a total of \$245m has been awarded in compensation in the period since the inception of the Tribunal in 1988 to 30 June 1994. Statistics show that an offender is convicted in approximately 51% percent of claims referred to the Corporation and accordingly there would have been potential debtors of approximately \$125m in restitutions. Receipts from restitution action only total \$1.6m from the inception of the Tribunal. Given that many of the Corporation's debtors have little or no assets and are repaying debts with small instalments as agreed with the Corporation, actual recovery would be expected to be substantially lower than the amount of the potential debt, however there still appears to be room for improvement in the rate of restitution recovery.

The Corporation is now taking steps towards an improved computerised debtors system as part of a general upgrading of the overall management information system of the Corporation. Efforts are also being made to improve administrative procedures within the Corporation. Officers of the Corporation expect that these reforms will address the abovementioned problems in restitution. The Corporation is also investigating the option of passing all or further recovery work to the Crown Solicitors Office or private collection agencies.

The use of private collection agencies or the Crown Solicitor's Office as mentioned above, appears to be the most viable solution to the difficulties the Corporation is experiencing with restitutions as such agencies would have computer systems already installed and would employ staff specialised in debt recovery. If the Corporation decides to maintain its debt recovery role, such agencies could be utilised in the interim whilst the debtors system is being upgraded thus preventing further delays and resultant losses in collection.

Other government bodies such as the Taxation Office, the Roads and Traffic Authority and the Social Security Office may also be useful in locating offenders. For example, an offender who owes money to the Corporation may also be receiving social welfare benefits. Officers of the Corporation believe that privacy considerations are a major impediment to recovery of restitution monies and restrict the Corporation's ability to locate current addresses of offenders. The possibility of an information network could be investigated.

It should be noted that, due to the nature and circumstances of debtors being pursued by the Corporation, the cost of pursuing these debtors needs to be closely monitored to ensure that the cost of recovery does not exceed the benefits from such recovery.

Conclusion

At the present time, it appears that the Corporation is only compensating a small portion of eligible victims. Greater public awareness is required to ensure that all eligible victims are aware of their rights under the Act.

The upward trend in the number of claims received each year is anticipated to continue given the current legislation and possible improvements in future public awareness. If victims compensation is to remain viable (given current potential compensation payments of approximately \$500m each year), urgent action needs to be taken towards amending the Act. Such amendments need to ensure that future compensation payments do not cause an unreasonable and/or unaffordable drain on public funds.

Suggestions of impropriety and complaints raised against legal practitioners representing victims should be investigated to ensure that all compensation claims are bona-fide and that legal costs paid are justified.

As more and more compensation is paid, the role of restitution becomes increasingly important. At present there are serious problems with restitution which are adversely affecting the debt recovery rate. Officers of the Corporation have advised that steps are presently being taken which they expect will rectify these problems. The major problems in restitution noted were:

1. A time lapse of approximately two years between the time a compensation payment is made and the time restitution procedures are commenced. Such a time lapse increases the probability that the amounts may not be recovered.
2. Inadequate computerised debtors system which is currently unable to provide information on a timely basis.
3. Lack of follow-up of offenders who either fail to pay once a restitution order is passed or who stop or fall behind in their repayments.

The Corporation is likely to require extra resources if these difficulties are to be rectified. Consideration should be finalised on having the Crown Solicitor's Office or private collection agencies take over or assist in the debt recovery role either on an interim or permanent basis.

It is important that recovery cost should be closely monitored in light of actual benefits received.

