rotate. It was to be Victoria's turn next, and then Queensland's. The two Vice-Presidents elected were McInerney Q.C., then President of the Victorian Bar Council, and myself, then President of the Bar Association of Queensland. Queensland deliberately sent a junior, McCracken, to the inaugural meeting so as to have continuity of representation. He is now the only original member of the Executive. For the sake of interstate peace I have refrained from expressing my views on juries in running down cases. But I will say that they have not altered one jot since July 1961.

The President of the Law Council, Bruce Piggott C.B.E., was in Brisbane at the time of the formation of the A.B.A., attending a meeting of the Executive of the Law Council. After the formation of the Association the new President and the two Vice-Presidents attended on the President of the Law Council to inform him of what had been done. At that time I was also one of the Vice-Presidents of the Law Council. Like Agag, we came delicately, somewhat fearing the fate of that unfortunate monarch (And Agag came unto him delicately . . . And Samuel hewed Agag in pieces, before the Lord in Gilgal: 1 Samuel c. 15, 32, 33.). But we explained that the objects of the new body were in no way intended to interfere with the functions of the Law Council. We were received with kindness. (These recollections have been checked for accuracy by my brother W. B. Campbell and by McCracken.)'

The first general meeting of the Australian Bar Association was held in Hobart on 24th January, 1963 during the Thirteenth Legal Convention of the Law Council of Australia. We believe that the Australian Bar Association has now become a most useful body and of great advantage to the Australian Bar in many ways. We also believe that it has assisted the establishment and continuance of the Bars of both South Australia and Western Australia.

Mr. Justice G. Hart*
John Helman**

*Of the Supreme Court of Queensland.
**Of the Queensland Bar.

The Criminal Injuries Compensation Act, 1967 (N.S.W.)

In contemporary society we all too frequently have brought to our notice headlines announcing the commission of some violent crime. The report of such crimes usually contains graphic details of the offender's actions. Where the offender is apprehended, the circumstances of his trial will normally be described, together with the ultimate verdict. But at this point in the criminal process, the interest of the various mass media, and with them of the community at large, usually ends. The eventual fate of the unfortunate victim attracts little if any publicity, even though the injuries he has sustained may be serious, resulting in possible permanent physical disability and considerable financial loss.

It does seem that with our modern emphasis upon the treatment and rehabilitation of offenders, we have lost sight of the victim and of the obligations owed to him by both society and the offender. Indeed, to many members of the public it must appear that the interests of the offender are placed before those of his victim. For no matter what the nature of the victim's injury and loss, he is unlikely to receive compensation for them. While in primitive legal systems great importance was attached to redressing harm caused by criminal acts, in our supposedly sophisticated legal system scant attention is devoted to this aim. The courts seldom exercise their limited powers to order offenders to pay compensation to their victims. Nor are the civil remedies of victims against their attackers likely to result in the recovery of compensation, most such offenders being men of straw. In the case of offenders who remain undetected, victims have no opportunity to obtain redress through either the civil or criminal law.

But now, after being habitually ignored for centuries, it would appear that the role of the victim as the Cinderella of the criminal law is to be ended. For both in Australia and overseas, governments are at last recognising the need to provide schemes to compensate victims of violent crime. New Zealand instituted such a scheme in January 1964, the United Kingdom in June, of the same year, and more recently various American States, including California, have followed New Zealand's lead(1). Now New South Wales has become the first Australian State to introduce a crime compensation scheme.

In this article it is proposed to examine the broad outlines of the New South Wales scheme, together with certain problems associated with its implementation.

The Scheme's Statutory Basis

The statutory basis for the New South Wales scheme is to be found in the provision of the *Crimes Act,* 1900, and the *Criminal Injuries Compensation Act* 1967. Sections 437 and 554 of the former Act have, since 1900, granted power to the courts to order that a sum be paid out of the property of a convicted offender as compensation to any "aggrieved person" sustaining loss or injury by reason of the commission of a felony, misdemeanour, or other offence. In the case of courts of superior jurisdiction this sum must not exceed $2,000, and in the case of courts of summary jurisdiction $300.

(1) The nature of these overseas schemes is discussed in an article by the present author, *"Compensating Australian Victims of Violent Crime"*, (1967) 41 A.L.J. 3-11.

This power of the courts to award compensation seems to have been rarely exercised in the past, probably because the victim has had no guarantee that the offender would pay the sum due(2). However, as from 1st January, 1968, the *Criminal Injuries Compensation Act* gives the victim a qualified guarantee that the State will pay any sum awarded as compensation for injuries under these *Crimes Act* provisions(3).

In substance, the *Criminal Injuries Compensation Act* provides that where a court makes any direction for payment of compensation by a convicted offender, or, if the proceedings result in an acquittal or dismissal of an information against an accused person, where the trial court grants a certificate stating the sum which would have been awarded as compensation had conviction resulted, the victim may make application to the Under-Secretary for payment to him from the Consolidated Revenue Fund of the sum awarded. Upon receipt of such an application, the Under-Secretary must furnish a report to the Treasurer stating (a) the amount applied for, and (b) any amounts which, in his opinion, the applicant "has received or is entitled to receive, or would, if he had exhausted all relevant rights of action and other legal remedies available to him, be entitled to receive, independently of this Act, by reason of the injury to which the application relates"(4). The Treasurer may then, if he considers the circumstances justify it, pay to the applicant an amount equal to the difference between those mentioned in parts (a) and (b) of the Under-Secretary's report.

The effect of this somewhat involved process seems to be that the principal decision as to eligibility for, and amount of, compensation will, with one exception, rest under the New South Wales scheme upon the criminal courts, subject to the Treasurer's overriding discretion to make or withhold payment of any compensation awarded. The exception concerns victims who are injured by offenders who escape apprehension by law enforcement authorities. If the New South Wales scheme were to depend entirely upon the provisions of the *Criminal Injuries Compensation Act,* and the *Crimes Act,* the only victims who might, by grace, receive compensation would be those injured in a crime in which the offender was apprehended, and brought before a criminal court. When, as is quite often the case, the offender remains undetected, the unfortunate victim would be no better off than he was without a compensation scheme.

To avoid what would otherwise be a very serious weakness in the New South Wales scheme, the Attorney-General, Mr. K. M. McCaw, has announced that *ex gratia* payments of compensation will also be made to victims of unsolved crimes. However, Mr. McCaw has stated "that it would be unfair when no person is charged with a crime before the criminal court to throw upon the court the onus of determining what compensation should be paid to an injured person . . . It is thought that the experience of both the Under-Secretary of the Department and the Treasurer in relation to crimes and compensation to victims where convictions have occurred or acquittals have taken place, taken together with police reports of investigations will serve as standards and guides on which *ex gratia* payments could be assessed when a crime is unsolved"(5).

The Basis of Compensation

Compensation under the New South Wales scheme can be awarded only for certain types of injury caused to victims as a result of offences dealt with under the *Crimes Act.* Injury is defined by the *Criminal Injuries Compensation Act* as "bodily harm and includes pregnancy, mental shock and nervous shock"(6). The Act requires a court when making any award under sections 437 or 554 of the *Crimes Act,* to specify the sum, if any, to be paid by way of compensation for loss, and such sum may only be recovered from the offender in person(7).

Criminological research conducted overseas has shown that many crimes of violence involve situations in which the victim's own behaviour contributed to the injuries inflicted upon him. Apparently taking account of this research, and the experience gained from the operation of the New Zealand and United Kingdom compensation schemes, the *Criminal Injuries Compensation Act* obliges courts, when making a compensation award, to have regard to any behaviour of the victim which directly or indirectly contributed to his injury, including whether the victim was a relative of the offender, or was living with the offender at the time of the offence and to any other relevant circumstances. These other circumstances will presumably include such matters as the availability to the victim of social service, worker's compensation or other benefits, matters which will also be considered by the Treasurer in deciding whether or not to make a payment from Consolidated Revenue to satisfy an award made by a court.

Implementation Problems

The New South Wales Attorney-General has referred to his State's crime compensation scheme as "experimental and embarking upon a new field so far as Australia is concerned"(8). He might have added that

(2) Speaking during the second reading debate in the New South Wales Legislative Assembly on the *Criminal Injuries Compensation Bill,* Mr. W. F. Sheahan Q.C., stated that "in all my long association with the criminal law I remember only one judge making a direction under that section (s. 437)". Parl. Deb. (N.S.W.) (1967), No. 53, p. 3214.

(3) Compensation will not be paid by the State for injuries inflicted prior to 1st January, 1968.

(4) *Criminal Injuries Compensation Act,* s. 5 (1) (b).

(5) Parl. Deb. (N.S.W.) (1967) No. 53, p. 3912. It should be noted that statements made in the present author's article in (1967) 41 A.L.J. 3-11, to the effect that victims of unsolved crimes would not receive compensation under the New South Wales scheme are no longer correct. The article was in fact prepared before the Attorney-General clarified this issue in the speech noted above.

(6) S. 2.

(7) S. 8.

(8) Parl. Deb. (N.S.W.) (1967), No. 53, p. 3917.

this scheme is unique not only in Australia but in the world as a whole.

The New South Wales scheme differs in a number of important respects from the two best known crime compensation schemes, those of New Zealand and the United Kingdom(9). New Zealand, while having a statutory scheme, provides compensation *as a matter of right* to the victims of certain specified crimes(10). Compensation is assessed on principles similar to those already operating under New Zealand workers compensation legislation. The scheme is administered by a special board.

The United Kingdom scheme is non-statutory in nature. Compensation is provided *ex gratia* to victims of crime, and is assessed on the basis of common law damages. A special tribunal administers the scheme.

Because it is unique, it seems certain that problems will arise in implementing the New South Wales scheme. In particular, the criminal courts are likely to be confronted by a number of difficulties when seeking to fulfil their function as the principal compensation assessors. Both New Zealand and the United Kingdom, when establishing their crime compensation schemes, specifically rejected suggestions that the criminal courts should act in the role allocated to them in New South Wales. It was felt that there was a danger that the administration of justice would be impeded if what amounted to responsibilities of a civil nature were placed on the criminal courts. For instance, it was pointed out that in reaching their decision whether or not to award compensation, the courts would in many cases be largely dependent upon medical evidence as to the type and extent of victims' injuries. However, such medical evidence might not be available for some considerable time after the commission of an offence. This could lead to the postponement of a trial until the evidence was available—a delay which would clearly prejudice the rights of the accused. The accused might also be prejudiced by evidence, not strictly relevant to the issue of determining his guilt or innocence, led by the prosecution at his trial concerning the injuries of any victim. A jury in particular might not only be confused by evidence of this type, but also permit sympathy for the victim to cloud their judgment on other matters.

It is also conceivable that the prosecution could be placed in the invidious position of both presenting the Crown's case against the offender in relation to the offence with which he is charged, and against the victim in relation to certain injuries which the State disputed were attributable to that offence. This might lead to hostile questioning of the victim by the prosecution, questioning which could result in the impression being given to a jury that the State was unsympathetic to victims of crime and concerned to minimise the guilt of offenders—an impression which might, in turn, wrongly influence the jury in reaching a verdict.

There are a number of further arguments which might be advanced against combining criminal and civil proceedings in this way. One of these is that the length of criminal trials is likely to be increased with a resulting rise in the cost of administering criminal justice. Another, that the accused may feel obliged to give evidence in person about the nature of the victim's injuries, when he would normally have been able to exercise his right not to go into the witness box. There is also the problem of what standard of proof the court should apply in satisfying itself as to the type and extent of the victim's injuries.

Apparently undeterred by these various dangers and difficulties, the New South Wales Attorney-General has confidently stated in Parliament "that there is no more ideal tribunal to make these determinations (as to compensation) than the trial judge who deals with the actual crime out of which the application for compensation arises"(11). It is to be hoped that the Attorney-General's view will be proved correct.

Apart from solving these problems, the criminal courts will also be obliged to delineate the scope of the compensation scheme in New South Wales. It appears clear from the two relevant statutes that compensation payments are not intended to be limited to victims who suffer actual bodily harm at the hands of offenders. In addition to the wide definition of *injury* contained in the *Criminal Injuries Compensation Act*, the *Crimes Act* itself speaks not of "victims" but of "aggrieved persons", a phrase which would appear to include not only dependants of the actual victim but also, in certain circumstances, non-dependants. Thus a person suffering mental or nervous shock upon being told by the police that a close relative had been injured in a violent crime might be awarded compensation by a court, as might a member of the public who suffered the same type of shock after witnessing the commission of a violent crime. Members of the public who suffer injuries going to the assistance of the police will also be eligible for compensation under the scheme.

Another problem to be overcome by the courts will be that of deciding upon an appropriate scale of compensation payments. The maximum amounts of compensation which may be awarded under the scheme are so low—$2,000 by courts of superior jurisdiction and $300 by courts of summary jurisdiction—that they appear to preclude any assessment based on common law damages. Nor is it likely that awards could be related to those made under workers' compensation legislation. It would seem that the criminal courts will be left to devise some separate scale of awards based on the gravity of the injuries inflicted on victims of crimes of violence. Victims suffering very serious injuries would probably receive a maximum award of compensation, while those who were only slightly injured would receive no more than token compensation. The *Criminal Injuries Compensation Act* provides that no application can be made by a victim to the Under-Secretary for any payment from the Consolidated Revenue unless the sum awarded by the court by way of compensation for injury exceeds $100(12).

(9) A detailed and critical comparison of the New South Wales, New Zealand and United Kingdom schemes has been made by the author in the article referred to earlier in (1967) 41 A.L.J. 3-11.

(10) *Criminal Injuries Compensation Act (N.Z.)*, 1963.

(11) Parl. Deb. (N.S.W.) (1967), No. 53, p. 3910.

(12) S. 3.

Future Developments

No doubt the problems that have been mentioned, together with others as yet unforeseen, will gradually be resolved as experience is gained in administering the New South Wales crime compensation scheme. Meanwhile, the government of other States, and the Commonwealth, will be interested observers of this pioneering venture.

From a recent survey, conducted by the writer, of governmental attitudes in Australia towards crime compensation schemes, it appears that all governments have been studying the latest overseas developments in this field. Proposals to compensate victims of violent crime have also been discussed by the Standing Committee of Attorneys-General but each government, with the exception of New South Wales, has yet to discover ways and means of implementing such proposals. It should be mentioned, however, that there are existing statutory provisions in a number of States which already go part of the way towards providing compensation to victims of crime. For example, in Western Australia the *Police Assistance Compensation Act*, which has been operating since June 1965, provides compensation to a person, or his dependants, who, in certain specified circumstances, sustains injury in assisting a police officer to make an arrest or to preserve the peace. The scale of compensation is the same as that provided under the Western Australia *Workers Compensation Act* to a worker suffering injury in the course of his employment. In South Australia, too, compensation may be awarded to certain victims of crime. The South Australian *Criminal Law Consolidation Act* enables a court, among other things, to order the payment of such sum of money as is considered reasonable to compensate any person who has been active in or towards the apprehension of any person charged with felony. If any man is killed endeavouring to apprehend any person charged with any felony or misdemeanour, compensation may be ordered to be paid to the man's dependants.

Mainly economic and political factors seems to be preventing the other States from following New South Wales' lead in instituting a more comprehensive compensation scheme. The nature of these factors was succinctly stated in a recent letter written by the Premier and Attorney-General of South Australia, the Hon. D. A. Dunstan, answering the writer's enquiries concerning his State's attitude towards such schemes. Mr. Dunstan said:

"The problem in this State has been twofold. Firstly, the stringent position of this State's finance at the moment in the Social Service sphere, and secondly, were this State to implement a scheme to compensate such victims, the amount paid by the State would preclude the victim from claiming Social Service benefits upon the Commonwealth Government. Until we can get an agreement with the Commonwealth concerning Social Service benefits, I do not think we can make much progress."

Let us all hope that agreement can soon be reached between the Commonwealth and the States on this subject so that further progress can be made in this important area of social reform.

Duncan Chappell, B.A., LL.B. (Tas.), Ph.D. (Cantab.), Lecturer in Law, University of Sydney.

Notes and Comments

Australian Bar Association

P. D. Connolly Q.C., President of the Bar Association of Queensland since August 1967 took office as President of the Australian Bar Association in 1967 following the elevation of Mr. Justice W. B. Campbell to the Bench of the Supreme Court of Queensland.

At the fifth Annual General Meeting of the Australian Bar Association held at Wentworth Chambers, 180 Phillip Street, Sydney on 18th May, 1968 the following office bearers of the Association were elected:—

President: B. B. Riley Q.C. (N.S.W.).

Vice-Presidents: X. Connor Q.C. (Victoria);
P. D. Connolly Q.C. (Queensland).

Hon. Secretary: T. Simos (N.S.W.).

Hon. Treasurer: J. P. Slattery (N.S.W.).

The secretariat of the Association has now moved to Sydney.

1969 Law Council Convention

Planning for the 1969 Law Council Convention to be held in Brisbane 16th-22nd July, 1969, is already well under way. An Organising Committee under the Chairmanship of Mr. J. R. Nosworthy and comprising J. L. Kelly Q.C., (Deputy Chairman) and V. M. Mylne Q.C. and A. G. Demack, from the Bar Association and Messrs. A. B. Carter, H. E. Paterson and J. Byrne from the Law Society is hard at work.

J. L. Kelly Q.C., is also the Convener of the sub-committee dealing with papers and seminars. This sub-committee would welcome suggestions on all aspects of this subject and in particular as to topics for discussion. The sub-committee's address is Inns of Court, 107 North Quay, Brisbane.

New South Wales Bar Association

The following are the office bearers and members of the Council of the New South Wales Bar Association for the year 1968:—

President: B. B. Riley Q.C.

Vice-Presidents: P. M. Woodward Q.C.;
G. J. Samuels Q.C.

Hon. Secretary: J. Badgery-Parker.

Hon. Treasurer: J. P. Slattery.