

**NOTICE 936 OF 2001****SOUTH AFRICAN LAW COMMISSION****DISCUSSION PAPER: A COMPENSATION SCHEME FOR VICTIMS OF CRIME**

1. The Commission recently approved its discussion paper dealing with a compensation scheme for victims of crime as part of its investigation into the reform of the law related to sentencing.
2. The discussion paper considers the feasibility of establishing a Victim Compensation Scheme (VCS) in South Africa. It begins by providing an overview of the nature and extent of violent crime in the country. This is considered critical to understanding the foundation for such a compensation scheme and for realistically costing such an endeavour. The discussion paper also briefly documents the economic, physical and psychological impacts of violent crime on its victims and discusses the services currently available to them.
3. Thereafter, debates concerning compensation are raised and an analysis of the motivations for and against the establishment of a VCS are provided. Strong arguments from a victim-centred and moral perspective are made for establishing a VCS. Some potential benefits for the criminal justice system as a whole are also described. Arguments against establishing a VCS are then outlined. These mainly focus on whether providing compensation, in a context of limited resources, should be prioritised over and above other aspects of victim support. The debates conclude that compensation, either partial or full, should be seen as a complementary component of victim support, which is vital to the ensuring the efficacy of the whole criminal justice system. This makes prioritisation difficult.
4. An overview of the South African law of damages and existing schemes that offer compensation (i.e. compensation to victims of road accidents, occupational injuries and diseases, and political traumas) are then provided. The international experience in compensating victims of crime specifically is also considered and the recovery of compensation from the offender is discussed.
5. The eligibility criteria for compensation from the State, based on comparative international data, are then elucidated. Specific parameters applied to foreign compensation

schemes, which may be appropriate for inclusion in a South African scheme, are highlighted, including the mandate of these schemes, the type of crimes eligible for compensation, as well as who may qualify to apply to the scheme for compensation. This analysis of the parameters of different compensation schemes is considered the skeleton upon which any legislative framework for a South African compensation scheme would be based.

6. The findings of an analysis of selected police dockets are then reported. This is done in order to verify information about certain types of violent crimes and their impact on victims. This information is used to make assumptions when costing a VCS later in the discussion paper, and for shaping possible policy scenarios. In addition, the docket analysis focuses on the usefulness of police information in adjudicating possible claims for victim compensation. It reveals, amongst other findings, that current police recording practices provide inadequate data on which to base an assessment of compensability, such as may be required in a VCS. Of particular concern is the fact that a medical report was not completed in over 80% of the cases studied.

7. The envisaged costs associated with establishing a compensation scheme in South Africa are then discussed on the basis of certain assumptions. The variables that would determine the overall cost of the scheme are pointed out, with the estimated financial impact of various policy permutations and applied eligibility parameters considered. The discussion paper also considers the estimated administrative costs that would be incurred in running a compensation scheme. These, and the cost of different models, vary a great deal (i.e. from incredibly costly to potentially viable in the South African context) depending on the policy parameters used.

8. The discussion paper highlights possible sources of funding to finance the establishment of a VCS. Attention is given to the potential of state funding, voluntary sources and the imposition of dedicated taxes. Obstacles that may be encountered in attempting to secure such funding are considered, as are alternative expenditure choices, including the provision of limited and targeted assistance to crime victims *in lieu* of extensive compensatory support.

9. The mechanics of administering a victim compensation scheme are briefly delineated and some of the administrative processes that would need to be in place if such a scheme was established in South Africa examined. In particular, steps are detailed which aim to minimise the risks, while maximising the benefits to victims.

10. The discussion paper concludes by recommending that a fully-fledged compensation scheme is not possible in the short-term and details the pre-conditions (e.g. reliable police record keeping, sufficient funds, etc.) that would need to exist for such a scheme to be established in South Africa. It is, however, recommended that pilot targeted compensatory assistance be established for certain categories of victims of crime, i.e. disabled crime victims, rape survivors and the dependents of murder victims. In addition, it is recommended that a Victims of Crime Fund be set up and that dedicated taxes on firearm ownership and ammunition purchase, as well as alcohol, be considered as mechanisms for funding pilot targeted compensatory schemes.

11. Recommendations are also made concerning issues such as witness fees, restitution from offenders, the role of the victim empowerment programme and the Charter of Victims Rights. Finally, it is recommended that the development of a compensation scheme not be dismissed out of hand simply because a full-scale scheme is not feasible in the short-term. It is recommended that the feasibility of the scheme itself should be periodically assessed against a number of suggested criteria and that a VCS in South Africa should be developed incrementally.

12. The Commission invites the comments of all parties who feel that they have an interest in the topic or may be affected by the measures discussed in the Discussion Paper. Individuals, organisations and institutions affected by the provisions of the proposed legislation or who are likely to be affected by possible amendments to existing legislation should participate in this debate and are invited to indicate how the present law affects them, what their concerns are, what solutions they are able to propose and whether there are other issues and/or options affecting the law that must be explored. The closing date for comments is 31 July 2001.

Correspondence should be addressed to:

The Secretary  
South African Law Commission  
Private Bag X 668  
  
PRETORIA  
0001

e-mail: [wwwuuren@salawcom.org.za](mailto:wwwuuren@salawcom.org.za)