



Support and Compensation – Lessons from Victims of Crime

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Abstract

Victim's compensation and support schemes play an important role in rehabilitating victims of violent crimes. While these schemes often receive limited air time, they are increasingly relevant to the broadening health and wellness focus of injury support schemes.

Our paper highlights:

- The different types of violent crime.
- The different needs of victims for different types of violent crime.
- The range of support available to victims of violent crime.
- The role of victim's compensation and support schemes in assisting victims of violent crime.
- The support and compensation these schemes offer.
- The challenges faced by these schemes and parallels with conventional injury support schemes.

We conclude by sharing some of our personal thoughts and learnings from our involvement and research into the area of victim support and compensation schemes.

Keywords: victim compensation, victim support, violent crime

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1. Introduction

Victim support and victim compensation schemes play an important role in supporting victims of violent crime, although in some cases these schemes may only be a small part of the support network for victims. The aim of this paper is to discuss some of the key issues faced by these schemes in providing support to victims of violent crime and to increase the awareness of these schemes.

There are a variety of different types of victim support and victim compensation schemes around Australia. In the rest of this paper we refer to them as “victim schemes”. In addition we use the word “victim” to refer to victims of violent crime.

The authors of this paper recently undertook a review of the NSW Victims Compensation Fund¹ (“NSW scheme review”). The purpose of the review was “to provide an independent assessment of the Victims Compensation Scheme with a view to delivering faster and more effective financial support to victims of violent crime.” We have used some of the key learnings from this work to help inform our paper.

Section 2 provides some background around the types of violent crimes and the needs of victims of these crimes. In Section 3 we consider the main support spheres available for victims to assist in their healing process. Section 4 provides a brief summary of the main victim schemes in Australia. Section 5 describes some of the main barriers for victim schemes in providing broad coverage to victims.

In Section 6 we compare some of the key characteristics of victim schemes and other personal injury schemes around Australia. For example, we compare the utilisation rates of schemes, the socio-demographic profile of claimants, the types of benefit supports available to victims, and the types of injuries sustained.

Section 7 provides a summary of some of our key points of view in relation to victim schemes. In particular we draw out some of the key conclusions from our NSW scheme review and then build upon these ideas to develop some personal thoughts on:

- victim scheme benefit design
- alternative potential funding sources for victim schemes
- how to remove barriers for victims to access victim schemes
- the use of the actuarial analysis in victim schemes.

¹ NSW Department of Attorney General and Justice Review of the Victims Compensation Fund [http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/vwFiles/Report_PWC-VCF.pdf/\\$file/Report_PWC-VCF.pdf](http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_vs.nsf/vwFiles/Report_PWC-VCF.pdf/$file/Report_PWC-VCF.pdf)

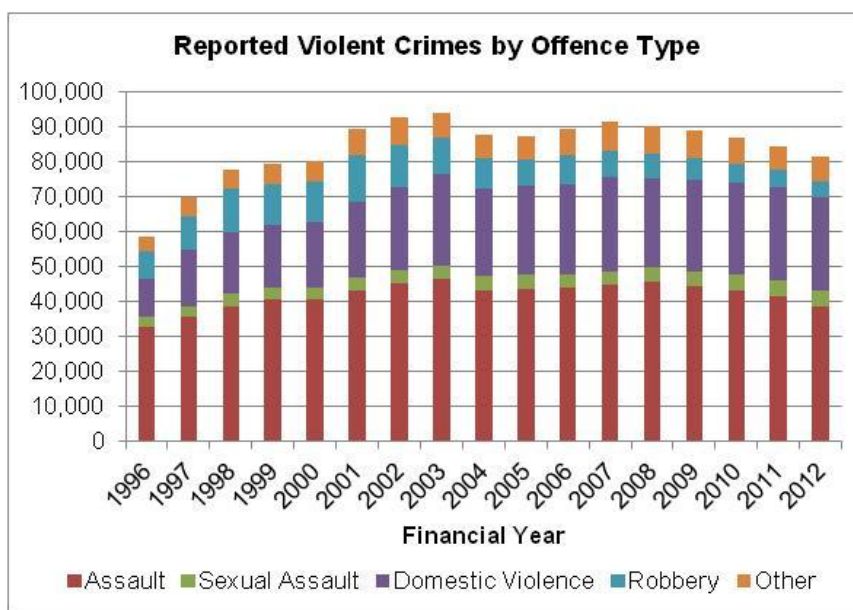
2. Victims of Violent Crime

Many people are impacted by violent crimes every year in Australia. In this paper we refer to the direct victims of the violent crimes as the “primary” victim. However, there are also those who may be psychologically injured as a result of witnessing an act of violence and we refer to these as “secondary” victims. These secondary victims also include parents or guardians of a primary victim (who was under the age of 18 at the time of the violent act) and are psychologically injured as a result of learning about the act of violence. We also refer to “family” victims in the case of homicides where the effects of these violent crimes can be significant, especially for those who were dependent on the deceased victim.

2.1. Types of violent crime

The following graph shows the number of violent crimes reported in NSW in each financial year by offence type.

Figure 1 Reported Violent Crimes by Offence Type in NSW



Source: BOCSAR²

Note that this graph only includes crimes reported to police. Some victims of violent crime may choose not to report the incident to the police because they believe it is a personal matter, believe nothing could be done about the crime, or they are inhibited by social or cultural constraints³. This is further discussed in Section 5.

The majority of violent crimes reported to police include assault, domestic violence, sexual assault and robbery. The “Other” category includes homicides, arson, blackmail and abductions.

² NSW Bureau of Crime Statistics and Research.

<http://www.bocsar.nsw.gov.au/>

³ Australian Institute of Criminology, Facts and Figures 2012, Chapter 3: Crime victimisation

2.1.1. Common assault

The victims of common assault are predominantly young males⁴. The assistance required following the act of violence may involve medical and/or dental services, rehabilitation services to improve the victim's physical capacity and counselling to deal with the shock, pain and suffering following the incident.

2.1.2. Sexual assault

The impact of sexual assault on victims and their families can be physically and emotionally devastating. The reported rate of sexual assault crimes has been growing in Australia over the past two decades, however it is likely that this is mostly due to changes in the proportion of incidents reported rather than increased prevalence⁵. It is believed that reported incidents represent only a small proportion of the total number of sexual assaults⁶. Of the incidents reported to police in NSW, a majority of sexual assault victims were women or girls⁷.

Victims of these crimes may need a range of services and support to help overcome the physical and emotional trauma associated with these events. Counselling can assist the victim and non-offending family members in dealing with the emotional distress following the event, while appropriate medical specialists may be able to assist with the victim's concerns regarding infection, pregnancy or other injuries. This may be exacerbated for victims who were sexually assaulted as a child who may face long term effects and significant mental health impacts. In some cases the victim may also need to be relocated or may require an increase in security measures in the home.

For around 70% of sexual assaults it is estimated that the offender is well known to the victim⁸, most commonly being a family member, close family friend or person in the same workplace or school as the victim. This can create difficulties for the victim to report the sexual assault to the police. The prospect of the criminal justice process can also be confronting and traumatic.

In early 2013 a six member Royal Commission was established to investigate Institutional Responses to Child Sexual Abuse. It will look at how well institutions with a responsibility for children, such as government agencies, sporting groups, religious organisations, schools and orphanages responded to instances and allegations of child sexual abuse. It is anticipated that the Royal Commission will unearth instances of childhood sexual abuse over many decades and we would expect to see an increase in the reports of these type of offences in the coming years.

⁴ Australian Bureau of Statistics 4102.0 - Australian Social Trends, 1997

⁵ Australian Institute of Criminology, Trends and issues in crime and criminal justice, no. 359, Trends in violent crime, June 2008

⁶ <http://www.aic.gov.au/publications/current%20series/cfi/101-120/cfi105.aspx>

⁷

http://www.women.nsw.gov.au/women_in_nsw/current_report/safety_and_access_to_justice/to_pic_2_safety_in_the_community/2.1_sexual_assault

⁸ Australian Bureau of Statistics, Personal Safety Survey 2005

2.1.3. Domestic violence

Domestic violence remains high within the NSW community and is the leading cause of death, disability and illness in women under 45 years⁹. However, it is difficult to assess the true prevalence of domestic violence. It is widely believed that only a portion of domestic violence matters are reported to the police, with hesitation to report the crimes resulting from the complexity and vulnerability of the victim's relationship to the offender, fear of revenge and further violence from the offender, feelings of shame or embarrassment and concerns for the welfare of any children^{10,11}.

Domestic violence is not isolated to physical violence, nor is it often a single isolated incident. Often a pattern of abusive and coercive behaviours have been established by the offender through threats, isolation and intimidation, affecting the victim's emotional, psychological, financial, sexual as well as physical health. This can weaken the victim's financial and emotional ability to leave the violence.

For victims of domestic violence, crisis intervention following an escalation of violence often involves police assistance, medical treatment, safety assessments and the provision of short term accommodation. Longer term support and assistance such as counselling, financial aid, legal advice, court support and accommodation are often required. Indeed, domestic violence is one of the leading drivers of homelessness in Australia as the victims of these crimes often face difficulties in finding appropriate accommodation for themselves and their children, making provision of accommodation a particularly important support function.

2.1.4. Homicide

Homicide has a deep and long lasting impact on the victim's family and friends. The grief experienced can be intense, particularly due to the sudden and violent nature of the death. Financial assistance for funeral costs, practical assistance to deal with the coroner, the police and the media and also counselling are needed.

2.2. At-risk subgroups

There is an over-representation of violent crime in certain subsections of society. We highlight the major issues facing a number of Australian subsections.

- *Aboriginal and Torres Strait Islander peoples*

Aboriginal and Torres Strait Islander peoples are between 2.7 and 5.2 times more likely to become victims of violent crimes¹².

⁹ NSW Auditor General's Report: Responding to domestic and family violence, November 2011

¹⁰ NSW Auditor General's Report: Responding to domestic and family violence, November 2011

¹¹

http://www.women.nsw.gov.au/women_in_nsw/current_report/safety_and_access_to_justice/focus_topic_under-reporting_of_domestic_violence_assaults

¹² BOCSCAR Bureau Brief, December 2001, Aboriginal Victimisation and Offending: The Picture from Police Records

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In dealing with indigenous victims, unique challenges can arise. For Aboriginal women, a key issue blocking access to medical services, reporting to police and follow through in the justice system is the closeness and breadth of their kinship groups. This kinship can impact an individual's anonymity and their decision to disclose offences for fear of social and physical repercussions, alienation and upheaval within the community and the family¹³. This means for family violence and sexual assault victims, relocating to a safer location is often not an option due to the closeness of the kinship ties.

The social context is also challenging, as Aboriginal people often live in communities which are geographically and socially isolated. This is often characterised by high unemployment, high crime rates, poor transport facilities, and poor access to professional services.

When the crimes are reported, many indigenous communities are not adequately resourced to deal with family violence issues, resulting in a lack of support for victims¹⁴.

In addition, the historical treatment of Aboriginal people has resulted in much distrust of authorities and mainstream services. As such, agencies providing support to Aboriginal people need to be sensitive to the culture and the community to gain the trust of the victim in order to provide assistance. Specialised services for Aboriginal people are available to provide legal advice, information and representation for Aboriginal women who are victims of family violence and sexual assault.

- *Culturally and linguistically diverse (CALD) people*

The socioeconomic disadvantages that can burden CALD communities can lead to an increased presence of crime in these communities. Navigating the police and legal procedures while managing the language and cultural barriers can act as an additional difficulty for victims from these communities.

- *People living in rural and remote communities*

Where comparable data exists, they indicate that there is a higher reported incidence of domestic violence in rural and remote communities than in metropolitan settings¹⁵. There are additional complications in these areas around accessibility of treatment and other services and the need for transportation.

- *People with disabilities*

People with an intellectual disability are almost three times more likely than those without a disability to be victims of physical assault, sexual assault and robbery¹⁶.

¹³ WA Office for Women's Policy 2005

¹⁴ Memmott, Paul. & Australia. National Crime Prevention. 2001, *Violence in Indigenous communities : full report*

¹⁵ <http://www.aph.gov.au/library/intguide/sp/ViolenceAgainstWomen.htm>

¹⁶ Australian Institute of Criminology, Trends and Issues, No. 60 Intellectual Disability and Crime Victimisation

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Often they will have difficulty discerning whether a crime has been committed against them and they may also be angry and fearful of their situation but unable to leave the violence due to financial constraints.

For people with an intellectual disability, the support and services they are provided needs to recognise the victim's own individual capabilities and limitations. They may have trouble gaining access to court support services without the appropriate referrals and guidance. They also may require legal advice and intensive support during the court processes.

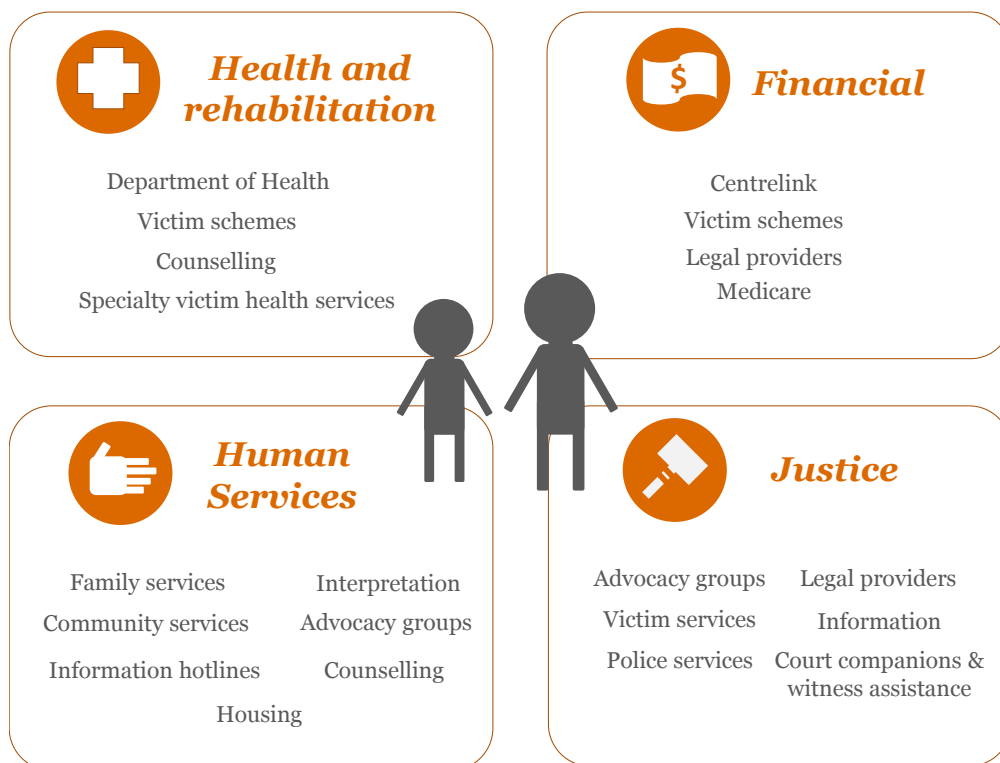
- *Homelessness*

Domestic violence is one of the leading drivers of homelessness in Australia as the victims of these crimes often face difficulties in finding appropriate accommodation for themselves and their children. While programs such as the "Staying Home, Leaving Violence" initiative attempt to overcome these difficulties, it can raise new problems such as ensuring the family is safe once the offender has left the household. It can also be expected that the homeless are particularly at risk of violent crime and have particular difficulties in accessing services and support.

3. Support Spheres

Victims of violent crime are faced with the significant burden of navigating legal, government and community service systems. There are a range of support services available to victims of violent crimes in Australia. They can be broadly categorised as helping victims in four key areas – financial support, health and rehabilitation, justice and human services. The following diagram highlights the range of organisations that help victims with each of these needs.

Figure 2 Support Services Available to Victims



This section highlights the contributions these groups of organisations make to improving victim welfare.

3.1. Financial support

Financial support is available to victims through a variety of channels. Victim schemes are the focus of this paper and the main benefits and services they provide are outlined in Section 4.

However, the circumstances of many victims can often result in eligibility for financial support from Centrelink. Centrelink delivers support under a range of different circumstances such as unemployment and single income families. Medicare also helps alleviate the costs associated with medical treatment and can be accessed by all Australian residents.

In some victim schemes, legal providers assist victims with completing and submitting their application for compensation. Detailed paperwork is often required to access these services and the use of legal providers can remove the frustration that victims

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may feel on documenting their experiences. Legal providers can remove a significant administrative burden from the scheme.

3.2. Health and rehabilitation

Victims of crime have a need to rehabilitate the physical and psychological injuries inflicted upon them by their offenders. There are a number of groups involved in improving this aspect of victim welfare including health professionals and counsellors. These include:

- mainstream medical services provided by hospitals, general practitioners and other medical specialists
- counselling offered by various victim schemes and under Medicare
- specific victim health services such as NSW Health Sexual Assault Services which provides information, counselling, court support, medical treatment and forensic examinations for victims of sexual assault.

Some victim schemes support victims by providing financial support for medical services and case providers that help navigate broader medical and rehabilitation services. This is of particular value to victims for services that are not covered by Medicare (i.e. dental) or where waiting lists are prohibitively long.

In addition to requiring assistance as victims of crime, victims may also be affected by mental health, drug and alcohol problems that may require services to treat and manage these underlying problems.

3.3. Justice

The police are often the first responders to victims of crime and play an important role in ensuring the safety of the victim. They also play an important role in providing information on the support available to the victim. When a victim of crime reports the incident(s) to the police, the police have the responsibility to investigate and decide whether to lay charges against the offender. They also provide information to the victim with regards to court attendance, bail conditions of the offender and sentencing.

Legal providers help victims understand their rights with respect to compensation, appearing at court and lodging complaints or disputes. They can also play important but less formal roles in listening to victims' stories, providing information about available services, and are also strong advocates and contributors to the public discussion on victim rights. There are a variety of different legal providers that provide support to victims of violent crimes. However, the socio-economic circumstances of many victims means that there is a heavy reliance on state based legal aid, community legal centres and the pro-bono services provided by larger law firms.

Court attendance in a criminal matter can be difficult for victims of crime. Court preparation and support services can help reduce the distress that victims may feel attending court. These services are often delivered by victim advocacy groups and state government victims support services.

3.4. Human services

State based community, housing and family service organisations provide many of the services needed by victims of violent crimes. Information and referral to these services often begins with victim support and advocacy groups and victim help lines.

Examples of broad categories of services available include:

- Help lines, counselling and interpretation services
- Housing, refuges and crisis accommodation
- Family services and child protection
- Crisis medical treatment and forensic examinations.

Many of these services are also available for victims with special needs such as Aboriginal people, children, elderly and disabled victims.

3.5. Case Study: NSW Victims Support Scheme

With such a large number of government and non-government agencies providing services and assistance to victims of crime it can be difficult for a victim to be aware of the services available. Therefore the quality of care provided to victims will depend on the knowledge and expertise of their support persons to navigate different services from multiple agencies.

Victims of particular types of violence (such as sexual assault and domestic violence) may have a more formalised support structure in place – for example, the NSW Rape Crisis Centre provide victims with a case worker who provides information, support and referral services to assist the victim in the recovery process.

Victims Services is the agency within the NSW Department of Attorney General and Justice with the responsibility of assisting victims of crime. Through its Victims Access Line, it provides information and support to victims and provides referrals to other government and non-government agencies. Victims Services also administers the Victims Support Scheme which provides counselling and financial assistance to victims of crime.

Under the new Victims Support Scheme, victims will be assigned a support coordinator as a single point of contact to provide victims with information regarding court processes, criminal justice and human services systems, access and referral to services, crisis support and support throughout the victims support application process. The purpose of the support coordinator is to assist the victim in navigating the complex support spheres available.

4. Victim Schemes

In Australia, each state and territory has a victim scheme that provides compensation, financial assistance and support to victims of crime¹⁷. While the range of support available under each scheme varies, they are broadly consistent in their goals to improve victim welfare.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognises the profound impact crime has on victims and calls on member states to provide assistance to victims of crime, to provide financial compensation to victims when restitution is not possible from the offender and to provide fair and accessible criminal legal and judicial processes.

These principles have been adopted by the NSW government and are set out in the *Victims Rights and Support Act 2013* ("the Act"). The Act requires the victim to be treated with courtesy, compassion and respect, to be provided with information regarding services and to be informed throughout each step of the criminal legal and judicial processes. The Act also sets out the details of the Victims Support Scheme such as eligibility criteria to receive support and the composition of that support. This support includes counselling, financial assistance (for treatment, safety devices, economic loss etc.) and recognition payments.

4.1. Benefits

The financial support provided varies considerably between different victim schemes.

Some schemes, such as NSW, VIC, QLD and ACT, focus on providing timely care and financial assistance to cover expenses. Typical expenses covered by the victim schemes include counselling, medical expenses, loss of earnings, incidental travel expenses, and other expenses in exceptional circumstances such as relocation or upgrading security. Counselling is generally considered by stakeholders to be a highly valuable component of victim schemes in helping victims to deal with the emotional distress following the act of violence. There is usually also a lump sum compensation component which is intended to act as a symbolic gesture, acknowledging that the claimant has been the victim of a violent crime.

Other schemes, such as WA, SA, TAS and NT, focus more on lump sum compensation amounts. These are usually determined on a discretionary basis, and generally include amounts for pain and suffering, loss of enjoyment of life, loss of income and treatment expenses. In the NT scheme, a schedule of compensable injuries is used to determine the amount of compensation. However, even for these schemes the benefits provided are not intended to provide full restitution.

¹⁷ Victims Services (NSW): <http://www.lawlink.nsw.gov.au/vs>
Victims of Crime Assistance Tribunal (VIC): <http://www.vocat.vic.gov.au/>
Victims Assist (QLD): <http://www.justice.qld.gov.au/justice-services/victims-of-crime/victim-assist-queensland>
Victims of Crime (WA): <http://www.victimsofcrime.wa.gov.au/>
Victims of Crime (SA): <http://www.voc.sa.gov.au/>
Victims Support Services (TAS): <http://www.justice.tas.gov.au/victims>
Victim Support (ACT): <http://www.victimsupport.act.gov.au/>
Crime Victim Services Unit (NT): <http://www.nt.gov.au/justice/victimcrime.shtml>

Victims seeking full restitution would need to sue the offender under common law. While it is difficult to source data that shows the extent to which this occurs, we understand that only a small volume of victims proceed through this channel. It is likely that the main reasons for this is that it is unlikely that many offenders can afford the damages and in many cases victims are reluctant to confront their offenders through the justice system for the various reasons outlined in Section 5.

We note that the NSW scheme has recently undergone reforms (2013), shifting from a lump sum compensation-based scheme to one focused on providing timely care and financial assistance. Both the Victorian and Queensland schemes also made similar shifts to needs based support in the past decade.

The amount of legal assistance available varies across the various victim schemes. Most schemes cap legal costs paid to claimants at around \$500 to \$1,500. In WA and the UK, claimants' legal fees are not reimbursed.

All victim schemes impose limits to the benefits payable for a claim. These range from around \$30,000 to \$75,000 for the Australian schemes. The UK scheme has a larger limit of £250,000.

4.2. Eligibility and Coverage

Most victim schemes require claimants to have a police report or a report from health professionals to be eligible for benefits. There are also time limits within which a claim must be lodged, generally around 2 to 3 years after the act of violence, often with extensions provided for children, the intellectually disabled, and victims where the offender was in a position of power and influence in relation to the victim.

None of the victim schemes in Australia require the offender (if known) to be convicted of a crime before the victim is able to access benefits. In most states, it only needs to be established that “*on the balance of probabilities*” the claimant was a victim of an act of violence.

For most victim schemes, coverage extends to primary, secondary and family or related victims. Recently, there has been some activity in extending coverage to victims of terrorist attacks abroad. Prior to the 2013 federal election, the newly elected Australian government agreed to introduce a scheme to compensate terrorism victims back dating to the September 11 attacks¹⁸, while similar schemes are already in place abroad in the US and UK¹⁹.

There are also generally exclusions or reductions in benefits payable in circumstances where the victim's conduct contributed to the offence or where the victim can access compensation from other sources, such as workers compensation.

¹⁸ <http://news.smh.com.au/breaking-news-national/abbott-pledges-compo-for-terror-victims-20130827-2smua.html>

¹⁹ <http://www.bbc.co.uk/news/uk-16783678>

4.3. Funding

The level of funding available for victim schemes remains fairly modest when compared to other personal injury schemes such as those covering work related incidents, car related incidents and medical misadventure. Scheme expenditure is approximately \$9 per capita per annum in most states across Australia.

One of the major challenges for victim schemes is finding an appropriate funding source. The majority of the revenues associated with these schemes generally arise from broader community funding sourced from state consolidated revenues. Additional revenues may be sourced from restitution off convicted offenders or more broadly, from all offenders of crime through court fine levies. Each of these funding sources have particular challenges and limitations.

4.3.1. State Based Consolidated Treasury Revenues

There are a limited number of avenues for funding victim schemes. Consequently, the majority of the funding is sourced from consolidated treasury revenues. Unfortunately as there is no real link between the occurrence of violent crime and this funding source, victim scheme funding levels are not tied to offence rates and scheme utilisation.

It can therefore be a challenge for victim schemes to find additional funding when needed, as there are many competing priorities for limited state resources. The result of this can be rationing, where a backlog of claims develops and cannot be paid until more funding arrives.

4.3.2. Restitution from Convicted Offenders

There is broad community expectation that offenders of violent crime should be held accountable for their actions and contribute to addressing the consequences of the crime through restitution processes. Indeed restitution is one of the principles of the United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power²⁰.

However, restitution does not contribute significantly toward the funding of most victim schemes because the capacity of convicted offenders to pay is generally limited as offenders of crime are often from lower socio-economic backgrounds. Debt recovery initiatives may be ineffective because of the limited capacity (and sometimes reluctance) of offenders to pay. In addition, there are often instances where the offender is unable to be located or may not be convicted and hence there is no recourse to restitution.

There are also a number of barriers to pursuing restitution. For example, many victims may not want to pursue restitution from their offenders for fear of retaliation. Many victims of violent crime have personal relationships with the offender and their safety may be compromised should they take the path of restitution.

²⁰ Section 8 of the Annex to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

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Some arguments have been made that the restitution process inhibits the ability of convicted offenders to be rehabilitated successfully if they are required to repay significant outstanding debts. The argument here is that the criminal justice system is the mechanism by which justice should be dealt with.

4.3.3. Court Fine Levies, Other Fines and Proceeds of Crime

Funding from all offenders of crime, and not just violent crimes, may take the form of specific court fine levies, other fines or a share of the proceeds of crime. This funding source holds an intuitive appeal as funding is sourced from offenders of crime.

Some states, such as NSW, have court fine levies directed towards funding of their victim schemes. However, court fine levies make up a relatively small component of NSW scheme funding²¹. There are similar “capacity to pay” issues associated with these types of levies, as described in the previous section.

The South Australian Scheme sources revenue from fines and expiation notices, with 20% of aggregate revenues from this source directed to its victim scheme²². Proceeds of crime is another potentially lucrative source of funding for the victims schemes as large sums of money may be sourced from suspected criminals. However, this source of funding is not widely used within victim schemes at present.

²¹ Victims Compensation Tribunal New South Wales Chairperson's Report 2011/12, p26

²² Victims of Crime (Fund and Levy) Regulations 2003

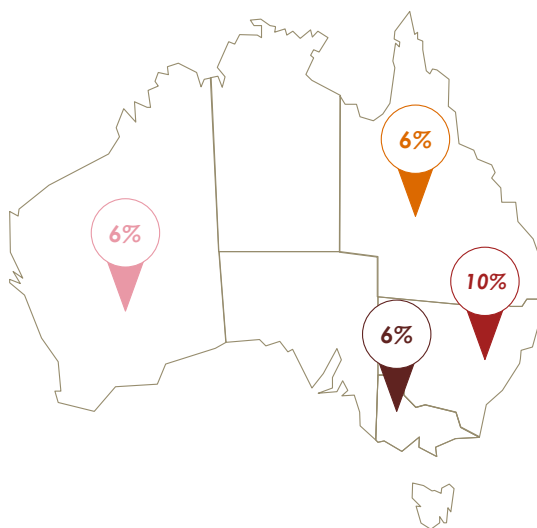
5. Scheme Barriers

There are a number of barriers that limit the level of support that victims receive from victim schemes. These barriers result in low scheme utilisation and weaken the ability of support provided by these schemes to improve victim welfare. Throughout this section we explore some of the barriers and enablers that influence the number of claims lodged and the quality of the support victims receive.

5.1. Barriers to claim lodgement

National crime statistics show that there are over 200,000 victims of violent crimes reported each year across Australia²³. However, only a small proportion of victims pursue compensation and support from a victim scheme. The following diagram shows the number of claims lodged in 2010/11 with victim schemes in each state, as a proportion of reported violent crimes.

Figure 3 Scheme Utilisation



This is not as high as one might expect given the substantial emotional and financial support that victims often need. There are a number of barriers that prevent higher scheme utilisation:

- Not all victims meet the eligibility and reporting criteria
- Dependence on the offender may prevent victims from escaping the violence
- The prospect of talking about the incident with the authorities may be confronting
- Victims may mistrust the justice system
- Victims may have their needs met by other systems or services (e.g. Medicare)
- Victims may not be aware of the victim schemes

²³ <http://www.aic.gov.au/statistics/violent%20crime/victims.html>

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Time limits are a feature of victim schemes that can evoke passionate debate. Each scheme has its own way of applying the time limits, but a two to three year time limit is common, with certain exemptions applied depending on the act of violence. For example, it is common for the time limits for offences that take place during the victim's childhood to commence only once the victim is 21 years old. Many states also grant leave from the time limits in cases where the offender is in a position of power over the victim.

Time limits clearly restrict the potential for claims to be lodged against old acts of violence. However, some acts of violence are more likely to take longer to report than others. Sexual assault claims can take decades to emerge, particularly where the offender holds an ongoing position of power over the victim or where the victim was a child. It is not uncommon for childhood sexual assault victims to report the crimes decades after the offence as the victim comes to terms with the experience. Importantly there appears to be a shift in societal attitudes in recent times, enabling some victims to feel supported enough to raise matters which they have kept secret for many decades.

A number of victim schemes also require the victim to report the offence to the police. The premise is that a publicly funded scheme should at least have the act of violence reported to enable the criminal justice system to question and charge the offender. This can be a confronting prospect for many victims, particularly those who fear retribution from the offender. Victims from indigenous or certain ethnic backgrounds may also be reluctant to report the crime where mistrust of police is common.

The nature of domestic violence leads to a number of unique barriers that can prevent victims from lodging claims. The dependence many victims have with their offenders and concerns of the welfare of any children can lead to hesitation to report the crimes. Fear of retribution is common and this is reinforced in victim schemes where the cost of compensation is recovered from the offender.

Not all victims may need or want to access the compensation and support offered by these schemes. Mainstream services often provide similar services that are available to everyone in the community. Various financial and emotional support services can be accessed through health services, Centrelink, educational facilities and housing, family and children's services.

Victim advocate groups play an important role in enabling victims to overcome these barriers and report their crimes. They are often one of the first groups that victims seek out for help and are well placed to help victims overcome the barriers to seeking help from these schemes. They understand the complexity of the circumstances that victims face and they are experienced in helping the victim navigate the different services that they may need.

5.2. Barriers to improving victim welfare

There are a range of barriers that prevent schemes from providing victims with the support and rehabilitation that produce the best outcomes. These include:

- The adversarial nature of the process can be detrimental to victim welfare

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- Limited funding and lengthy claims processes can delay urgently needed support
- Victims are often unable to navigate the system of support and the service providers
- Scant resources reduce the ease of service provision in regional and remote areas.

For victims, violent crimes are highly sensitive and personal matters. For some crimes, particularly sexual assault, it is common for victims to feel that nobody believes the crime occurred. Revisiting these crimes and providing evidence of their occurrence can be traumatic and confronting. The adversarial nature of the compensation process for many victim schemes can detract from the well-being of the victim and from the rehabilitative objectives of the scheme.

The immediate delivery of emergency support to the victim can be critical to their recovery but this can be hindered by lengthy claims processing times, court and tribunal backlogs and scheme funding limitations. In a survey of recent victims as part of our review of the NSW scheme, the vast majority of victims that required practical assistance such as crime scene clean up, security upgrades, relocation costs, medical and dental expenses and funeral costs needed this assistance within three months of the crime occurring. Slowing down the delivery of these types of services can place a significant financial burden upon the victim and their families.

As Section 3 shows, the spectrum of support and rehabilitation available to victims is broad. However, this support is often fragmented across a range of different service providers and understanding the different support pathways available can be challenging for individuals reaching out for help. The frustration of being passed between service providers, finding information on the eligibility for particular services and completing forms can be overwhelming and detrimental to the welfare of the individual.

Some victim schemes, such as the NSW scheme, have mechanisms in place to help victims overcome this such as case co-ordinators and help-lines. In our review of the NSW scheme, our consultations with victim advocacy groups, government agencies and legal providers highlighted that there was a clear demand from victims for these types of mechanisms. It also highlighted potential barriers to information sharing between the different agencies due to privacy restrictions resulting in victims needing to retell their story and relive their ordeal to access services.

There are also additional difficulties in providing support to victims in regional areas and remote communities. Providing these communities with information about victim schemes is the first challenge, as internet and telephone access is often limited and this restricts the ease by which a victim can reach out for help. There is often limited coverage of counselling services in these areas and preferences for particular types of counsellors (i.e. female counsellors for female victims) can dilute these resources even further.

6. Comparisons with other personal injury schemes

In this section we compare various aspects of victim schemes with other personal injury schemes around Australia.

Accident compensation schemes are formal insurance arrangements providing coverage for personal injuries arising from a variety of different circumstances:

- Workers compensation insurance covers employees against personal injury and certain work-related illnesses arising in relation to the workplace
- Compulsory third party (CTP) car insurance covers vehicle owners for personal injury to other people from road and traffic accidents
- Public liability insurance provides protection against claims made by third parties for which the insured is legally liable.

We now compare and contrast some significant differences between these more formal insurance arrangements and victim schemes.

6.1. Utilisation of compensation and support benefits

Compulsory forms of injury insurance, such as workers compensation and CTP insurance, have a relatively high utilisation of benefits, especially for more seriously injured persons. This high utilisation of benefits has arisen because there is strong public awareness of these insurance products and many processes have been established to promote reporting of injuries in a timely manner.

For example, many workers compensation schemes have incentives for employers to encourage early reporting of workplace accidents. This enables early intervention in the injury management process to maximise the efficient recovery of injured persons. In the case of CTP, traffic accidents are generally required to be reported to the police and the insurance is compulsory, with well-established processes around claiming of benefits.

In contrast, the utilisation of benefits within victim schemes is relatively low in comparison to other personal injury schemes, in some cases because of barriers to accessing benefits as described in Section 5.

This presents a number of challenges for victim schemes. For example, in cases where societal attitudes change or where other external influences puts upwards pressure on utilisation of benefits, this can impact the ability of the victim schemes to fund the additional demand for compensation or services. For example, the recent Royal Commission into Institutional Responses to Child Sexual Abuse may result in higher utilisation of benefits for victim schemes in the shorter to medium term.

6.2. Claimant and offender demographics

The demographic profile of victim scheme claimants is likely to be very different to the demographic profile of accident compensation scheme claimants. For example, workers compensation insurance covers workers and hence generally impacts

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previously healthy people of working age. Victims of violent crime have a very different profile which presents a number of challenges for victim schemes.

Some characteristics of the demographic profile of victim schemes include:

- Sexual assault and domestic violence victims are predominantly female
- There are relatively high proportions of child claims, often with a long latency period
- Lower socio economic groups and those of a minority cultural background are often more at risk to be victims and offenders of violent crimes
- Assault victims are predominantly younger adult males
- Different types of crimes have different levels of reporting of crimes to the police.

Because victims of violent crime may come from a lower socio economic background there may be a higher dependence on the need to provide case co-ordination and support to help navigate complex social security and medical networks. Case co-ordination can be vital in helping victims get back on their feet in a timely manner.

Victim supports need to be tailored to meet the needs of victims. The diverse cultural background of victims means that interpreter and other services specific to various cultural backgrounds can be useful within victim schemes. The socio economic profile of offenders can also limit the compensation and recourse to restitution that may otherwise be possible.

6.3. Benefits and victim outcomes

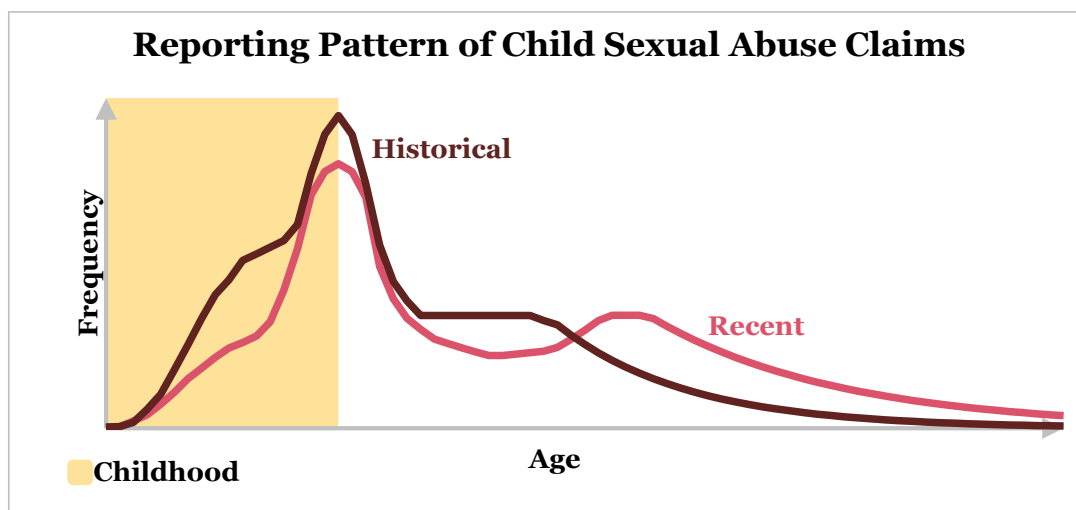
Accident compensation schemes generally have a clear focus on scheme objectives and claimant outcomes. For example, workers compensation schemes may target specific return to work objectives, rehabilitation of injured workers to perform suitable other duties or provide compensation in respect of past and future lost income benefits. These benefit supports are generally clearly targeted at the individual circumstances of the claimant and are clearly set out in legislation and insurance contracts.

The needs for victims of violent crimes are often very different to those of other personal injury schemes, and victim schemes may therefore target a broader range of support and rehabilitative objectives. This is generally done with very limited funding which can lead to significant trade-offs between victims of various crime types and the support that is available. One particular trade-off may be between providing specific financial and non-financial support for the immediate needs of victims compared with the needs of longer term victims of violent crime that may have occurred over many years. In Section 7 we outline our views on victim scheme support and benefit design.

6.4. Reporting periods

The reporting period for some types of violent crimes can be long. The reasons for this are complex and vary by the type of violence experienced by the victim. In Section 5 we explored some of the barriers that victims face when reporting their crimes to the authorities and these barriers contribute to the lengthy reporting periods.

The chart below shows that for child sexual assault offences, the time from incident to claim lodgement can be long.



While many victims report their abuse as they enter adulthood, a large proportion of victims only come to terms with the trauma of their abuse decades later. With increasing awareness and community sensitivity to the rights of victims, we are beginning to see a greater proportion of crimes reported by victims in their 40's and 50's. This trend may continue, considering the potential of the Royal Commission into Institutional Responses to Child Sexual Abuse to unearth more incidents that are decades old.

In some instances parallels can be drawn towards latent claims within accident compensation schemes. This provides some challenges for victim schemes in terms of assessing appropriate longer term funding and projected usage rates. The use of actuarial techniques can be useful in identifying patterns of report and finalisation to assess these funding needs and also to identify emerging issues, and hence to recommend the need to potentially change either the scheme design or flag potential changes to future funding requirements.

6.5. Advocacy and scheme funding

There are a number of prominent victim support groups. These support groups may focus on victims of specific types of violent crimes such as domestic violence or child sexual abuse, while other support groups may focus on specific groups of people such as women's rights, Aboriginal rights, or lower socio-economic groups.

One of the challenges for victim schemes is being able to work together with these victim support groups to provide the best possible support and outcome for the victims. This inevitably involves balancing the requests for support from these support groups with the limited funding that is available.

In some ways this may be compared with the challenges that other insurance schemes face balancing the needs of worker unions, motor groups, industry lobby groups and taxpayers.

6.6. Type of injuries

The types of injuries received by victims are often very different from those injuries arising within accident compensation schemes, in particular the higher prevalence of

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psychological injury in victim schemes. Hence there is generally a greater focus on counselling as a form of support to meet the needs of these victims.

We note the increasing trend towards psychological injuries within those injured in other accident compensation schemes and the importance of psycho-social factors in the recovery of injured persons from other accidents and injuries.

Whilst the types of injuries differ between victim schemes and accident compensation schemes, one similarity is the use of a table of maims or a schedule of injuries to determine the level of compensation applicable.

For victim schemes where lump sums form part of the support provided, there is an ongoing debate regarding whether the lump sum amount should be based on the type of injury or offence. In a scheme where lump sums form the only avenue for support, it is important the lump sums recognise the costs associated with medical treatment, relocation and loss of income. In these cases, payment based on the injuries sustained is likely to best meet the needs of victims.

However, in schemes that provide financial support on a needs basis, lump sums generally represent a payment by the state as a gesture to recognise the trauma the victim has experienced. A lump sum based on the type of offence better aligns with the degree of pain and suffering than one that is based on the nature of injury.

In the NSW victim scheme, the recognition payment is determined by the type of offence and separate financial assistance is provided for expenses such as treatment, relocation and loss of income. Additional complexities with compensation by type of injuries is that it often does not recognise the extended nature of the act of violence and the fact that domestic violence does not always involve physical violence and hence a victim may have no physical injuries for which they could be compensated for.

7. Our points of view and learnings

In this section we express some of our points of view and learnings that have arisen mainly from our NSW scheme review. The NSW scheme review was prompted primarily in response to significant backlogs in victims being able to receive compensation payments. The backlogs arose from increasing victim utilisation of benefits against a backdrop of largely static funding. The scope of the NSW scheme review was holistic in reviewing the viability of the current scheme and proposing new scheme design options with a view to delivering faster and more effective financial support to victims of violent crime.

As part of this review we performed an extensive literature review and consultation process with stakeholders. The consultation process included face to face interviews with key stakeholder organisations, broader stakeholder consultation via an issues paper from which we received 33 submissions and a victim survey from which we received over 1,000 responses. The purpose of these consultations was to better understand victim needs and stakeholder perspectives on current scheme design to feed into any proposed scheme changes.

We now discuss some of these key learnings from the NSW scheme review.

7.1. Benefit Design

The NSW scheme review highlighted that victims needs vary significantly depending on the victims individual circumstances and especially by the type of violent crime.

Two areas of general agreement across victims and stakeholders were the importance of counselling and case co-ordination. The question of whether lump sum compensation or needs based support are better for victims welfare was an area where stakeholders held very different views.

Proponents of delivering support by lump sum compensation argue that while no amount of money can fully compensate a victim for the trauma they have experienced, it provides victims with validation that their crime occurred. It is also an acknowledgement by the state that they were a victim of a crime and the compensation can provide closure for some victims. For victims dependent on the offender, which is common in many domestic violence and sexual assault cases, the lump sums can give victims the financial means to leave the offender and potentially escape the cycle of violence.

Lump sum compensation does have a number of disadvantages. Firstly, the limited level of funding available to the schemes means lump sums may be relatively small. Secondly, lump sum payments may not be received in time to provide for services required by the victim in their immediate circumstance (e.g. medical expenses and safety devices).

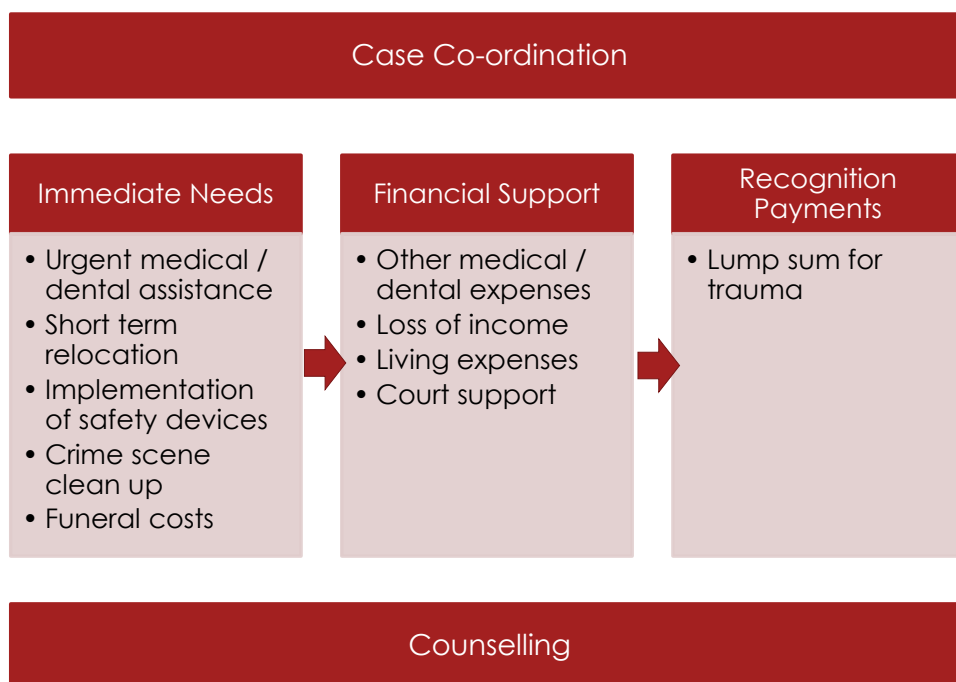
The schemes that provide needs based support are able to tailor their package of support to meet the individual needs of the victim. This means the spending is targeted and the scheme's funding can be prioritised to fund services that are known to directly rehabilitate and improve victim welfare. However, a needs based scheme does not

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provide the therapeutic effect that the acknowledgement of a lump sum provides. For domestic violence claims it also takes away the financial independence that lump sums provide to people who have been heavily dependent on their partner.

One of the major learnings for us was the idea of providing a flexible range of supports for victims depending on their individual circumstances. From this we were able to summarise victims benefit needs from victim schemes under five main types of benefits as shown in Figure 4 below.

Figure 4 Key Benefit Design for Victim Schemes



We now discuss each of these main types of benefits which we consider to be important building blocks for any benefit design:

Case co-ordination

There are many support services currently available to victims including mainstream services and specialist services but there can be difficulties accessing these services either because of significant waiting lists or the inability to navigate the complex variety of support services. A case co-ordination single point of contact for the victim to navigate the services and support available would ensure that the victim's individual needs are met in an easy and effective manner.

Immediate needs

Victims often require urgent medical attention and some victims may also require assistance to escape further violence (e.g. short term accommodation and relocation costs). This will improve the safety of the victim, help to break the cycle of violence and enable a quicker recovery.

Longer term financial support

Victims may require additional assistance particularly in situations where the victim had been dependent on the offender and also for longer term, and potentially expensive, medical treatments.

Recognition payments

A modest lump sum payment which provides acknowledgement to the victim of the trauma and grief experienced plays an important part in the victim's closure process. However, where the time to wait to receive this was significant it was also seen as an issue inhibiting the healing process.

Counselling

Counselling plays a critical role in helping the victim process their psychological trauma and to move forward with their lives. The importance of counselling across all primary, secondary and family victims was seen as a highly valued service.

7.2. Removing Barriers

One of the key lessons from accident compensation schemes is that early intervention can lead to better outcomes for claimants. In the same way, we believe that breaking down the barriers to enable early intervention in assistance provided to victims of violent crime will have similar benefits.

The most critical barrier is one of awareness and education. One potential way to raise awareness of victim schemes could be to place the phone number of its assistance lines and/or other advocacy groups at the end of newspaper articles relating to victims of violent crime, similar to the media suicide reporting guidelines which requires phone numbers of support services (such as Lifeline and Kids Helpline) to be provided at the end of suicide related articles.

Eligibility requirements also restrict the number of victims who are able to access victim schemes. There is however a trade-off between loosening eligibility requirements and increasing the cost to the scheme. This risk could be managed by having different eligibility requirements for the various components of the scheme. Less stringent eligibility requirements could apply for immediate needs due to the importance of providing timely support at this early stage, while more stringent requirements would be appropriate for recognition payments.

The NSW scheme review highlighted that backlogs in victims accessing compensation was primarily due to increased reports of sexual assault and domestic violence claims mainly from events that occurred more than 2 years from the date of the violence indicating the erosion of barriers in reporting these crimes over time. This increasing demand for services from changes in societal attitudes for claiming for these types of benefits highlights that static funding can also be a barrier to providing timely assistance to victims. We discuss funding in the next section.

7.3. Funding Sources

In Section 4.3 we discuss the difficulties in finding a suitable funding source that is linked to the characteristics of the risks being covered.

In this section we present a couple of potentially lucrative funding sources where it could be argued there exists an indirect link between the source of funding and the supports provided by victim schemes. We would support any reviews that put these types of discussion on the table.

Current funding levels are reasonably low in comparison to other personal injury schemes. Because of this, victim schemes often need to make a number of trade-offs in the provisions of benefits at levels which are probably lower than would ideally be the case.

7.3.1. Court Fine Levies, Other Fines and Proceeds of Crime

Some schemes around Australia currently have some funding sourced from court fine levies, other fines and proceeds of crime, but with the exception of the SA scheme, this source of funding remains limited.

Proceeds of crime is a potentially lucrative source of funding for the victims schemes as large sums of money may be sourced from suspected criminals. Proceeds of crime primarily include the seizure of assets gained from criminal activity, for example, stolen property, money received from crime (eg. sale of drugs), or property purchased with money earned from criminal acts. However, this source of funding is not widely used within victim schemes at present.

This funding source holds an intuitive appeal as funding is sourced from offenders of crime. We are of the view that thought should be given to extending the source of this type of funding to victim schemes.

7.3.2. Alcohol Taxes

There is considerable literature which links violence with the consumption of alcohol²⁴. Given this link we believe that consideration could be given to raising funding through the taxation of alcohol. Alcohol taxation has the significant advantage in that it has the potential to raise a significant amount of revenue from a source that is linked to causes of violent acts.

Past attempts to fund programs through state based alcohol taxation have been unsuccessful. In 1992, the Northern Territory introduced an alcohol harm reduction program funded by a levy on alcoholic drinks. However, the levy was removed in 1997 as the result of a High Court decision ruling that states and territories could not levy taxes on alcohol.

²⁴ For example, Australian Institute of Criminology, Trends and issues in crime and criminal justice no. 439, How much crime is drug or alcohol related? Self-reported attributions of police detainees, May 2012

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However, we believe this is a funding source that warrants further consideration whether through additional alcohol taxation, redistribution of existing revenue or another innovative approach.

An example of an innovative approach to implementing a 'user pays' type system was introduced in the UK via the Violent Crime Reduction Act 2006²⁵. The Act included provisions to allow local councils to charge a levy on premises in designated areas called 'Alcohol Disorder Zones' to make licensees pay the costs of alcohol-related crime where a concentration of premises has led to high rates of problems.

7.4. Actuarial Analysis

Actuarial techniques, judgement and expertise in the management of injury seminar schemes are well placed to be applied to victim schemes. There are a number of key areas where these skills are well suited to the challenges facing these schemes:

- Forecasting future claim numbers based on past utilisation, crime reporting rates and understanding of latent claims.
- Identifying mismatches in the funding available with the benefit structure and scheme utilisation.
- Identifying victim needs and designing the benefits and supports to be provided while balancing the desires of the schemes various stakeholders.
- Developing funding models that provide ongoing viability despite the variability in the annual cost of support provision and benefit payments.

Victim schemes play a very important role in society and actuaries can play an important part in helping to optimise the use and effectiveness of these schemes.

²⁵ <http://www.legislation.gov.uk/ukpga/2006/38/section/15>

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