

# Retrospective changes to ACT criminal injuries scheme defeated

On 24 December 1999, the *Victims of Crime (Financial Assistance) (Amendment) Act 1999* (ACT) came into force. This amending Act had the effect of virtually repealing the existing *Criminal Injuries Compensation Act 1983* (ACT) ('the old Act'), with parts I and II wholly replaced. Following the amendments, the Act was renamed the *Victims of Crime (Financial Assistance) Act 1983* (ACT) ('the new Act').

Section 16(2) of the new Act provided that if no award for compensation had been made before the commencement day, then any subsequent award was not to include compensation for pain and suffering. Only limited provision was made in the new Act for a special payment of compensation for an extremely serious and permanent injury.<sup>1</sup>

Numerous victims of crime had undetermined applications at the time the new Act came into force. Four victims of crime, who had initiated applications before 24 December 1999, pressed their applications to the Registrar for an award of compensation. The Registrar determined that the provisions of the new Act precluded him from awarding compensation for pain and suffering.

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The aggrieved victims lodged an appeal on the basis that the amending act was invalid because it was inconsistent with the *Australian Capital Territory (Self-Government) Act 1988* (Cth) ('the Self-Government Act'). Section 23 of this Act provides that the Legislative Assembly has no power to make laws with respect to 'the acquisition of property otherwise than on just terms'.

In the decision of *Frank & Ors v ACT*<sup>2</sup> in the Full Court of the Supreme Court of the Australian Capital Territory, Miles CJ and Gray J held that the interests of the appellants were within the concept of 'property'.

Only limited provision was made in the new Act for a special payment of compensation for an extremely serious and permanent injury.

Given that the rights of the appellants to apply for compensation had been diminished, it was held that there had been an acquisition of property as contemplated in section 23 of the Self-Government Act. As the appellants were deprived of an award for pain and suffering, that acquisition was considered

to be on unjust terms.

Crispin J dissented, finding that the legislature was free to determine the extent to which public funds should be spent and that it was free to change its mind about such matters.

In *Australian Capital Territory v Pinter*,<sup>3</sup> the Full Court of the Federal Court of Australia dismissed the Territory's appeal. The judgments of Black CJ and Spender and Higgins JJ analyse the concepts of property.

The majority respectfully reject Finn and Dowsett's JJ dissenting judgments.

They conclude that the Territory's assumption of responsibility to pay compensation to victims of crime was not legislation that could be revisited and reformed without the amending (and in this case retrospective) legislation attracting the character of a law with respect to property.

The Territory declined to further appeal the matter to the High Court.

Ultimately, the Territory passed legislation, which led to the removal of a victim of crime's capacity to receive an award for non-economic loss, unless they satisfy the new extremely serious and permanent injury test. However, the attempt to retrospectively apply the operation of the new Act to a date coinciding with the day the changes were announced was held to be unlawful. ■

**Endnotes:** 1 s 10 *Victims of Crime (Financial Assistance) Act 1999* (ACT). 2 [2001] ACTSC 42. 3 [2002] FCAFC 186.