



The Victims of Crime Financial Assistance Scheme
Legislation and Policy Branch
Justice and Community Safety Directorate
GPO Box 158
CANBERRA ACT 2601
VOCFAScheme@act.gov.au

Submission to the Review of the ACT Victims of Crime Financial Assistance Scheme

To Whom It May Concern:

Thank you for the opportunity to make a submission to the Review of the ACT Victims of Crime Financial Assistance Scheme (the Review).

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing the non-government and government alcohol, tobacco and other drug sector in the ACT and seeks to promote health through the prevention and reduction of the harms associated with alcohol, tobacco and other drugs.

ATODA works collaboratively to provide expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, information and resources. ATODA is an evidence informed organisation that is committed to the principles of public health, human rights and social justice.

Alcohol and drugs are intricately linked as both a cause and consequence of crime and violence. Many offenders have alcohol and drug problems, are intoxicated at the time of offending, and/or commit crimes for the purpose of obtaining alcohol or other drugs. Conversely, many victims of crime are intoxicated at the time of the offence or use alcohol and other drugs to deal with the negative impact of their victimisation.

This submission deals only with question 19 in the Review's Issues Paper:

Should intoxication of the primary victim impact on the amount of financial assistance payable to the primary victim or to other victims? a) If so, in which circumstances?

ATODA believes that legal discrimination against people who are intoxicated, particularly people with alcohol and drug problems, is inequitable, unfair, and unjust.

The current provision discriminates and is unfair:

If the victim was intoxicated at the time the criminal injury was sustained, the Magistrates Court must calculate the amount of financial assistance to be awarded to the victim by reference to the degree of injury the court considers that the victim would have sustained if he or she had not been intoxicated at that time. The intoxication set-off does not apply in relation to a sexual crime committed against a primary victim (section 37(1) of the VOCFA Act).¹

The provisions essentially state that an individual who is intoxicated at the time of victimisation is not entitled to the same financial assistance as someone else. ATODA believes that this discrimination is unfair and unjust.

There is no particular reason that a person who is intoxicated should necessarily, because of that fact, be entitled to less financial assistance. Any contribution that intoxication makes to victimisation is, however, mediated by behaviour, conduct, or some other physical action. To that extent, ATODA believes that it is more appropriate to attribute any contribution to victimisation to behaviour of the individual who is intoxicated rather than the intoxication *per se*. Additionally, if this provision does not apply to victims of sexual assault, why should it apply to other victims?

The Issues Paper indicates that it is likely that an administrative schemes, such as those existing in Queensland² and New South Wales³, may be a preferred model for a reformed Scheme in the ACT because it is the most likely to overcome the problems identified by the Ombudsman in her review of the current scheme.

The Queensland and New South Wales schemes do not explicitly provide that intoxication of the primary victim should reduce the amount of financial assistance. The schemes instead make the behaviour or conduct of the primary victim a relevant consideration when determining the amount of financial assistance payable (sections 30(1) of the NSW Act and section 85(2) of the Queensland Act).⁴

Section 85(2)a of *Victims of Crime Assistance Act 2009* (Qld) permits the following to justify reducing the amount paid to applicants:

The extent to which the applicant's conduct directly or indirectly contributed to the injury suffered by the applicant as a direct result of the act of violence in relation to which assistance is sought.

Section 30(1)a of *Victims of Crime Assistance Act 2009* (NSW) permits the following reasons for not making an award or for reducing the amount of compensation payable to applicants:

Any behaviour (including past criminal activity), condition, attitude or disposition of the primary or secondary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim.

The Queensland Act focuses exclusively on conduct whereas the NSW Act refers to both conduct and additional characteristics. The impact of this distinction is unclear. However, ATODA believes that the reading of these sections indicate that the NSW provision permits intoxication to be considered a reason to reduce the amount payable to victims whereas the Queensland provision may not.

Recommendation:

ATODA recommends the removal of any explicit reference to intoxication and instead, include a provision along the lines of that provided in s85(2)a the Victims of Crime Assistance Act 2009 (Qld).

Please do not hesitate to contact ATODA on (02) 6255 4070 or info@atoda.org.au if we can provide further information or support.

Yours faithfully,



Carrie Fowlie
Executive Officer
Alcohol Tobacco and Other Drug Association ACT (ATODA)
carrie@atoda.org.au
www.atoda.org.au

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¹ Justice and Community Safety Directorate. (2013). The ACT Victims of Crime Financial Assistance Scheme: An issues paper. Canberra: ACT Government. p.22.

² *Victims of Crime Assistance Act 2009* (Qld)

³ *Victims Support and Rehabilitation Act 1996* (NSW)

⁴ Justice and Community Safety Directorate. (2013). The ACT Victims of Crime Financial Assistance Scheme: An issues paper. Canberra: ACT Government. p.22.