

Smart Justice

“Smart action for a safer community”

Better support for victims of crime

We can better support victims without jeopardising a fair trial

Crime impacts heavily on victims, their families and witnesses. It also has a more widespread effect with serious social, economic and health consequences for our community.¹

The criminal justice system can increase the trauma a victim may have already experienced - causing ‘secondary victimisation’.² Supporting victims through the criminal justice system can therefore reduce the impact of crime. We need a responsive criminal justice system that supports victims and gives them options on how they want to deal with what happened to help them recover from the impact of crime. By increasing victims’ confidence in the criminal justice system, we can increase the rate at which victims report crime, which can help to prevent further crime.

There have been steps in the right direction

Over the last decade there have been many positive changes to the criminal justice system. For example, the *Victims’ Charter Act 2006* (Vic) establishes principles on how the criminal justice system should respond to victims. These principles focus on respect for victims, informing them about the court case and accessing entitlements such as compensation. There have also been improvements to sexual assault law,³ increased crimes compensation⁴ and changes to improve police responses to family violence and sexual assault.⁵ Legislation now allows victims to read their victim impact statement to the sentencing court⁶ and there is also more support and counselling under the Victims Assistance and Counselling Program.⁷ There is also more scope for judges in some criminal cases to take a more proactive approach to making criminal compensation orders as part of the sentencing process⁸

We need to do more

There are still gaps in the way the criminal justice system responds to victims. Many victims do not report crimes. For example, only around 13% of sexual assault cases are reported to police due to a range of factors including fear of retribution, fear of giving evidence, fear of not being believed and lack of knowledge and access to help.⁹ The Victims’ Charter has been operating for nearly seven years now, yet Victoria Police’s own estimated published compliance rate for police responding to victims under the Charter is only 83%.¹⁰ The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS) found that police do not follow up adequately with victims and that it is difficult community” for victims to get information about the progress of a case.¹¹ There are no penalties for not complying with the Victims’ Charter.¹²

An independent victims advocate

In contrast to Victoria, in South Australia there is an independent, statutory Commissioner for Victims’ Rights. Appointed in 2006, the Commissioner reviews the effect of the law on victims, monitors agencies’ compliance and reports annually to Parliament.¹³ The Commissioner can also recommend that an agency or official make a written apology to a victim where there has been a breach of victims’ rights. Other states and territories that have also appointed Commissioners, include the ACT (2011), New South Wales and Western Australia (2013).

Better access to support services

Victims need to be aware of support services so that they can access them. Under the UK system, police must provide the local Victim Support Group with a victim’s contact details soon after an offence is reported, unless the victim asks the police not to.¹⁴

Increased crimes compensation and easier access to compensation

Only a small percentage of victims of violent crime apply for crimes compensation, despite being entitled to compensation under the state-funded scheme.¹⁵ Some victims do not even bother making a claim because the average amount awarded in the state funded scheme is quite low.¹⁶ Other victims face barriers in accessing legal assistance with their compensation application.¹⁷

Some Koori victims face further barriers in accessing compensation. Some of these victims have been victims of family violence or sexual assault as children which has led to drug use and a criminal record. However, the current law requires the Victims of Crime Assistance Tribunal (VOCAT) to have regard to a victim's past criminal activity when making an award or when assessing the amount of the award.¹⁸

Increased options for victims

Unlike all other states in Australia and the Northern Territory, Victoria does not offer victims restorative justice options such as conferencing with the offender unless the offender is a minor.¹⁹ Restorative justice refers 'to diverse practices and models developed as alternatives to dealing with criminal offences through the mainstream justice system'.²⁰ It involves 'a process where all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'.²¹ Research suggests that options such as restorative justice can have positive benefits such as increased satisfaction for victims,²² a feeling of being treated fairly and with respect²³ and reduced post-traumatic stress.²⁴

Smart Justice solutions

- *A stronger, independent advocate for victims*
To build an effective and responsive system for all victims, we need an independent statutory victims advocate similar to South Australia's Commissioner for Victims' Rights.
- *A direct pathway to victim support*
Victims need a direct link to support services. We should consider a more proactive referral system like the one introduced in the UK in 2006.
- *A more effective and fairer compensation system*
We need to increase the compensation paid to victims and we also need to reduce the barriers in accessing compensation. We need to make sure that irrelevant and unrelated personal information about victims is not used when assessing a claim for compensation.²⁵
- *Increased options for victims throughout the criminal justice process*
Victims should have access to a range of options so that they can decide how they want to deal with the impact of the crime. Research suggests that options such as restorative justice can have a positive impact by increasing victims' satisfaction with the process and by reducing post-traumatic stress which some victims might experience after a crime.

This factsheet is based on the law of Victoria, Australia and was last updated on 24 June 2014.

1. Mayhew, 'Counting the costs of crime in Australia', Trends and Issues in Crime, (2003) Australian Institute of Criminology.
2. Walklate, *Victimology: The victim and the criminal justice process*, (1989).
3. Part 8.2 of the *Criminal Procedure Act 2009* (Vic).
4. On 1 July 2007, the amount of special financial assistance available to victims was increased by 30% while on 1 July 2010, a new category of financial assistance for safety related expenses for primary victims became available.
5. Victoria Police Code of Practice for the investigation of Family Violence and Code of Practice for the Investigation of Sexual Assault. Victoria Police now have the option of providing electronic referrals for victims through the Support Link Program.
6. s 8Q *Sentencing Act 1991* (Vic). (Amended by the *Sentencing Amendment (Community Correction Reform) Act 2011* (Vic)).
7. In Victoria, eligible victims are able to access free crisis and short term counselling services see: www.victimsofcrime.vic.gov.au.
8. s86AA(1) and s86(1A)(b) *Sentencing Act 1991* (Vic).
9. Sentencing Advisory Council, *Recidivism of Sex Offenders Research Paper*, (2007), 4 and 7.
10. s 8Q(1) *Sentencing Act 1991*; Victoria Police, Annual Report 2009/2010, 23. The compliance rate is not recorded in subsequent annual reports.
11. FVPLS, *Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault*, (2010) Policy Paper Series, Paper 3, 139-141.
12. The Victims Support Agency (VSA), a business area in the Department of Justice, is responsible for monitoring compliance with the Victims' Charter.
13. See the *Victims of Crime Act 2001* (SA).
14. *Code of Practice for Victims of Crime 2006* (UK), para 5.4 -5.6. There is an exception for some victims.
15. In 20012-13/, 58,312 crimes against the person were reported to police, yet only 6,894 crimes compensation applications were made to VOCAT in the same period: Victoria Police Crime Statistics 2012-13, 23 and VOCAT Annual Report 2012-13, 12.
16. See *Improving Access to Justice for Victims of Crime*; (2010) Law Institute of Victoria, 1. The average amount of financial assistance awarded by VOCAT in 2012-13 was \$7,763: VOCAT Annual Report 2012-13, 6.
17. Federation of Community Legal Centres, *Reviewing Victims of Crime Compensation: Sentencing Orders and State-Funded Awards* (2010); 8; Law Institute of Victoria, above n16, 2.
18. s 54(a); *Victims of Crime Assistance Act 1996* (Vic).
19. AIC, *Restorative justice in the Australian criminal justice system* (2014), Table 1, 6.
20. Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006), 79.
21. Marshall, 'The evolution of restorative justice in Britain', *European Journal on Criminal Policy and Research* 4(4) (1996), 37.
22. Armstrong, 'Factors contributing to victims' satisfaction with restorative justice practice: a qualitative examination', *British Journal of Community Justice* (2012) Vol. 10, Issue 2, 39-54.
23. Hayes, 'Assessing reoffending in restorative justice conferences', *The Australian and New Zealand Journal of Criminology*, (2005) 38(1): 77-101., cited in AIC, above n 19, 26.
24. Angel, *Victims meet their offenders: Testing the impact of restorative justice conferences on victims' post-traumatic stress symptoms* (2005), cited in AIC, above n 19, 27.
25. FVPLS, above n11, 110-111. Federation of Community Legal Centres, above n 17, 6.