

PREVENTING VIOLENCE IN AUSTRALIA: POLICY, PRACTICE AND SOLUTIONS

Editors

**Andrew Day
Ephrem Fernandez**

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Violence in Australia and its Victims: A Case for Victims' Rights and Victim Assistance

Michael O'Connell

Violence is a problem that causes ever-increasing concern, despite our society being far less violent than it once was,¹ and far less dangerous than some other developed societies. Many factors contribute to violence. These can broadly be divided into three categories: biological, psychological and sociological. Biological factors include gender, age and brain functioning. Psychological factors include the influence of parents and peers (such as parental aggression), and the use of punishment (rather than reward) to counter undesirable behaviour. Sociological factors include cultural influences such as the role of violence in organised criminal gangs, structural explanations that focus on aspects of society that produce discrimination and disparities in wealth, and, interactionist explanations that focus on the interactions between perpetrators and victims. The sum of these factors influences, on the one hand, the complexity of violence as a problem and, on the other, the lack of agreement on the "causes" of that problem. It is also evident that there is no simple answer to tackling violence and preventing victimisation.

That said, shocking stories and vivid images suggesting wanton violence on the streets of Australia's major cities (see Babacan, Chapter 11) and the resultant toll on victims and their families have fuelled public demands to control violence. There is much controversy on how that might be achieved. Increased powers for police and other law enforcers, stricter laws regulating licensed premises, and tougher penalties for perpetrators have emerged as popular short-term remedies from the political jostling within and across Australia's jurisdictions. Preventing violence, however, requires more than the removal of a violent person to an institution, such as a prison or a forensic mental health facility. Preventing violent victimisation will require investment in a number of ways that indicate that resorting to violence is unacceptable, including effecting fundamental change in individual and public attitudes towards violence.

Victims of violent crime

To recite crime statistics is of little comfort to victims of violence and their families. Nonetheless, these statistics give some insight into the nature and extent of violent crime, and in spite of their limitations, provide a better "factual" basis from which to develop effective responses than the well-publicised acts of criminal violence that seem to stimulate public alarm.

The Australian Bureau of Statistics (2014a) report on crime known to police shows nationally a decrease between 2012 and 2013 in the number of victims of homicide (decrease of 5.3% or 24 fewer known victims), kidnapping or abduction (decrease of 5.8% or 37 fewer known victims), and, robbery (decrease of 11% or 1465 fewer known victims) in Australia. Conversely, between the same years there was an increase in the number of victims of sexual assault (increase of 7.6% or 1413 more known victims). There were just under 20,000 sexual assault victims recorded by police and, consistent with past years, four in five sexual assault victims were female. Nearly two-thirds of these victims were 19 years of age or under.

These figures are likely to under-estimate the true prevalence of crime. The Crime and Safety Victim Survey repeatedly confirms that the proportion of victims who report personal crime to police varies on the type of crime. For example, in 2012-2013 only about one-third of victims of threatened assault reported the most recent threat, and only half of the victims reported the most recent physical assault or robbery. In the 12 months before being interviewed in 2012-2013, Australians aged 15 years and over were more likely to experience threatened assault than any of the other selected personal crime. Further, they were more likely to suffer physical assault than either robbery or sexual assault. Of the 18.4 million people aged 15 years and over in Australia, an estimated:

- 576,800 (or 3.1% of that population) were victims of at least one threatened assault;
- 498,000 (or 2.7% of that population) were victims of at least one physical assault; and
- 65,700 (0.4% of that population) were victims of at least one robbery. (Australian Bureau of Statistics, 2014b)

It is evident from a comparison of the survey data for 2008-2009 and 2012-2013 that the victimisation rate has declined for some types of violent crime (eg, face-to-face threatened assault, physical assault and robbery), but remained stable for others (non face-to-face threatened assault and sexual assault – despite the increase in sexual assaults disclosed by survey respondents).

Costs of violent crime

Several attempts have been made to estimate the cost of crime in Australia (eg, Walker, 1992; 1997; Mayhew, 2003a; 2003b; Rollings, 2008a; 2008b). For example, Rollings estimated that:

¹ For example, hundreds of thousands of Aboriginal and Torres Strait Islander people were killed as "white settlement" expanded post-colonisation.

- homicide costs are at least \$1.5 million per homicide, or \$950 million overall;
- assaults costs are almost \$2000 per assault, or \$1.411 billion overall;
- robbery costs are just under \$4000 per robbery, or \$225 million overall; and
- sexual assault costs are between \$2500 and \$3000 per sexual assault, or \$720 million overall.

As well as these costs, there are criminal justice expenses incurred by the police, the courts and associated legal services, and corrective services; plus the cost of victim assistance. In 2005, the former costs were estimated to be \$9808 million and the latter to be \$1073 million.

Estimates of this sort attempt to capture both the tangible costs of crime, which include medical expenses and loss of income resulting from, for instance, the act of violence, as well as the intangible costs, which are divided into realised costs, such as pain and suffering from the act of violence. There is a lack of sound data on the intangible costs of crime, and such estimates do not include the social costs, such as those relating to the fear of crime (Dolan, Loomes, Peasgood & Tsuchiya, 2005; Rollings, 2008a; 2008b). In addition, and as pointed out above, much crime is never reported to police. Furthermore, even for those reported crimes, each crime has different consequences for those affected. There is an inherent problem, for example, in attaching a value to the life of a murder victim or attributing a monetary value to grief.

Nevertheless, estimates of the overall costs of crime are important for, among other things, quantifying benefits of crime prevention and victim assistance programs. They also allow for comparisons of potential or existing policy solutions, and for them to be ranked by the benefits generated by the expenditure (Fowles, Byrnes & Hickert, 2005). Costs of crime, for instance, can be applied as an indicator of the seriousness of one type of crime over another or used to provide a rationale for the allocation of resources. With respect to victims of violent crime, such policy comparison has been most obvious since the introduction of state-funded victim compensation schemes in the 1960s. These schemes were initially designed to provide lump-sum payments to "innocent victims of violent" crime and not victims of property crime. In the 1990s, debates on the merits of state-funded lump-sum victim compensation payments lead to re-defining of who are the most deserved victims of violent crime (see later in this chapter).

Estimates of the intangible costs of crime also offer limited, but important, information about the consequences of being a victim of crime. Violent crime can have a major impact on the wellbeing of victims, their families and friends, and the wider community. Those most directly affected may suffer physically, emotionally or psychologically, and financially. There can also be dysfunction to the victim's social support networks. Anxiety about crime can become pervasive and intensified as to affect people's quality of life, for instance by reducing levels of trust and negatively impacting on social cohesion. The next section elaborates on the effects on the primary or actual victim.

Effects of violent crime

There are numerous ways in which a person can be affected by violent crime (see Table 2.1). Victims may suffer physical injury of varying severity that can be temporary or permanent. They may also experience emotional or psychological harm that can be short-term or long-term. Victims may endure financial loss, including direct expenses such as the value of property stolen during a robbery and indirect expenses such as treatment costs; as well as the costs associated with assuming their role and responsibilities in the criminal justice process, such as loss of income and child care fees when attending.

Table 2.1: Effects of Violent Crimes

Effect	Harm Suffered by Example
Physical	Bruises, wounds or physical disabilities
Emotional/psychological	Fear, sleeplessness, anger, anxiety, suspicion, a desire to move
Financial/economic	Property loss, property damage, loss of income, medical expenses
Psychosocial	Residual effects on normal family contacts, effects on spouse/children/greater family, associated marital impact, fear, suspicion, financial loss
Inconvenience	Awaiting restoration, repair or replacement of property, meeting the requirements of the criminal justice system, seeking compensation

Source: O'Connell & Hayes (2012, p 328) as adapted from Waller (1982, p 7)

Victims of violent crime often experience anxiety, guilt, denial, self-blame, anger and fear, in addition to sleep and diet disturbances. These reactions are normal, and in the majority of cases, dissipate in the first few weeks after the violence (O'Connor, 2004). Literature published by the Australian Centre for Post-traumatic Mental Health (2007) identifies depression as a common reaction to crime. Adjustment disorder, substance abuse, anxiety disorders (including post-traumatic stress disorder) are among other mental health problems that result from violent crime. Victims of violent crime also tend to develop more persisting fear-based symptoms associated with post-traumatic stress disorder and obsessive-compulsive disorder. Consistent with this, Bryant et al (2010) reported depression as the most common diagnosis made with respect to people who attended Australian hospitals after a traumatic incident (not necessarily a crime). Other common reactions included anxiety disorder, substance abuse and post-traumatic stress disorder. Although these emotional or psychological effects are normal, when they persist victims may require treatment.

Robbery and non-sexual assault also evoke a range of negative psychological and social effects, as well as behavioural responses and lifestyle changes, including avoidance, resignation from work and moving home (Markesteyn, 1992; O'Connell, 2005). In one study, about one-quarter of victims of violent crime reported extreme levels of distress, anxiety and/or depression; and, another one-quarter reported moderate to

severe psychological symptoms (Norris, Kaniasty & Thompson, 1997). Homicide can lead secondary victims to self-harming behaviours such as alcoholism, drug misuse and abuse, and suicidal tendencies. It can also cause cognitive learning difficulties among surviving children. Quite often the grief can be overwhelming as adults and children struggle to cope with their daily lives. Furthermore, they may also feel let down by the criminal justice system that was meant to protect their loved ones (O'Connell & Nitschke, 2000; O'Connell, 2005).

Creamer, Burgess and McFarlane (2001), as part of the Australian National Survey of Mental Health and Well-being, asked people about their experiences of a variety of traumatic events, including sexual assault and/or other assault. Of those who were diagnosed with post-traumatic stress disorder, the most common traumatic event was either rape (8.4% of men and 9.2% of women) or sexual molestation (11.8% of men and 5.5% of women). Serious physical assault (2.4% of men and 3.7% of women) and being threatened with a weapon, held captive or kidnapped (1.9% of men and 4.2% of women) also caused post-traumatic stress disorder, but for a lesser number of people. The researchers also used multiple regression analyses to investigate the socio-demographic predictors of a post-traumatic stress disorder diagnosis. Of those people who had experienced trauma, the researchers reported that people aged 55 or over were less likely to suffer post-traumatic stress disorder, while those people who were not married were more likely to suffer such disorder. Although women appeared to be at higher risk of post-traumatic stress disorder overall, this finding was mediated by the type of trauma experienced.

Overseas research has identified a relationship between violent crime and mental health problems, such as post-traumatic stress disorder. Kilpatrick et al (1987) interviewed female adults about the psychological impact of criminal victimisation many years after the crime. Symptoms of post-traumatic stress disorder were still evident in more than half of those who had been raped (57.1%) 17 years previously; in about one-third of those who had been molested (33.3%) more than 25 years previously; and, in over one-third of those who had experienced an aggravated assault (36.8%) more than 10 years after the assault. Breslau, Davis, Andreski and Peterson (1991) asked a sample of adults aged between 21 and 30 years about their reactions to different life experiences. Symptoms of post-traumatic stress disorder were reported by about 80% of females who were victims of rape, in almost 23% of the sample who reported a physical assault, and in just over 23% who reported witnessing someone being killed or seriously hurt. In a latter study, Riggs, Rothbaum and Foa (1995) found that both female (about four in 10; 42%) and male (about three in 10; 32%) victims of non-sexual assault suffered symptoms of post-traumatic stress disorder about four weeks after the crime; however, the number affected decreased after more than three months following the crime (for females the rate reduced to about one in five (21%) and for males it reduced to almost none (0%).

A range of factors that can affect a victim's vulnerability to post-traumatic disorder after a crime have been identified:

- "Pre-crime" correlates include early separation from parents, neuroticism, pre-existing anxiety or depression, and a family history of anxiety (Breslau, Davis,

Andreski & Peterson, 1991); pre-existing emotional problems such as anxiety, depression, or irritability (Ehlers, Mayou & Bryant, 1998); and, education (with higher education being associated with a lower symptom severity) (Filipas & Ullman, 2001). Childhood sexual abuse and physical abuse have been found to be associated with the level of post-traumatic stress disorder symptomatology (Nishith, Mechanic & Resick, 2000; Breslau, Davis, Andreski & Peterson, 1991; for an alternative finding see Freeman & Smith, 2014).

- "During the crime" correlates include perceived helplessness as the violence happens (Jaycox, Marshall & Orlando, 2003). A study by Cascardi, Riggs, Hearst-Ikeda and Foa (1996) showed that women who were assaulted in places they had perceived to be safe were more likely to suffer post-traumatic stress disorder symptomatology than women assaulted in places they perceived to be unsafe; and, conversely women who were assaulted by a person they perceived to be dangerous were more likely to experience such symptomatology than those assaulted by a person they perceived as safe.

- "After-crime" correlates include a range of psychological, environmental and social factors; however, social factors tend to feature most in the research literature examined. Negative social reactions when disclosing sexual assault has been found to be associated with higher risk of suffering symptoms of post-traumatic stress disorder (Filipas & Ullman, 2001). These social reactions include victim-blaming, taking control of victim's decision-making, treating the victim in a manner than stigmatises, telling the victim to get on with life, and responses that focus on the supporter's needs rather than those of the victim. Negative social responses from family and friends towards victims of violent crime are also associated with higher risk of suffering symptoms of post-traumatic stress disorder (Andrews, Brewin & Rose 2003).

It is evident that there is a considerable volume of evidence documenting the association between violent crime and mental health problems. A review of literature, however, reveals that only two longitudinal studies have been conducted in Australia. In 2011, Cornaglia and Leigh (2011) compared the mental health of victims of crime and non-victims of crime in urban areas using data from the Household, Income and Labour Dynamics survey. Their initial analysis showed a negative effect of criminal victimisation on the mental health of both victims of violence and victims of property crime, but further analysis showed that the decline in mental health for victims of property crime was not statistically significant.

The most recent study conducted by Freeman and Smith (2014) also used data from the Household, Income and Labour Dynamics survey. Their analysis controlled for a wide range of controls that might have affected the mental health of victims. These included mental health pre-victimisation, general health, partner status, area of residence, labour force status, financial prosperity, alcohol consumption, smoking status, physical activity, social networks and adverse life events. The researchers found "strong evidence that being a victim of violent crime has a negative effect on mental health" (p 12). Further, victims of violent crime suffered significant deterioration in their mental health that could not be attributed to pre-existing time-stable factors such

as history of child abuse. They also noted that becoming a victim of violent crime has negative impact on both females and males, although that effect is more pronounced for females. The researchers suggest this might be attributed to the greater propensity of females to experience certain disorders.

This literature provides support for the provision of victim assistance that addresses the physical and emotional or psychological harm that results from violent crime. The research confirms the need for support services to be accessible and interventions to be evidence-based as the efficacy and effectiveness of many of the interventions that are offered to victims in Australia, as elsewhere, is unknown (O'Connell & Hayes, 2012; Roberts & Green, 2007).

Victim assistance

To cater for the whole range of victims' needs a mix of practical, legal, rehabilitative and financial assistance should be available (JSU, 1999; 2000; Wyrsh, 2002). Given the range of needs and effects, interventions should facilitate psychological "first aid", including crisis responses, practical and material assistance, intermediate support and long-term support (O'Connell, 2013). Barriers to accessing assistance include having limited or no information about the availability of services or their potential benefit (Kelly, Merrill, Shumway, Alvidrez & Boccellari, 2010). Freeman and Smith (2014) suggest that the police have a role to play as a source of information on victim support services and as referral agents, but also concede that many victims of violence do not report their victimisation, so other occupations also need to distribute information on medical, therapeutic, financial and practical assistance. Their list of probable occupations includes: doctors, community health workers, and mental health workers.

Many of the problems encountered in developing and implementing victim assistance programs mirror those inherent in the evolution of social welfare programs. These include competition between disciplines, short-falls in funding, lack of outreach, and, uncertainty regarding the efficacy of interventions, as well as the absence of "true" measures of effectiveness (see Salasin, 1981). There is also the possibility of causing more harm. Campbell, Sefl, Barnes, Ahrens, Wasco and Zaragoza-Diesfeld (1999) found that negative experiences with health professionals can increase post-traumatic stress symptoms. Helpers' biases and misconceptions, for instance, can seriously undermine the therapeutic value of victim-oriented interventions and unskilled support workers can cause secondary victimisation (Winkel, Blaauw & Wiseman, 1999; see also Wyrsh, 2002 on mismatch of victims' needs and victim assistance on offer to victims).

Furthermore, the impact of violent crime can mean that victims will traverse both the criminal justice sector and the health sector; yet there can be competing objects between the sectors (Chelimsky, 1981) and the efficient and effective functioning of linkages between these systems can bear strongly on victims' experiences and their endeavours to cope (ACT Department of Justice & Community Safety, 2003). There is, therefore, a need for proper case management and integrated victim assistance (Davis, Lurigio & Skogan, 1999). In addition, improved outcomes for victims might not be achieved if service integration is not contextualised and tailored mindful of

the existence, availability, and accessibility of local services (Ochberg & Spates, 1981). Australian research (eg. Day et al, 2010; Meyer, 2014) likewise highlights the importance of an integrated response network comprising services relevant to victims' needs. Such a network should provide for stream-lined, inter-agency referrals and brokerage of needs-driven interventions.

All States and self-governing Territories in Australia have victim assistance programmes. All also explicitly or implicitly in their victims' rights law acknowledge victims' right to access assistance; however, simply recognising that victims have such right is not the same as guaranteeing victims will have access. In most jurisdictions, generalist victim services are administered by public agencies within the Justice portfolio. In Queensland, that agency is Victim Assist; in New South Wales, it is Victim Services; in Victoria, it is the Victim Support Agency; in Tasmania, it is Victim Services; in Western Australia, it is the Victim Support Service; in the Australian Capital Territory, it is the Victim Services Scheme. These agencies share a common focus on victims of violent crimes. In each jurisdiction there are a range of non-government organisations, such as the Homicide Victims Support Group in Queensland, New South Wales and Victoria, the VOCAL in New South Wales and Angelhands in Western Australia. A Road Trauma Support Team exists in Tasmania, Victoria and South Australia.²

In South Australia, the Attorney-General funds the Victim Support Service – this is a not-for-profit, non-government organisation – that provides information, counselling, and advocacy for victims of violent crimes and victims of property crimes. In the Northern Territory, the Crime Victim Support Agency operates within the Justice portfolio and helps mostly victims of violent crimes; while the non-government Victim Support Service offers counselling and advocacy to all adult victims of crime. Alternatively, in most States services for victims of sexual offences are delivered by non-government Centres against Sexual Assault, yet in South Australia these services are delivered by the Rape and Sexual Assault Service that is in the health portfolio. Peak agencies for child victims are operated throughout Australia from either the health portfolio or the welfare portfolio. Over all, throughout Australia victim assistance programmes have prospered because of government intervention; in particular funding. In 2013, Australia's Attorneys-General endorsed a National Framework on Victims' Rights and Victim Assistance that provides for cross-jurisdictional cooperation and collaboration to improve outcomes for victims of predominantly violent crime; however, the Framework is a mix of aspiration and actions within existing State and Territory resources. There are several appendices to the Framework that show commonalities in victims' rights and victim assistance. One appendix compares the state-funded victim compensation (or financial assistance) schemes, which are broadly covered in the next section of this chapter.

² The Road Trauma Support Teams are mentioned because the offence of culpably negligent driving resulting in death is counted as "homicide" in some crime data on violent crime in Australia.

State-funded victim (criminal injuries) compensation

Across Australia, victims of violent crime may be financially compensated in three ways, other than private insurance: through a criminal court order that the guilty offender pay restitution or compensation; through an award for "damages" or compensation in the civil courts; or through a claim to a statutory, state-funded victim compensation scheme. The latter is part of governments' victim assistance programmes but also an integral element of a wider social recognition of the interests of victims of violent crime in particular.

Herman (2010) states that the development of state-funded compensation for victims of crime was "one of the most significant reform initiatives of the 1960s" (p. 31) and is the principal means by which society demonstrates, in an important and tangible way, its support for victims of crime. Since then, state-funded criminal injuries compensation schemes have found favour with governments of various persuasions in most Western societies, including Australia. Compensation is considered by many to significantly enhance victims' ability to ameliorate the negative impact of victimisation (Herman, 2010; Miers, 2013). Freckleton (1996) states that compensation systems should be "recognised as an important aspect of state care of the vulnerable and the wronged" (p. 245). Yet various governments across Australia have decided to revisit the rationale for state-funded criminal injuries compensation.

The first phase of compensation schemes throughout Australia provided modest lump-sum payments intended as limited reparation rather than full compensation as might be attainable via civil prosecution for "damages". Since their introduction, these schemes have varied across jurisdictions, primarily in terms of what are compensable, maximum awards, and methods of administration. All schemes have encountered difficulty assessing intangible or non-pecuniary "damages" such as pain and suffering. Payments for non-pecuniary loss in South Australia are determined using a 0-50 point scale with each point representing \$1000, whereas the former New South Wales scheme employed a "mains table". Commonly, victims of primarily violent crimes, who did not contribute to their victimisation, but also reported offences, cooperated with police investigators and accepted their responsibilities as witnesses for public prosecutions, have been considered worthy of state-funded compensation. Yet, once-off lump sum compensatory payments are said to politically attractive band-aids that amount to "limited, time bound" responses incongruent with victims' actual mental health needs (Rich, 1981). The debate represents another clash between the criminal justice sector's need to foster victim cooperation and the health sector's need to help victims cope and recover.

In the second phase, lump sum payments have been rejected on the basis that they often fail to mitigate victims' psychological injury and/or social isolation (Wade, 1996; Cook, David & Grant, 1999). Thus, some jurisdictions have moved towards providing assistance for financial losses such as treatment costs and addressing psychological injury through the provision of counselling. The debate "as to the most effective response to criminal victimisation – compensation, counselling or a combination of the two" – has also occurred in the context of ever increasing demand on limited

government resources (Cook, David & Grant, 1999, p. 67). This argument became most pronounced in the mid-1990s when both Victoria and the Australian Capital Territory sought to make pain and suffering and other intangible losses non-compensable, although both jurisdictions have since compromised. This shift in policy though has also been embraced by Northern Territory, Queensland and most recently New South Wales. For example, the new victim support scheme in New South Wales is focused on building "packages of care to support and assist" victims instead of a lump-sum of money to be spent as the victim of violent crime desires. Notably, direct victims of domestic violence and sex offences, as well as the immediate family bereaved by homicide, are still considered deserved of lump-sum payments.

In a letter to the United Nations Special Rapporteur on Violence against Women, a coalition of 35 organisations condemned the New South Wales reforms (Community Legal Centres NSW, 2013). Their criticisms include that: the law operates retrospectively, so victims who had already applied for lump-sum compensation could now be denied such; the sums of awards will be considerably less than as likely under the repealed "mains table" of injuries; and, the emphasis on financial loss favoured employed victims over those unemployed. They also pointed out that victims of violence, such as domestic violence and sexual violence, will be required to report offences and cooperate with police and prosecutors, thereby denying those who choose not to report access to financial assistance. Media reports in addition covered examples of girls aged 14 years and under who were entitled under the former scheme to a maximum of \$50,000 who would under the new scheme receive no more than \$15,000. Defending the reform, the Attorney-General pointed to the back-log in settling claims, the need to provide more immediate practical assistance, and the "perilous state of the victim's compensation scheme before government's changes" (Harris, 2014).

Contrary to the shift towards financial assistance, South Australia's Government announced recently that the maximum of lump-sum payments will be doubled (from \$50,000 to \$100,000). Funeral expense reimbursement (from \$7000 to \$14,000) and grief payments (from \$10,000 to \$20,000) in homicide cases will also be doubled, and children under 18 years of age of murder victims will be eligible for a proportion of the grief payment. All victims of crime aged 18 years and over will continue to be entitled to compensation, if eligible within the terms of the *Victims of Crime Act 2001* (SA).

The Australia Government has also enacted a statutory financial assistance scheme for Australian citizens who become victims of declared terrorist incidents overseas. The scheme is modelled on the former New South Wales scheme insofar as it comprises a "mains table" for settling the sum of payments to direct or primary victims; and, it offers a single lump-sum per incident related death that it to be divided among the surviving immediate family members. The lump-sum payable to the direct or primary victim is capped at \$75,000 and the per-incident related death is also capped at \$75,000. The scheme now applies retrospectively, so victims of terrorist incidents such as the 2002 Bali bombings might be eligible for payments. Before this scheme, South Australia was the only jurisdiction with a statutory compensation scheme that covered its citizens as victims of violent crime in other places.

Throughout the evolution of statutory, state-funded victim compensation schemes in Australia, a common focus on victims of violent crime has prevailed although notable divergences still exist in entitlements. The debate on lump-sum compensation verses financial assistance coupled with treatment is ongoing. State-funded victim compensation schemes, however, might in the future serve another purpose that until recently was over-looked in the debate. A Netherlands study (Kunst, Winkel & Bogaerts, 2010) aimed to see if post-traumatic stress disorder could be predicted from data available in the e-files maintained for the compensation scheme. The results indicated that about half of the victims applying for state compensation in the Netherlands still have post-traumatic stress disorder many years after the crime and the settlement of their claim. The researchers also reported that several sources of information included in the e-files may be used to predict those victims who are most likely to suffer from prolonged post-traumatic stress disorder. These predictors included age, gender, time since victimisation, and violence-related hospitalisation. The researchers recommended that electronic databases, such as that used in the Netherlands, should be considered by policy makers as sources of referral for treatment and those who administer compensation funds might be seen as referral agents.

Victims of violent crime and criminal justice

In the aftermath of crime, participation in the criminal justice system can be beneficial for victims of violent crime and their families; however, that system can also be a cause of secondary victimisation (Tontodonato & Erez, 1994; see also Osenbach, Stubbs, Wang, Russo & Zatzick, 2009). As Herman (2005, p 574) wrote, "if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law". Secondary victimisation can result in a "second injury" (Bard & Sangrey, 1982; United Nations Office on Drugs and Crime, 1999). It can manifest in frustration, even anger (O'Connell, 2005). It can reduce victims' self-esteem, faith in the future, trust in the legal system, and faith in a just world" (Orth, 2002, p 314; see also Roberts & Green, 2007). Furthermore, after a violent crime desire for revenge is not a maladaptive coping reaction to the feelings of injustice; however, with increasing time after the incident, the desire for revenge may become maladaptive (Orth, Montada & Andreas, 2006).

Factors that help shape victims' experiences with Australia's criminal justice systems include: the manner in which public officials and others treat them throughout the criminal justice process (O'Connell & Hayes, 2012); the amount of useful and relevant information they are given about the investigation, prosecution and court outcome (Gardner, 1990); whether they are consulted on key decisions that affect them (Erez, Morgan & Roeger, 1994; JSU, 2000); and, the extent to which they are able to participate within the system (O'Connell, 2013). Conversely, victims who feel that they have been treated fairly and afforded their rights tend to experience less secondary victimisation (Herman, 2003; Laxminarayan, 2012), as well as have greater satisfaction with the justice system (Gardner, 1990). For many victims, procedural justice is as important to crime victims as the desired outcome (Elliott, Thomas & Ogloff, 2012; Holder, 2014).

Despite the prevalence of victims' rights in Australia, studies and commentaries suggest that the implementation has been at best "patchy". Too many victims, it seems, are afforded these rights on paper, only to be denied them. Victims of violent crime such as sexual assault, domestic violence and hate crimes, and victims from marginalised social groups, often feel the police are not sufficiently sympathetic (VCCAV, 1994). O'Connell and Hayes (2012) reported that most victims are generally satisfied with the initial police response, but they become less satisfied, even frustrated and angered, as time passes. Their views on how well the police kept them informed about the progress of their cases are one factor correlated with satisfaction and dissatisfaction. Holder (2014) warns, however, that "satisfaction may hide more than it reveals about the expectations and interests of people who are victims of crime" (p 1).

Victims' feelings that prosecutors failed to provide information victims expect, and victims' perceptions that prosecutors allow defence counsel to harass them during cross-examination, also reduce their satisfaction. Victims have encountered common problems in court, such as: a lack of safe waiting areas and facilities that separate them from the accused and defence witnesses; resenting the amount of time that they have to spend waiting to give evidence, and difficulty following the court proceedings due to insufficient information (O'Connell & Hayes, 2012).

Conversely, the National Victims of Crime Working Group identified many positive developments since victims' rights existed. They concluded that victims were far more likely to have a negative experience with the criminal justice system if there were no victims' rights charters and declarations. These charters and declarations govern treatment of victims in the criminal justice systems.

Victims' rights in Australia

In Australia, every State and self-governing Territory has a declaration or charter on victims' rights, which are derived from the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/CONF 121/122; United Nations, 1985). Most have enshrined their declaration or charter in law. In 1993, the Australian Standing Committee of Attorneys-General adopted a national victims' charter, which set minimum standards for the treatment of victims in the criminal justice system. There are many commonalities in the declarations and charters that exist in Australia, for example:

- treating victims with respect, compassion and dignity, as well as cultural sensitivity;
- providing protection from the accused person (and his or her family and associates);
- avoiding unnecessary intrusion into victims' privacy, including protecting the identity of the victim.
- providing medical, psychological and practice assistance that is accessible;
- providing information of the criminal justice process and victims' role and responsibilities as witnesses;

- providing accurate and timely information about the investigation, the charges laid, about the outcome of a bail application (including information on conditions imposed to protect the victim), the prosecution, the court outcome and the impending release, escape or recapture of the offender;
- giving victims opportunities to participate in decisions that affect them, such as taking into account victims on their perceived safety concerns when deciding whether to bail the accused; consulting victims before any decision to modify or not to proceed with charges laid against the accused; and the opportunity to make submissions at parole hearings;
- giving victims the opportunity to make statements on how the crime affected them and giving those who choose to make statements accurate information and appropriate assistance;
- providing for offender paid restitution and, when the offender cannot afford to pay restitution, state-funded compensation for victims of violent crime; and
- reducing inconvenience by, for instance, returning victims' property held by the State for the purpose of investigation or evidence.

Many of the "rights" pick up the needs of victims that have been identified in reports on victims and criminal justice (see, for example, Curtis & Pankhurst, 2002; Gardner, 1990; JSU, 2000; New South Wales Task Force on Services for Victims of Crime, 1987; South Australia Committee on Inquiry on Victims of Crime, 1981; VCCAV, 1994; Victorian Sentencing Committee, 1988; Wilkie, Ferrante & Susilo, 1992).

Although victims' rights have increased exponentially in recent decades, implementation challenges remain. Community surveys (eg, Roberts & Indermaur, 2009) show that many citizens still believe the criminal justice system does not meet the need of victims; and, victim surveys reveal that many victims are not aware of their rights and many victims, despite victims' rights, still feel they are treated with ambivalence.

It is increasingly common that jurisdictions acknowledge that victims can complain if their rights are not honoured. For example, in South Australia public officials are obliged to give victims information about making a complaint about a breach of their rights. No Australian jurisdiction has provided penalties for non-compliance with victim rights legislation by a public officer, except in South Australia, where the *Correctional Services Act* sets a maximum penalty of \$10,000 for officials who breach confidentiality with respect to certain information, including information about victims that is kept on the Victims Register (*Correctional Services Act* 1988, s 84D). The New South Wales, Queensland and South Australia legislation prohibit criminal or civil liability being attached for breaches. However, no Act excludes disciplinary action against a public official for a breach.

Most Australian jurisdictions have a designated entity to receive, inquire into and attempt to resolve victims' complaints. South Australia, New South Wales, the Australian Capital Territory, Queensland and Victoria have legislatively established authorities to deal with compliance to their declaration or charter. In South Australia and New South Wales a Commissioner for Victims' Rights has the authority to receive a complaint, attempt to resolve it and, where this is not possible, to advise Parliament.

The Australian Capital Territory has a Commissioner for Victims of Crime who has the authority to receive and investigate a complaint, and to make a report to the Attorney-General. Complaints made by victims of crime in Queensland should be registered with the Victims of Crime Coordinator who can oversee how individual agencies resolve grievances. The Secretary for the Ministry for Justice in Victoria is tasked with establishing a victim-complaint process in the State.

The limited information publicly available suggests that the majority of victims' complaints are resolved by providing information or referrals, or reminding public officials of their obligations. Compliance mechanisms are an important tool to strengthen victims' rights. They also enable governments to determine whether victims' rights are being implemented properly in agencies. It is important to ensure that public officials and public agencies have appropriate procedures and practices in place to meet their obligations to victims.

Procedural justice to better help victims of violence

Victims' participatory rights are said to be one way to enhance procedural justice for victims of crime without unnecessarily encroaching on procedural justice for accused and convicted persons. A study involving respondents from the Netherlands and New South Wales, Australia investigated the concept of procedural justice for both sexual assault victims and non-sexual assault victims (Laxminarayan, 2012; see also Laxminarayan, Bosmans, Porter & Sosa, 2013; Laxminarayan, 2014). The researcher found that procedural justice, "in terms of voice, accuracy and police treatment", impacted the psychological effects of criminal proceedings and was also an important determinant of victims' perceptions of "outcome favourability" (p 133). For victims of sexual assault, procedural justice was more strongly associated with the outcome variable; thus, the researchers recommended that providing victims of sexual assault with means "to voice themselves would be helpful in their recovery" (p 134). Similarly, Kelly (1984) reported that procedural factors, such as fairness of treatment, were more strongly correlated with satisfaction levels among 100 rape victims than the outcome of either the police investigation or the prosecution. Both procedures and outcome, however, influenced satisfaction.

Holder (2014) explains that victims' concept of justice rests on substantive and procedural elements. "Moreover, this conception [draws] on core values associated with the public role of the criminal justice system, especially those of fairness, equality and respect" (p 1; see also Tyler, 1987; 1988; Wemmers, 1998). These principles might underpin the responses victims' made to surveys (Erez, Morgan & Roegeer, 1994; JSU, 2000; see also Wemmers & Cyr, 2004) in which victims identified ways to improve the criminal justice system. Their lists included more information about the system and their standing in it and their entitlement to legal counsel. As O'Connell (2013) said during a lecture on victims and legal representation, "Victims want a voice. They want to be heard. They want a say on decisions that affect them but do not necessarily want to make or control these decisions".

Practice example: The South Australian Commissioner for Victims' Rights

The *Victims of Crime Act 2001* in South Australia incorporates the Declaration of Principles Governing Treatment of Victims of Crime and provides for the Governor to appoint a Commissioner for Victims' Rights. A Commissioner for Victims' Rights was conceived as a response to concern that, despite victims' rights legislation, many victims were not being treated in accordance with their rights. Alluding to the desire to improve victims' procedural justice, the Premier and Attorney-General for South Australia asserted that victims should no longer be bystanders in the criminal justice system. The Commissioner, amongst other functions:

- Advises the Attorney-General on how to use available government resources to effectively and efficiently help victims of crime.
- Assists victims in their dealings with the criminal justice system.
- Consults with the Director of Public Prosecutions in the interests of victims and in particular cases about matters including victim impact statements and charge bargains.
- Consults with the judiciary about court practices and procedures and their effects on victims.
- Monitors the effect of the law on victims and victims' families.
- Makes recommendations to the Attorney-General on matters arising from the performance of these functions.

Several of these functions are unique, or as the leader of the Opposition in the South Australia Parliament put it: "interesting developments" (Redmond, 2007). They have afforded the Commissioner avenues to intervene in criminal proceedings in ways traditionally associated with civil (inquisitorial) criminal justice systems than common law systems. The Commissioner, for instance, has the authority to appear in person, or through legal counsel, before a sentencing court to make a victim impact statement, neighbourhood impact statement or social impact statement. Perhaps the most notable development, however, is recognition of victims' right to legal counsel albeit in limited circumstances. For example:

The police on behalf of A, a victim of domestic violence, attained an anti-violence (restraining) order against A's husband. A agreed with the conditions of the order. Later A's husband applied to vary a condition and the prosecutor agreed without first consulting A. A complained but the prosecutor refused to alter his stance, so A asked the Commissioner to help. The Commissioner engaged a lawyer to act on A's instructions. The lawyer challenged the prosecutor to either withdraw from the agreement to support the variation or face the prospect of an application to set the variation aside in court. The prosecutor conceded that he had not consulted the victim A and on doing so, withdrew from the agreement struck with the defendant, A's husband.

By way of further example:

B was an adolescent victim of an alleged sexual assault. Before the assault happened, the defendant allegedly showed B pornography via the Internet using

B's laptop. The police seized the laptop and conducted an analysis of the hard-drive. Defence counsel applied for a "shadow" copy of all data on the hard-drive. In addition to some data being the intellectual property of other users of the laptop, not all data belonging to B was (arguably) relevant to the criminal case. The Commissioner instructed a lawyer to intervene, which he did. Both the Commissioner and the lawyer attended the court. First they spoke with the prosecutor and alerted him to the prohibition on unnecessary intrusion into a victim's privacy. Second, the lawyer applied to intervene in the criminal proceedings, which the judge permitted. After hearing submissions from prosecution, defence counsel and the lawyer for the Commissioner (on behalf of B), a compromise was reached that avoided unwarranted intrusion into B's privacy.

And a final example:

Under South Australia law, victims can apply to appear before Courts hearing applications to revoke a licence or vary licence conditions for mentally impaired or mentally incompetent offenders (section 269P of the Criminal Law Consolidation Act 1935). In Steele's case, Gray J of the Supreme Court held that the family of a killed victim were interested persons and allowed their legal counsel (funded by the Commissioner for Victims' Rights) to cross-examine witnesses and make submissions. Most recently, in the Supreme Court Kelly J allowed legal counsel for the Commissioner to make submissions regarding a persistent sex offender's application for supervised release. In light of law that stipulates community safety is a priority factor in determining whether a persistent sex offender should be released or not, the Commissioner's counsel argued against the offender's release. Her Honour invited the Commissioner to make further submissions, which happened, and in her judgment, Kelly J observed that she was 'greatly assisted by [the] submissions'. (R v Marshall [2014] SASC 92 at [42])

These and other examples of the Commissioner's interventions augment the entitlement to legal representation available to victims of sexual assault when an application is made to disclose details of a protected communication that happened in a therapeutic context³ as well as the entitlement to legal representation available to a person seeking a suppression order, such as a victim who asserts that publication of certain information will cause him or her "undue hardship".⁴ Drawing on a limited legal fund, the Commissioner has twice during criminal proceedings paid legal counsel to assist victims of sexual assaults. On one occasion, to advise the victim on the implications of withholding a statement made to a Commission of Inquiry, and on the other, to represent the victim at a *voir dire* (ie a trial within a trial) on whether Medicare records are "protected communications", as are therapeutic notes kept by a counsellor or other therapist.

Whether having a Commissioner act as that in South Australia and or having stronger participatory rights has increased victims' satisfaction and or conception of

³ Section 67F(7) of the *Evidence Act 1929* requires the court to take into account, amongst other factors, the attitude of the victim or alleged victim to whom the communication relates (or the guardian of the victim or alleged victim) to the admission of the evidence, when determining whether or not to order disclosure of a "protected communication".

⁴ Section 69A of the *Evidence Act 1929* provides that any person who has, in the opinion of the court, a proper interest in the question of whether a suppression order should be made, is entitled to make submissions to the court on the application.

procedural justice is unknown. Overseas research, however, casts a positive light on allowing victims to be represented by legal counsel. In Ireland, Back, Maunsell and Gogan (1998, pp 17-18) reported "a highly significant relationship ... between having a lawyer, and overall satisfaction with the trial process. The presence of a victim's lawyer also had a highly significant effect on victims' level of confidence when giving evidence, and meant that the hostility rating for the defence lawyer was much lower". Similarly in Canada, Crown Counsel is quoted as saying "[in regard to disclosure of medical records for victims of sexual assault] everyone takes it more seriously [when there is independent counsel for the victim]" (Mohr, 2002, pp 16-17). In the United States both Cassell (2014) and Beloof (2005) have argued in favour of victims having legal counsel; and Cassell (Fine, 2014) is reported to have said "victims express greater satisfaction when they feel they are heard". Such findings are not peculiar to countries that, like Australia, inherited the common law adversarial criminal justice system. In Austria, for instance, a recent empirical study, which included an examination of 5000 pre-trial files and 85 interviews with police officers, prosecutors, judges and lawyers shows that by strengthening victims' access to legal representation the division of power to influence proceedings shifts from the accused to the victim without jeopardising the rights of the accused. (Birkbauer, Sover & Weber, 2012).

Conclusion

Victimological research, victimisation studies, and surveys provide a wealth of information on victims, their reactions to crime, the effects of crime on them, and their perceptions of criminal justice. Regarding violent crime in particular, much is now known about the extent of physical and mental injury that results, and the extent of material loss and dysfunction in victims' social support. Research has also given insights into what works in helping victims cope in the aftermath of violence.

There is a consensus that Australia's criminal justice systems have not served victims well. Many victims, particularly victims of personal violence, lack confidence to report crime, lack adequate assistance whether or not they report crime, and look upon the possibility of criminal proceedings, especially in court, as an unacceptable ordeal. Many victims want procedural justice.

Giving victims participatory rights is an acknowledgement that procedural justice is an important step towards making criminal justice systems fairer and just. However, these rights can too often be no more than rhetoric, so a more radical break from the tradition of relegating victims to the status of a witness for the state as prosecutor is required. This chapter proposes that the appointment of a Commissioner for Victims' Rights with standing in criminal proceedings is a step towards ensuring that victims of crime have a more effective voice in every stage of the criminal justice process. It might lead to victims once again having legal counsel and standing as an equal in the administration of justice. Perhaps in the eyes of some this will be an "ill wind" but as Sherlock Holmes said:

"There's an east wind coming, Watson."

"I think not, Holmes. It is very warm."

"Good old Watson! You are the one fixed point in a changing age. There's an east wind coming all the same, such a wind as never blew on England yet. It will be cold and bitter, Watson, and a good many of us may wither before its blast. But in God's own wind none the less, and a cleaner, better, stronger land will lie in the sunshine when the storm is cleared. Start her up, Watson, for its time that we were on our way ..."

(Doyle, 1999, p 966)

Endmatter

Key learning points

- The economic, social and personal costs of violence in Australia are significant.
- Violent crime can have a profound and prolonged impact on victims.
- Medical, psychological, financial and practical assistance is necessary to help victims cope with the effects of violence.
- Procedural justice is an important factor in both victim- coping and victim-satisfaction.

Questions for consideration

- Given the long-term cumulative impact of violence on individuals and communities, should more be done to prevent such violence? What should be done to reduce violence and prevent victimisation?
- Should the state pay lump sums of money as compensation to victims of violent crime? Or, instead should the state provide therapeutic, medical and practical assistance?
- If procedural justice is so influential regarding both victims and how they cope with the effects of violence and their satisfaction with the criminal justice system, why are victims' rights not taken seriously? What can be done to strengthen victims' rights?

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Please access The Federation Press website for the full reference list.

Key reading and resources

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Understanding Homicide in Australia: Exploring Perpetrator Accounts

Paul Mazzerolle, Li Eriksson, Richard
Wortley and Holly Johnson

Of all crimes, homicide arguably has the most extreme consequences. It has devastating effects for the victim's family, where experiences of severe loss and emotional distress are common (Hardesty, Campbell, McFarlane & Lewandowski, 2008; Peterson Armour, 2002). It has been estimated that more than one in five immediate family members affected by homicide go on to develop homicide-related post-traumatic stress disorder (Arnack-McMullan, Kilpatrick & Resnick, 1991). Further, although homicides are rare events when compared against the large volume of non-lethal assaults, the impact of lethal violence on the criminal justice system is considerable. In Australia, approximately 2800 men and women are currently serving custodial sentences for homicide and related offences (Australian Bureau of Statistics, 2011b) at a significant cost to society. Estimates suggest that monetary costs associated with homicide are over five million US dollars per offence (Delisi, Kosloski, Sween, Hachmeister, Moore & Drury, 2010). Moreover, the overall health related impacts associated with both non-lethal and lethal violence represent a significant cost to the community (VicHealth, 2004). Given the significance of these events for families and the general community, there is an increasing need to examine and understand the various opportunities for preventing homicide events.

Understanding homicide in Australia: Exploring perpetrator accounts

Much of the homicide research internationally and in Australia use official data made available by State and local government agencies. Official data used by researchers include criminal justice statistics collected by the police, criminal courts and correctional agencies (eg, Wallace, 1986). Other forms of official data include public health data, such as coroner files and psychiatric patient records (eg, Polk, 1994). In addition to criminal justice and public health data, some research also utilises publicly available media reports of homicide incidents (eg, Peelo, Francis, Soothill, Pearson & Ackerley, 2004).