
NSW Department of Attorney General and Justice

Review of the Victims Compensation Fund

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Executive Summary

PricewaterhouseCoopers (PwC) has been requested by the NSW Department of Attorney General and Justice (DAGJ) to perform a review of the Victims Compensation Fund.

This review was announced by the NSW Attorney General, The Honourable Greg Smith SC MP in August 2011 in order 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.

In summary, the scope of this review is to undertake the following:

1. Detailed financial projection and analysis of the Current Scheme
2. Development of a profile of victims eligible for compensation
3. Examination of options for alternative ways to provide support and rehabilitation services to victims of violent crime
4. Examination of ways to fund options identified
5. Determination of a strategy to address the accumulated liability for lodged but unresolved claims

This report is subject to the reliances and limitations set out in Section 12 of this report.

Viability of the Victims Compensation Scheme

The *Victims Support and Rehabilitation Act 1996* (“the Act”) commenced on 2 April 1997 and repealed the *Victims Compensation Act 1987*. The object of the Act is to provide support and rehabilitation for victims of violent crime by giving effect to an approved counselling and a statutory compensation scheme, intended to be “a reformed scheme of compensating victims of violent crime”¹.

Part 1 of this report shows that the scheme is financially unsustainable within current funding constraints. The scheme has an escalating number of victims pursuing compensation and counselling, while the funding provided to meet those claims remains unchanged. As at June 2012 the accumulated liability with respect of lodged but unresolved claims is estimated to be \$392 million. This is expected to increase by approximately \$38 million per annum if the Current Scheme, including funding levels, is left unchanged. At 30 June 2013 the accumulated liability for lodged but unresolved claims is expected to have increased to \$430 million.

As a result of the large mismatch between funding levels and scheme costs the determination of claims has slowed. Claims are taking more than 25 months between lodgement and determination, undermining the objectives of the Act.

There are only two levers available to address this imbalance: increase funding levels and/or reduce scheme costs.

The Current Scheme receives approximately \$72M p.a. of funding from three sources. The majority of this funding (\$60M) is from NSW Treasury, while the remainder is collected from restitution from convicted offenders, court fine levies and a share of the proceeds of crime confiscations. The present level of NSW Treasury funding appears in line with other jurisdictions and there is limited scope for significantly increasing the funding from the remaining sources.

¹ Second Reading Speech, Parliamentary Debates, Legislative Assembly, 15 May 1996 at 974

However, even with a substantial change to the scheme design, a significant increase in short to medium term funding would still be required in order to clear the accumulated backlog of claims lodged under the Current Scheme in a reasonable time frame.

Designing a new scheme which would be financially viable within existing funding levels involves extremely difficult fundamental choices of either restricting the number of victims accessing the scheme or by reducing the average size of claims. Reduction in claim numbers could be achieved by tightening limitation periods and reporting requirements and reduction in average size could be achieved by capping the level of benefits.

Our review has also identified services and supports which are not currently provided by the scheme, but which would be beneficial to claimants and assist them to begin their healing process shortly following the act of violence. In addition we have seen that existing mainstream and specialised services can be challenging for victims to navigate and obtain services beneficial to their recovery. Both of these points also undermine the objectives of the Act.

Scheme Redesign

Part 2 of this report documents recommendations on a Proposed Scheme that provides an alternative way to provide support and rehabilitation services to victims of violent crime. Our recommendations have focused on how to make the best use of the funding that is currently available and have been informed by the following research:

- 1.** Data analysis which was used to ascertain claimant trends within the Current Scheme and to assess the financial viability of the Current Scheme.
- 2.** Literature review from a variety of other victims compensation schemes around Australia and overseas enabling us to gain an understanding of some of the approaches that other schemes have adopted.
- 3.** Face to face and telephone consultations with key organisations and individuals in which we discussed the needs of victims of violent crimes and the strengths and weaknesses of the Current Scheme and other schemes around Australia.
- 4.** Broader stakeholder consultation via an issues paper requesting submissions from which we received 33 submissions in total.
- 5.** A claimant survey used to better understand victims needs following an act of violence from which we received over 1,000 responses.

The Proposed Scheme has been developed according to the following key reform principles:

- 1.** The Proposed Scheme is financially viable
- 2.** The allocation of the Proposed Scheme's funds are prioritised to:
 - a.** Meet the immediate needs of victims of violent crimes
 - b.** Provide financial assistance and rehabilitation
 - c.** Recognise and acknowledge the trauma suffered
- 3.** The Proposed Scheme is consistent with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Our Proposed Scheme represents a significant shift in the design of the Current Scheme from a legal compensation awarding process to an administrative needs based process. We feel such a shift will produce results which better optimise the support and rehabilitation outcomes of as broad a group of victims as possible whilst being sustainable within current funding levels.

We summarise the key recommendations of the Proposed Scheme below. The main body of the report contains more detail behind the reasoning for each of these recommendations.

Summary of Recommendations

Current Scheme

1. To close the Current Scheme for new lodgements as soon as possible to avoid significant growth in the accumulated liability.
2. To open a new victims support scheme (the “Proposed Scheme”), as described in Section 8.

Funding

3. Longer term funding of the Proposed Scheme should be set at about current levels, circa \$72M per annum. This would require funding by NSW Treasury to remain at current level of approximately \$60M per annum.
4. Longer term funding levels should be indexed with an appropriate inflation measure.
5. Funding should be significantly increased in the short to medium term to pay off the Current Scheme liability in a reasonable timeframe.
6. The principle of restitution is considered an important element in the Scheme and should be retained, although we recommend that victims have the ability to opt out of the restitution process in circumstances where they can demonstrate a safety concern as a result of restitution being pursued. Whilst the principle of restitution is important, the safety of the primary, secondary and family victims should take precedence.

The Proposed Scheme

7. Repeal the Act and create new legislation (“the Proposed Act”) based on the recommendations in this report.
8. To remove all reference to “compensation” in the Proposed Scheme and the Proposed Act.
9. Name the Proposed Scheme the Victims Support Fund.
10. The Proposed Scheme should target an annual cost of \$65M p.a. (indexed). The cost of the Proposed Scheme would lie below the current funding levels and provide a \$7M p.a. buffer between the funding and the expected cost.
11. The Proposed Scheme is applied to newly lodged claims.
12. The treatment of claims lodged but unresolved will depend on the level of additional funding available and on the timeframe over which the accumulated liability is reasonably expected to be paid. The following options have been considered:
 - a. The Current Scheme continues to apply for existing lodged but unresolved claims
 - b. All existing lodgements fall under the Proposed Scheme

- c. The benefits under the Current Scheme are reduced and will apply for existing lodged but unresolved claims.

13. The Proposed Scheme has 4 pillars of support for victims of violent crime:

- i. Counselling
- ii. Immediate needs
- iii. Financial assistance
- iv. Recognition payment

Pillar 1 (Counselling)

- 14. Increase counselling hourly rates to a level consistent with Medicare rates.
- 15. Pay counsellors for travel time in excess of two hours.
- 16. In exceptional circumstances, allow discretion for higher counselling rates to be approved for the counsellors of claimants who reside interstate and overseas.
- 17. Continue to allow counsellors to be approved on an interim basis, especially in certain circumstances such as where a pre-existing counselling relationship exists, or where the claimant resides in rural or remote locations.

Pillar 2 (Immediate Needs)

- 18. Eligible claimants with critical immediate needs may apply for a package of support under Pillar 2 (immediate needs) up to a maximum of \$5,000. Funeral expenses would be exempt from this limit and would be subject to a separate limit of \$8,000.
- 19. A Pillar 2 (immediate needs) benefit package would be payable for items of reasonable cost where intervention and/or assistance are critical to the recovery outcomes of the victim or there is an emergency financial need. For example:
 - a. Relocation costs of the victim from a situation of potential violence (such as in domestic violence circumstances where the victim cannot afford the costs of relocation).
 - b. Implementation of safety measures (such as installation of locks or security doors where there is still the threat of violence).
 - c. Medical and other costs where the victim is unable to make the appropriate financial payments and the delay in payment or treatment would result in significantly poorer recovery outcomes for the victim (such as ambulance costs or emergency dental treatment).
 - d. Funeral expenses in the case of homicides.

Pillar 3 (Financial Assistance)

- 20. A Pillar 3 (financial assistance) package would provide claimants who have suffered an economic loss with amounts under Pillar 3 not exceeding \$30,000 with:
 - a. Loss of actual earnings up to \$20,000 for victims who can demonstrate a loss of actual income as a result of the crime.

- b. Financial assistance up to \$5,000 for victims who cannot demonstrate a loss of actual income, but can demonstrate a loss as a result of the crime. A further sub limit of \$1,500 would apply to amounts awarded for damage to clothing.
- c. Medical and dental expenses directly related to the injuries caused by the act of violence.

Pillar 4 (Recognition Payment)

21. That the Proposed Scheme continues to provide eligible victims of violent crime with lump sum amounts to acknowledge the violence suffered by the claimant and to recognise the trauma of the experience.
22. The benefits available under Schedule 1 Compensable Injuries are discontinued and replaced with recognition payments based on the nature of the violent act with the amounts payable consistent with those shown in Table 8.3 1.

Eligibility

23. Victims eligible for Pillar 1 (counselling) would include primary, secondary and family victims
24. Victims eligible for Pillar 2 (immediate needs) support would include:
 - a. Primary victims
 - b. The family members of homicide victims
25. Victims eligible for Pillar 3 (financial assistance) support would include:
 - a. Primary victims
 - b. The parents of child victims
26. Victims eligible for Pillar 4 (recognition payment) support would include:
 - a. Primary victims
 - b. In cases of homicide, dependent family members and non dependant parents.

Limitation Periods

27. To provide counselling (Pillar 1) to all victims with no limitation period restrictions.
28. Claimants must lodge their claim for Pillar 2 (immediate needs) and Pillar 3 (financial assistance) in a reasonable timeframe, no later than the maximum of 2 years or 18 years of age plus 2 years.
29. Claimants must lodge their Pillar 4 (recognition payment) within 2 years of the incident (or 18 years of age plus 2 years). In the case of Domestic Violence and Sexual Assault these time limits would be extended to an absolute time limit of 10 years (or 18 years of age plus 10 years for child claims).

Reporting Requirements

30. Pillar 2 (immediate needs) benefits be made available upon the claimant supplying one piece of evidence that supports, on the balance of probability, that the claimant is a victim of violent crime, such as a police or medical report.
31. For Pillar 3 (financial assistance) and Pillar 4 (recognition payment) benefits, a higher standard of evidence is required. A police report is required and there must also be evidence of injury (by a medical,

dental or counselling report). There may also be other documentary evidence required depending on the Pillar 3 assistance required (e.g. evidence of actual or relevant receipts).

32. In tandem with the Pillar 3 and Pillar 4 requirement for police reporting, to have a police liaison officer embedded within Victims Services.
33. That statutory declarations are no longer accepted as sufficient evidence for acceptance of a claim.

Psychological Injury

34. Psychological injury to be implicitly included in the recognition payment under Pillar 4, and that there be no further requirements for claimants to be assessed by Authorised Report Writers in the claims process.

Related Acts of Violence

35. Claimants are eligible to access each pillar of support only once for related acts of violence. This means:
 - a. The limits, sub limits and amounts available under each pillar of support apply to related acts of violence rather than individuals acts of violence.
 - b. Claimants are eligible for a single recognition payment under Pillar 4 (recognition payment) for related acts of violence.

Case Co-ordinators and Assessors

36. Victims Services provides claimants with a case coordinator to assist the claimant with immediate needs, navigating the various government and community support services relevant to the victims needs and to help claimants through the claims process.
37. That each claim in the Proposed Scheme is reviewed by an assessor who acts as an independent person within Victims Services that determines the level of support and financial assistance the claimant is eligible for under the scheme.
38. Victims Services to establish dedicated case co-ordinators for victims from backgrounds that require greater help in seeking assistance such as Aboriginal and Torres Strait Islanders, culturally and linguistically diverse communities, rural and remote communities, the homeless and people with disabilities.

Appeals

39. Appeals are in the first instance addressed by an internal review process conducted by a senior assessor.
40. That Victims Services establish prescriptive guidelines on which components of an assessor's determination may be appealed, and for there to be additional restrictions on the grounds for appeal.
41. That the powers vested in the Victims Compensation Tribunal to deal with appeals be transferred to the Administrative Decisions Tribunal.
42. The decision of the Administrative Decisions Tribunal is final and no further appeal or review is permitted.

Administration

43. That a simpler claims form and claims process be established to enable timely provision of immediate needs and financial assistance to victims.

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44. The Registrar be given the discretion to authorise financial payments reimbursing a claimant without the requirement for receipts to be provided in extreme or unusual circumstances.

Transitional Arrangements

45. Funding is firstly directed to emergency needs, then immediate needs and finally deferred needs.

Monitoring and Review

46. The initial scheme review should be conducted after 3 years and subsequent reviews should be conducted every 3-5 years to provide the opportunity to recalibrate either funding or benefits to ensure that the scheme is delivering on its objectives.

Regulatory Powers

47. That the Registrar or Director of Victims Services be given the regulatory power to restrict or expand the benefits and support available to claimants.

1. *Introduction*

PricewaterhouseCoopers (PwC) has been requested by the NSW Department of Attorney General and Justice (DAGJ) to perform a review of the Victims Compensation Fund.

This review was announced by the NSW Attorney General, The Honourable Greg Smith SC MP in August 2011 in order 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. A long-term financial viability review of the Victims Compensation Fund has not been undertaken since 1997 and a comprehensive review of the *Victims Support and Rehabilitation Act 1996* (“the Act”) has not been undertaken since 2004². There are wider questions about what is the appropriate mix of services and financial support to best meet the Act’s objective of “support and rehabilitation”.

This review incorporates the analysis and evaluation of the Victims Compensation Scheme to examine appropriate strategies and options for service provision to victims of violent crime in NSW.

We note that victims compensation sits within the larger picture of the criminal justice system and we are aware that a separate independent review of the provision of court support services for victims of crime was announced in February 2012.

1.1. *Terms of reference*

In summary, the scope of this review is to complete the following:

1. Detailed financial projection and analysis of the Current Scheme
2. Development of a profile of victims eligible for compensation
3. Examination of options for alternative ways to provide support and rehabilitation services to victims of violent crime
4. Examination of ways to fund options identified
5. Determination of a strategy to address the accumulated liability for lodged but unresolved claims

This report has been prepared by Michael Playford and Peter Hardy in accordance with the engagement terms outlined in the agreement with the DAGJ dated 10 January 2012.

² Request for Tender DAGJ 2011/54 – Long Term Viability review of the Victims Compensation Fund and evaluation of the statutory compensation Scheme in NSW, p2

1.2. *Review process*

This review has been informed by the following research:

1. Data Analysis

We have collected information from a variety of sources that has enabled us to:

- Understand claimant profiles within the scheme across a broad range of demographics and claim characteristics
- Understand unmet demand in the scheme through analysis of utilisation statistics
- Analyse the payment patterns and determine the financial position of the Current Scheme through the calculation of an accumulated liability.

This work is documented in more detail in Sections 3 to 5 of this report.

2. Literature review – See Appendix C

As part of our review we have collected information from a variety of other victims' compensation schemes around Australia and overseas. This enabled us to benchmark the NSW scheme with other jurisdictions, both Australian and overseas to enable a greater understanding of some of the approaches that other schemes have adopted.

We scanned the literature in the following Australian jurisdictions – Victoria, Queensland, Western Australia and South Australia. We also scanned literature in the following overseas jurisdictions – United Kingdom, New Zealand, Germany and the United States.

3. Face to face or telephone consultations with key organisations and individuals

As part of our stakeholder consultation, we have spoken with members of Victims Services and the Victims Compensation Tribunal, victims compensation scheme in other states, victims support groups, a community legal centre and private legal firms.

During these consultations, we discussed a range of issues which can be grouped broadly under the following headings:

- The needs of victims of violent crime
- The strengths and weaknesses of the Current Scheme
- The strengths and weaknesses of the schemes in other states

The following table details the organisations and individuals we met with, either face-to-face or through telephone conferences and other correspondence.

Organisation	Personnel
Victims Services	Director Chairperson Registrar Counselling Aboriginal Project Officer Victims Access Line (VAL) Referral and Support Compensation Assessors Restitution
Victims Assist Queensland	Director
Victims Rights South Australia	Commissioner
Victims of Crime Assistance Tribunal (VOCAT) Victoria	Principal Registrar
Sydney Women's Domestic Violence Court Advocacy Service	Co-ordinator
Victims of Crime Assistance League (VOCAL)	Vice President
NSW Rape Crisis Centre	Senior Counsellor
Wirringa Baiya Aboriginal Women's Legal Centre	Principal Solicitor, Senior Solicitor, Solicitor and Co-ordinator
Clayton Utz and Ashurst Australia	Pro Bono Partners and Associates

4. Broader stakeholder consultation via an issues paper requesting submissions

PwC released an issues paper dated 22 March 2012 titled "Review of NSW's Victims Compensation Scheme". In this paper, we outlined the issues and questions that have been considered in our review and invited interested stakeholders to respond via written submissions on all aspects of the Scheme.

We received 33 submissions in total. Appendix D outlines the organisations and individuals who responded and contains a summary of their comments.

5. Claimant survey

In May 2012, PwC in conjunction with Victims Services distributed a survey to claimants asking questions about their needs following the act of violence, such as practical and financial assistance needed, victims support groups accessed and a rating on their experience of the victims compensation process.

Surveys were sent to the following claimants:

- Claims lodged within the last 3 months
- Received an award of compensation within the last 3 months
- Received an interim award within the last 3 months

- Awaiting finalisation of claim where the claim has formally been listed for determination by a compensation assessor
- Waited for the finalisation of claim for a period between 6 to 18 months

This resulted in around 6,000 surveys being distributed, of which we received around 1,000 responses.

1.3. *Definitions used in this report*

“**Current Scheme**” refers to the existing Victims Compensation Scheme.

“**Proposed Scheme**” refers to the proposed changes to the Victims Compensation Scheme as recommended by PwC.

“**The Act**” refers to the *Victims Support and Rehabilitation Act 1996*.

“**Victim Services**” refers to the area within the Department of Attorney General and Justice who provide support and information to victims of crime in NSW.



“**VCF**” refers to the Victims Compensation Fund which is overseen by the Victims Compensation Tribunal.

“**BOCSAR**” refers to the NSW Bureau of Crime Statistics and Research, which is the official source of NSW crime information.

***Part 1 –
Viability of
the Victims
Compensation Scheme***

2. Scheme Background and History

Key Points

The Act commenced on 2 April 1997 with the object of providing support and rehabilitation for victims of violent crime by giving effect to an approved counselling and a statutory compensation scheme.

The Act is not intended to provide full compensation to victims of crime, but is as much an acknowledgement by the State of the trauma suffered by the victim as it is to help the victims financially.

There are a range of support services currently available to the victims of violent crimes in NSW including mainstream services, specialist services as well as benefits provided by the Current Scheme.

Navigating different systems to get appropriate supports and significant waiting lists can make accessing these support services difficult.

2.1. Introduction

The *Victims Support and Rehabilitation Act 1996* (“the Act”) commenced on 2 April 1997 and repealed the *Victims Compensation Act 1987*. The object of the Act is to provide support and rehabilitation for victims of violent crime by giving effect to an approved counselling and a statutory compensation scheme, intended to be “a reformed scheme of compensating victims of violent crime”³.

The Current Scheme has been impacted by the following subsequent changes:

- *Victims Compensation Amendment Act 1998* - amendments related to counselling, restitution and certain matters relating to domestic violence and psychiatric injury
- *Victims Compensation Amendment Act 2000* - amendments to limit the right to claim compensation for a psychological or psychiatric disorder to victims of armed robbery, abduction and kidnapping
- Various amendments in 2006 – as a result of the statutory review completed in 2004 (in accordance with Section 92 of the Act) to consider whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives
- *Courts and Crimes Legislation Further Amendment Act 2010*, *Victims Support and Rehabilitation Regulation 2010* and *Victims Support and Rehabilitation Amendment Rule 2010* - amendments were primarily to assist in streamlining the current statutory compensation scheme and implement the recommendations made in the 2006/2007 Chairperson’s Annual Report

Our understanding is that the Act is not intended to provide full compensation to victims of crime, equivalent to common law damages. The intention of the Act is to give victims of violent crime some compensation out of the public purse for the injury sustained. It is as much an acknowledgement by the State of victims’ pain and suffering as it is about helping victims financially.

³ Second Reading Speech, Parliamentary Debates, Legislative Assembly, 15 May 1996 at 974

We are aware the issue of victims rights has been enshrined in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which specify that:

8. *Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*
12. *When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:*
 - a. *Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;*
 - b. *The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.*
13. *The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.*

We understand these UN rights have been incorporated in the NSW Charter of Victims Rights which applies to all NSW government departments and non-government agencies funded by the State who provide support to victims of crime.

2.2. What Assistance is Currently Available?

Being a victim of violent crime can affect the person's physical and mental health, relationships and quality of life and require a range of services to help recover from the trauma. Support can be provided by government, non government and/or community organisations. Counselling can assist the individual in dealing with the emotional distress following the event, while appropriate medical specialists may be able to assist in treating the victim's injuries. Early intervention and prevention supports for those most at-risk can assist in minimising the impacts and support needs.

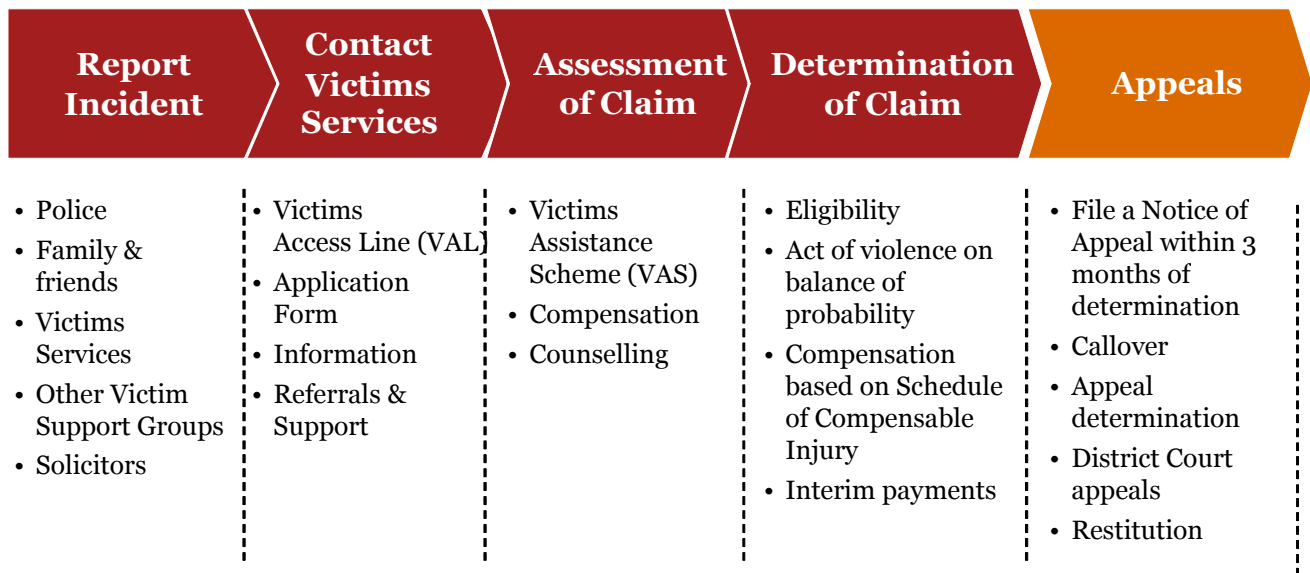
There are a range of support services currently available to the victims of violent crimes in NSW. The support needed may vary to meet issues unique to the individual such as sensitive personal and family problems or language barriers and cultural attitudes. In addition, navigating different systems to access appropriate supports and waiting lists can make accessing these supports difficult. The assistance they are given through this process can shape their perceptions on the quality of care and support received.

Broadly the types of supports that people who are victims of violent crime will access can be grouped into:

- **Mainstream services**, which are used by everyone in the community, such as hospitals and health services, Centrelink services, educational facilities, housing, correction and justice systems, family and children's services and aged care services
- **Specialist services**, which provide support to people seeking assistance and crisis intervention, such as the Victims Access Line (VAL), Community Services Domestic Violence Line, Victims of Crime Assistance League (VOCAL), and Homicide Victims Support Group (HVSG)
- **Benefits provided by the Scheme** such as counselling and compensation.

The feedback we have received from the consultation process is that many victims find it very difficult to navigate the system to get the services they need. The barriers to accessing these services can range in nature from being geographical, cultural and educational. Victims from particular subgroups such as Aboriginal and Torres Strait Islanders, culturally and linguistically diverse communities, people with disabilities, people from remote and rural areas and homeless people can face these barriers to a greater degree than other members of the community.

2.3. *Life cycle of claim*



Following the act of violence, the victim may seek assistance from the police, family and friends and various victim support groups (including Victims Services). They may then become aware of the Victims Compensation Scheme and contact the Victims Access Line to enquire about eligibility and benefits, and perhaps referrals to other support services.

After contacting Victims Services, the victim will complete an application form to lodge a claim (for compensation, counselling or VAS), or they may contact a solicitor to help them complete the application form and collate the necessary information.

Once the application has been lodged with all the necessary documentation attached, it then waits for determination by an assessor. In the intervening time, if the claimant suffers severe financial hardship, the claimant can apply for an interim payment to be made. An interim payment is also assessed by an assessor but within a much shorter timeframe.

An assessor makes a determination based on whether the claim is eligible and whether the act of violence could be established on the balance of probability. If the claimant is eligible and the act of violence can be established, then the assessor will determine the level of compensation based on the Schedule of Compensable Injury.

The claimant is then notified of the decision, and if they disagree with the assessor’s decision, they have 3 months to lodge a Notice of Appeal. After the appeal has been filed, a callover will be held before the Registrar of the Victims Compensation Tribunal to determine the readiness of the appeal. The appeal is then determined by a magistrate. If the appeal is on a question of law, the appeal will be heard in the District Court.

Once a victim has been awarded compensation, the restitution process begins if the offender can be identified and has been convicted for the act of violence from which the compensation claim arose.

Claimants can apply for an initial 10 hours of counselling. An Approved Counsellor may be allocated to the claimant based on some preferences indicated on the application form (such as location or gender), or the claimant can nominate an Approved Counsellor. Once eligibility for counselling is confirmed, the claimant will be sent details of an Approved Counsellor to contact and set up an initial 2 hour appointment with. After the initial appointment, the Approved Counsellor is required to submit a report to Victims Services which will discuss suitability to continue with the remaining 8 hours of counselling. Claimants can apply for a further 12 hours counselling (22 in total). In addition the Registrar has discretion to approve more counselling hours where required. The approved counselling service is paid for in full by Victims Services, with no gap payments required from claimants.

The Victims Assistance Scheme (VAS) was introduced in early 2007 to reimburse certain expenses for victims of crime. The threshold for claimed expenses must reach \$200 and payments are capped at \$1,500. The current maximum payment limit can leave victims out of pocket for many services or treatments. As an example, dental expenses will frequently cost over and above the \$1,500 cap.

3. Claimant Profiling

Key Points

There has been an increasing number and proportion of Sexual Assault and Domestic Violence claims reported in recent years and this has resulted in increasing proportions of younger claimants and female claimants.

The number of claims lodged out of time (over 2 years after incident) has increased by over 150% over the last five years from about 1,000 to over 2,500 per annum, mainly from Sexual Assault and Domestic Violence claims.

The number of claims lodged for which the incident was reported to police has reduced from about 95% in 2006 to about 85% in 2011, with the reduction mainly attributable to Sexual Assault and Domestic Violence claims.

There has been a large increase in the number of claims lodged by Aboriginal and Torres Strait Islanders over the last 10 years from about 300 a year in 2006 to over 700 in recent years.

Approximately 41% of claims are dismissed, with around half of the dismissals being due to the claimant being unable to establish an act of violence or a compensable injury

Of all the claims reported by secondary victims, only around 12% are successful in obtaining an award.

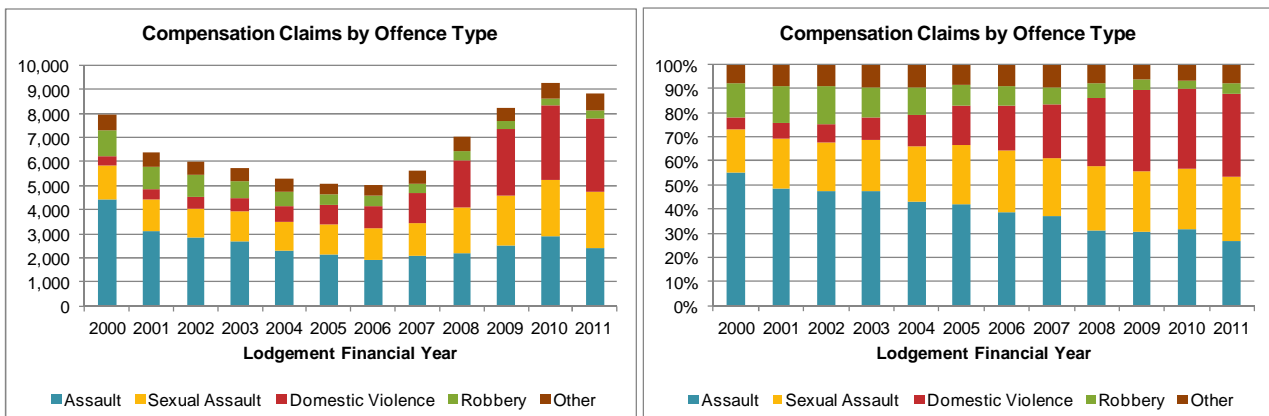
In the sections below, we have examined trends in claimants over the financial years 2000 to 2011.

3.1. Compensation claims

3.1.1. Offence type

Figure 3.1-1 shows the number and proportion of compensation claims lodged for each offence type.

Figure 3.1-1 Compensation Claims Lodged by Offence Type



The number of claim lodgements reduced significantly between 2000 and 2006 as a result of a significant reduction in assault and robbery claims. Since 2006 there has been a significant increase in the number of

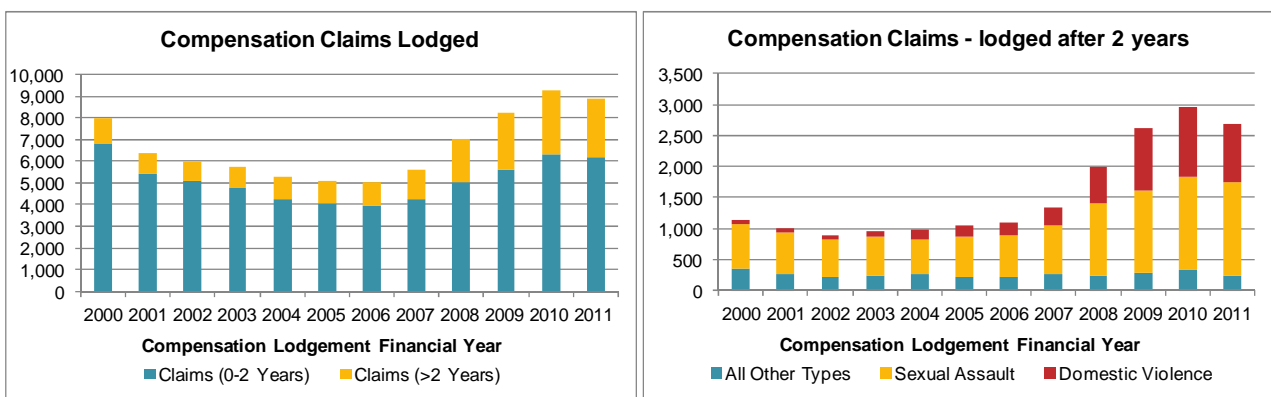
claims lodged, mainly due to an increase in the numbers of Domestic Violence and Sexual Assault claims being lodged. This is despite the number of violent crimes committed in NSW remaining relatively stable (Section 4.2.1 refers).

In particular, there has been a significant increase in Domestic Violence claims, increasing from 360 claims lodged in 2000 to 3,034 in 2011.

3.1.2. Out-of-time claims

Claims must be lodged within two years of the relevant act of violence, although the Director has discretion to accept applications that are lodged out of time. The following charts show the number of compensation claims lodged, split by whether the claim was lodged in-time (within two years of the incident end date) or out-of-time.

Figure 3.1-2 Compensation Claims by Delay from Incident to Lodgement



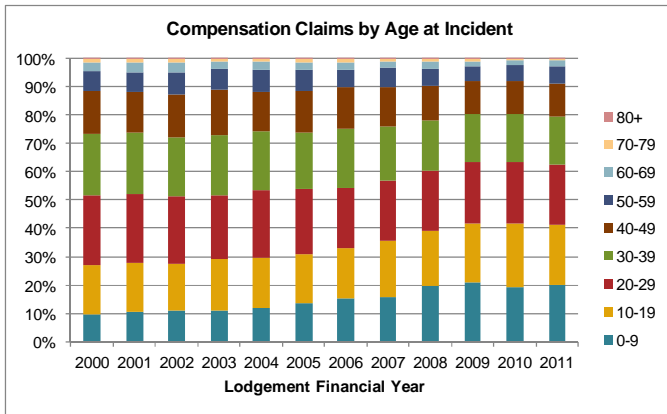
A significant portion of this increase in claims lodged since 2006 is due to older claims which were lodged more than two years after the incident. The increase in out-of-time claims is driven by increases in the Sexual Assault and Domestic Violence offence types.

Victims Services have informed us that the increasing trend in out-of-time claims is likely to be due to an increase in awareness of the Victims Compensation Fund through community education programs, as well as technology making information and application forms more accessible.

3.1.3. Age at incident

Figure 3.1-3 shows the proportion of compensation claims lodged by age group at the time of incident. Where an act of violence occurs over a period of time, the age at the start of the incident period is used.

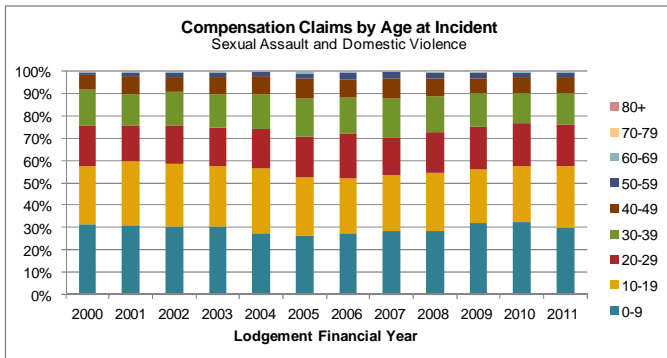
Figure 3.1-3 Compensation Claims Lodged by Age at Incident



There has been an increase in the proportion of younger claimants, with the proportion of claimants of age under 20 at the time of incident increasing from 27% in 2000 to 41% in 2011. This has been driven partly by the increase in Sexual Assault claims, for which there is historically a high proportion of young claimants, and an increase in young Domestic Violence claimants.

Figure 3.1-4 shows the proportion of compensation claims by age group for Sexual Assault and Domestic Violence claimants only.

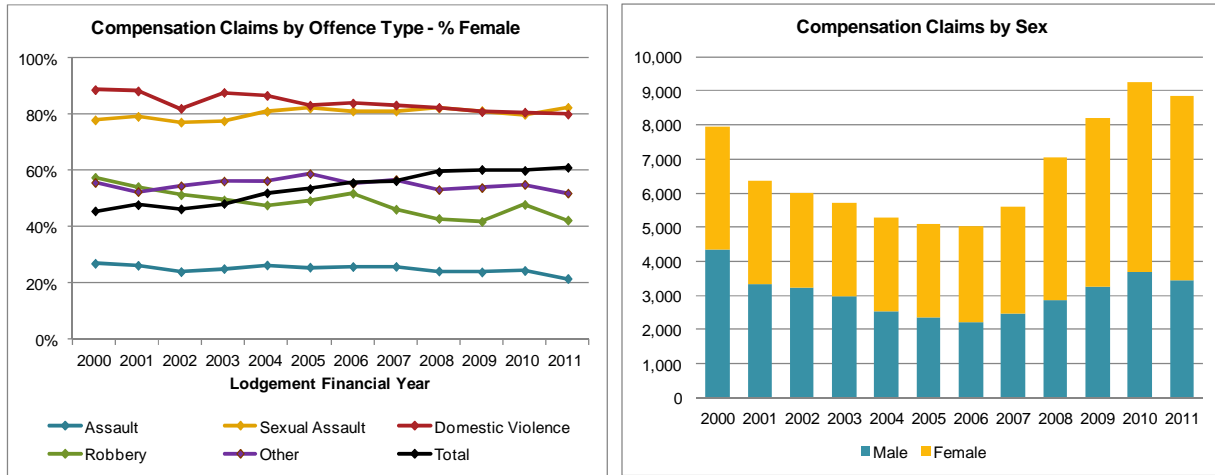
Figure 3.1-4 Compensation Claims Lodged by Age at Incident – Sexual Assault and Domestic Violence



3.1.4. Sex of victim

Figure 3.1-5 shows the proportion of female compensation claimants for each offence type.

Figure 3.1-5 Proportion of Female Compensation Claims Lodged

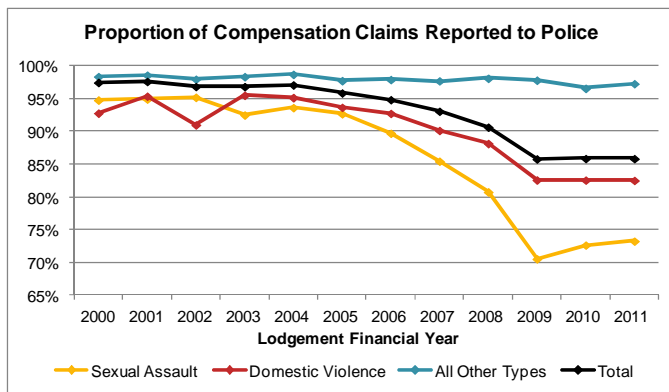


The proportion of female claimants has been relatively stable over the past few years within each offence type. However, in total, there has been an increase in female claimants due to the increase in Sexual Assault and Domestic Violence claims, for which there is historically a higher proportion of female claimants.

3.1.5. Reporting to police

Figure 3.1-6 shows the proportion of compensation claims lodged for which the incident was reported to police.

Figure 3.1-6 Proportion of Compensation Claims Reported to Police

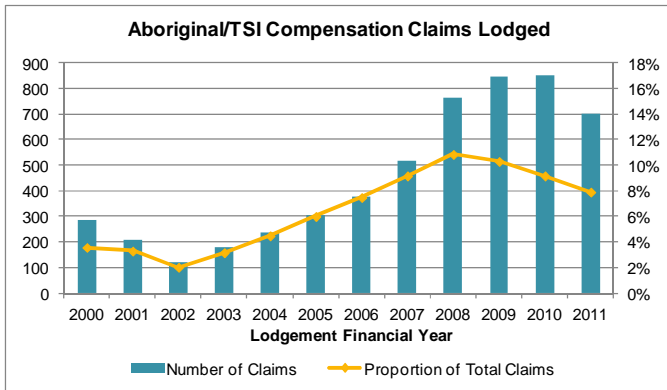


The overall proportion of claims reported to police has reduced from 97% in 2000 to approximately 85% since 2009. There has been a decrease in the proportion of Sexual Assault and Domestic Violence claims for which the incident was reported to police. The timing of this trend corresponds with the increasing number of claims lodged for these offence types.

3.1.6. Aboriginal and Torres Strait Islander claims

Figure 3.1-7 shows the proportion of compensation claims lodged for which the claimant was Aboriginal or Torres Strait Islander.

Figure 3.1-7 Compensation Claims Lodged by Indigenous Status

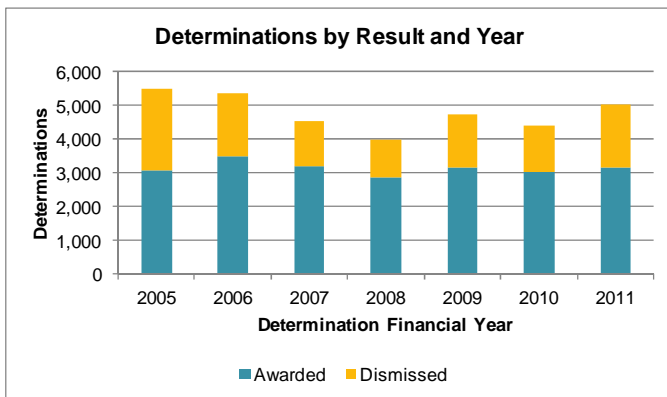


The proportion of Aboriginal and Torres Strait Islander claimants has increased in recent years, from around 3.5% in 2000 to around 8% in 2011. Victims Services have indicated that this may be due to better community education and awareness, as well as better capturing of the indigenous status of claimants in the data.

3.1.7. Dismissals

Figure 3.1-8 shows the number of awarded and dismissed or withdrawn determinations by financial year of determination.

Figure 3.1-8 Determinations by Result and Financial Year of Determination

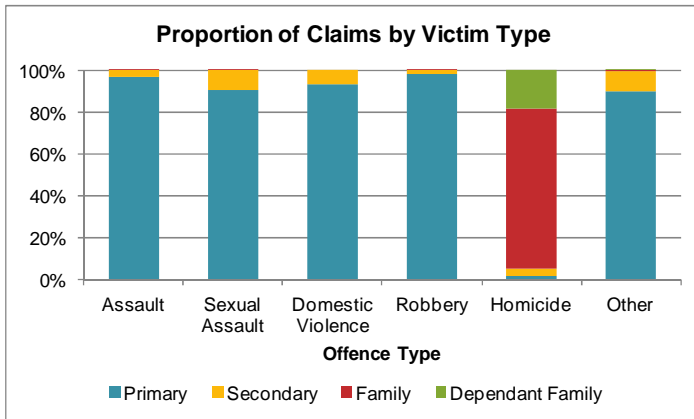


Since 2005, approximately 41% of claims are dismissed, with around half of the dismissals being due to the claimant being unable to establish an act of violence or a compensable injury. The actual number of awarded determinations has been reasonably consistent between years, at around 3,000 per annum.

3.1.8. Secondary and family claims

Figure 3.1-9 shows the profile of claims lodged over the financial years 2003 to 2011, by the type of victim lodging the claim.

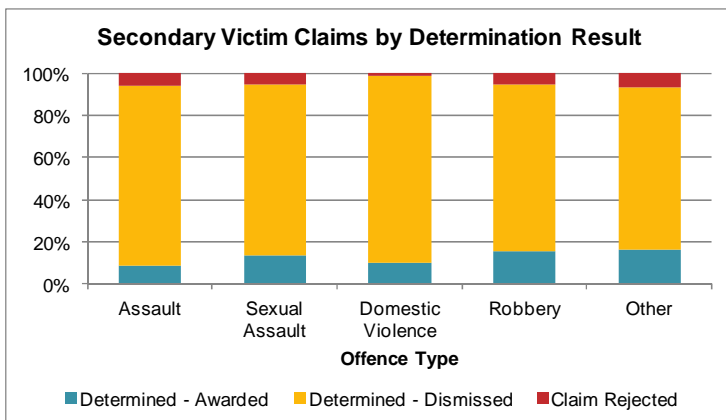
Figure 3.1-9 Claims Reported in 2003-2011 by Victim Type



Approximately 6% of non-Homicide claims are lodged by secondary victims, with a slightly greater proportion in the Sexual Assault offence type. For Homicide claims, approximately 20% are lodged by family victims who demonstrate dependency on the deceased victim.

Figure 3.1-10 shows the profile of claims lodged over the financial years 2003 to 2011 which have already been determined, by determination result.

Figure 3.1-10 Secondary Victim Claims Reported in 2003-2011 by Determination Result



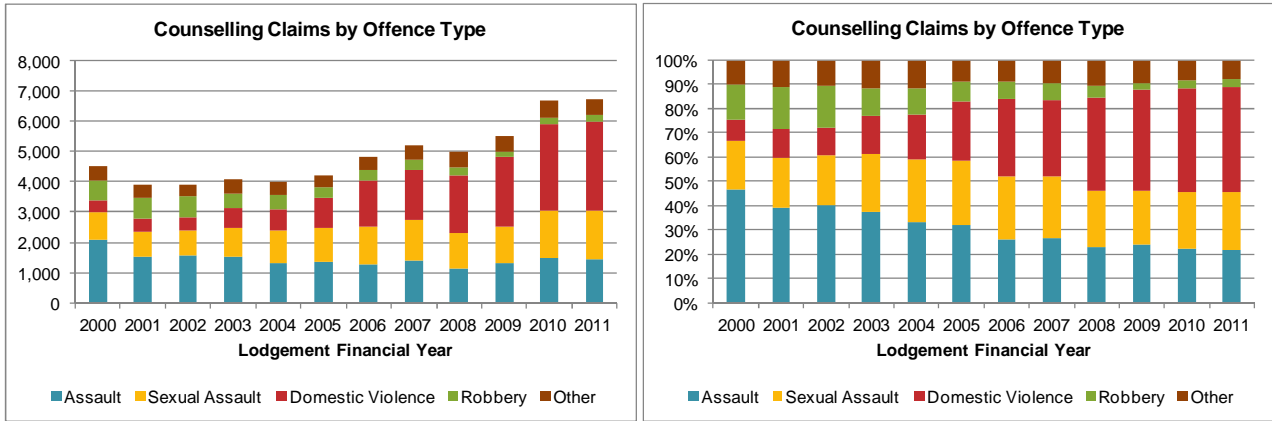
Of all the claims lodged by secondary victims, only around 12% are successful in obtaining an award. Over half of the dismissed claims are a result of no compensable injury or psychological disorder being established.

3.2. Counselling claims

The trends for counselling claims are similar to those of compensation claims.

Figure 3.2-1 shows the number and proportion of counselling claims lodged for each offence type.

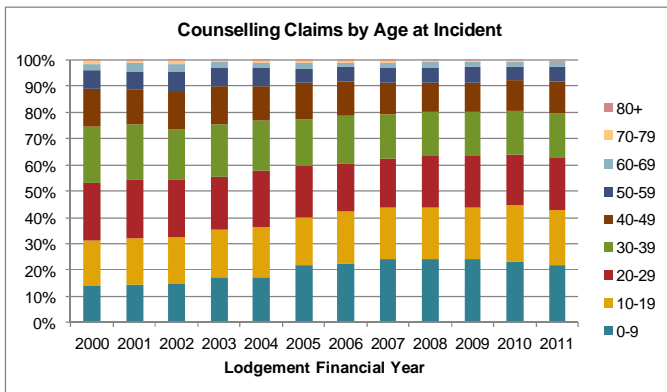
Figure 3.2-1 Counselling Claims Lodged by Offence Type



As with compensation claims, there has been a clear increase in the number and proportion of Sexual Assault and Domestic Violence claims in recent years.

Figure 3.2-2 shows the proportion of counselling claims lodged by age group at the time of incident. Where an incident occurs over a period of time, the age at the start of incident is used.

Figure 3.2-2 Counselling Claims Lodged by Age at Incident



As with compensation claims, there has been an observed increase in younger claimants driven by the increase in Sexual Assault and Domestic Violence claims.

4. *Analysis of Unmet Demand*

Key Points

The number of reported violent crimes committed in NSW has been relatively stable the last 10 years.

The utilisation of victims compensation claims for Domestic Violence has increased significantly over the last seven years, from around 5% in 2003 to over 20% in 2010.

The utilisation of victims compensation for Sexual Assault has also increased, although to a lesser extent than Domestic Violence.

In the sections below, we have analysed trends in the potential population from which victims compensation claims may arise, and in the utilisation of victims' compensation.

4.1. *Data*

The analysis of unmet demand was performed using crimes data from NSW Bureau of Crime Statistics and Research (BOCSAR) in conjunction with the analysis of claims incurred as detailed in Section 5.3.

4.2. *Potential population*

Each act of violence committed in NSW has the potential to result in a victims compensation claim. However, only a proportion of crimes result in a compensation claim, due to the following reasons:

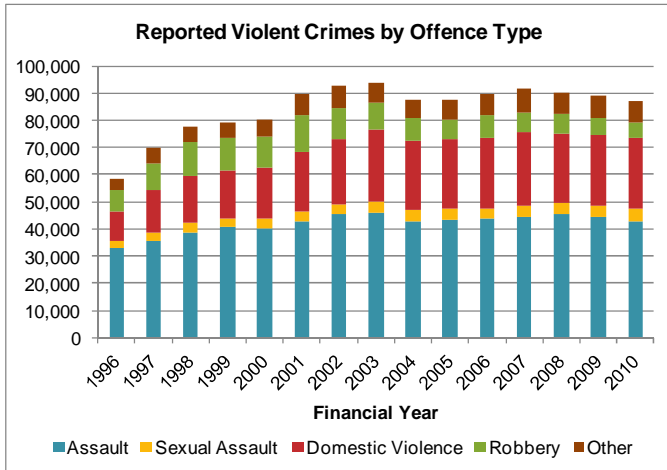
- The victim may not want compensation or services;
- The victim may be supported under other systems (eg. Medicare);
- The victim may not know of the possibility of lodging a claim, or may feel that lodging a claim is too troublesome;
- Other reasons.

We have considered all violent crimes reported to police in NSW as the potential population from which to measure the utilisation of victims compensation. Of course not all acts of violence are reported to police. There are particular issues for Sexual Assault, Domestic Violence and other acts of violence where the perpetrator holds an ongoing position of power over the victim which may mean that claims remain unreported at times close to the date of the act of violence.

4.2.1. Characteristics of the potential population

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

Figure 4.2-1 Violent Crimes Reported to Police by Offence Type



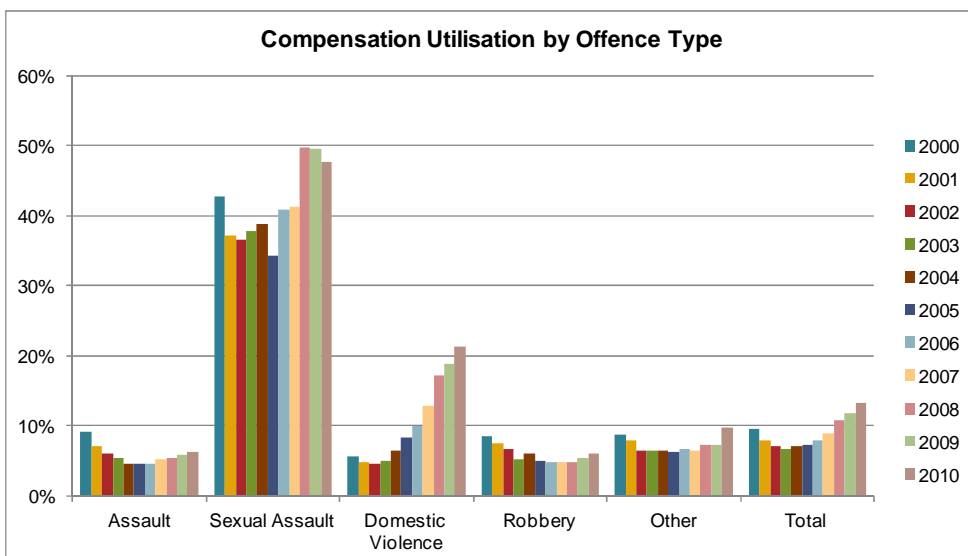
Source: BOCSAR

The number of crimes reported increased until around 2003, but has since remained relatively stable overall. Since 2003, Sexual Assault crimes have been increasing at around 2.4% each year, whereas Robbery crimes have been decreasing by around 8.5% per annum.

4.3. Trends in unmet demand

The following graph shows the utilisation of victims compensation for various groups of offences by financial incident year. This is determined as the number of claims incurred⁴ divided by the number of crimes reported to police for each financial year.

Figure 4.3-1 VCF Compensation Claims as a proportion of Reported Crimes



⁴ Lodged claims for the year of incident plus an allowance for expected future lodgements in respect of acts of violence from the year of incidence.

There has been a significant increase in utilisation of victims compensation for victims of Sexual Assault and Domestic Violence in recent years. In particular, the utilisation for Domestic Violence has increased from around 5% to 20%.

Overall, the utilisation remains relatively low at around 10% of all violent crimes reported to police. It has however been increasing in recent years, driven by the significant increase in utilisation for Sexual Assault and Domestic Violence.

5. *Analysis of Financial Status of the VCF*

Key Points

The estimated liability on reported claims is \$355M as at 30 June 2011 and this is higher than the \$239M estimated in the 2010/11 Chairperson's Report.

The estimated liability on reported claims is \$392M at 30 June 2012.

Based on the 12 months experience to 30 June 2012, the ultimate cost of each future year of incidents is expected to be \$91M.

The backlog and associated liability of reported claims will continue to increase over time as long as the disequilibrium between current funding levels (circa \$72M per annum) and scheme costs remains unaddressed.

This section contains an overview of the methodology and results of our analysis of the financial status of the fund. This section shows the estimated liability of lodged and future claims as at 30 June 2011.

Shortly before finalising this report we were provided summaries of claims data showing the number of claims lodged and determined in the 12 months to 30 June 2012. While the data and time available for analysis was limited, we have also estimated a revised accumulated liability using the data summaries at 30 June 2012 in Section 5.6.

We then consider estimates of the liability at future dates, assuming that the scheme structure remains unchanged.

Appendix B contains further detail on the valuation results.

5.1. *Key Financial Results*

Table 5.1-1 shows a summary of the estimated outstanding liability of the VCF as at 30 June 2011.

Table 5.1-1 Summary of Outstanding Claims Liability

Claims Liability as at 30 June 2011 (\$M)	Compensation	Counselling	Total
Liability as per Chairpersons' Report 2010/11	239		
PwC Liability on Lodged Claims	351	4	355
PwC Liability on Expected Future Lodgements	719	18	737
PwC Total Liability	1,070	22	1,092

The outstanding liability on lodged compensation claims is estimated at \$351m. We note that this is higher than the estimate provided in the Chairperson's Report of \$239m. This is due to refinements in our modelling approach reflecting the relatively large proportion of pending Sexual Assault claims which have a higher average claim size, as well as including an allowance for future appeals on claims which have already finalised.

A significant proportion of the outstanding liability is associated with claims expected to be lodged in the future in respect of acts of violence which have already occurred. This contingent liability has been calculated based on

the Current Scheme structure. There is considerable uncertainty surrounding this component of the liability, due to changing trends in recent years and a large number of expected future lodgements from older incident years for which there continues to be more uncertainty.

5.2. Methodology

5.2.1. Estimating ultimate claims for incidences already incurred

The pattern of future lodged claims is derived using a chain ladder approach. Claim lodgements are analysed by incident year and the delay between incident and lodgement dates to estimate the average percentage increase in cumulative claims lodged at each delay. We have analysed this separately by type of crime, given the different lodgement patterns of these types of crimes (Section 3 refers).

For incident years 2000 and prior, and for the Assault, Sexual Assault, and Domestic Violence offence types, the pattern of future lodged claims was based on the current number of claims lodged and an expected decay pattern to allow for an eventual decline in reported claims per year.

5.2.2. Estimating average claim sizes

For compensation claims, the average claim sizes were estimated using a Payments per Claim Finalised approach. This reflects the lump sum nature of compensation payments, where most payments are made as a lump sum shortly after a claim is finalised.

For counselling claims, the average claim sizes were estimated using a Payments per Claim Incurred approach, analysing payments by the delay between the date of lodgement and payment. This reflects the periodic nature of counselling payments and the relationship between the date of lodgement and payment dates for counselling claims.

A number of submissions questioned whether any allowance has been made for the high dismissal rate for claims lodged (circa 41%). This is allowed for implicitly in the methodology via the average claim size assumption which is calculated across all claims lodged. An alternative approach, giving consistent results, would be to calculate a higher average claim size only across non-dismissed claims.

5.2.3. Estimating the liability

For compensation claims, the liability is determined by multiplying the projected number of claims finalised by the expected average claim size.

For counselling claims, the liability is determined by multiplying the number of claims incurred by the expected average payment per claim incurred for future periods beyond the valuation date.

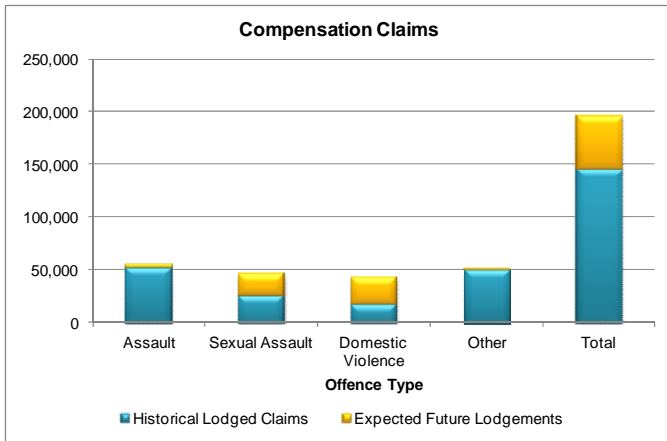
The result is a series of cash flows which sum to give the overall liability.

Note that projected payments include no allowance for future inflation as the VCF does not currently index compensation award amounts and counselling fees.

5.3. Number of claims incurred

Figure 5.3-1 shows the number of compensation claims lodged to date, and the number of expected future lodgements by type of crime.

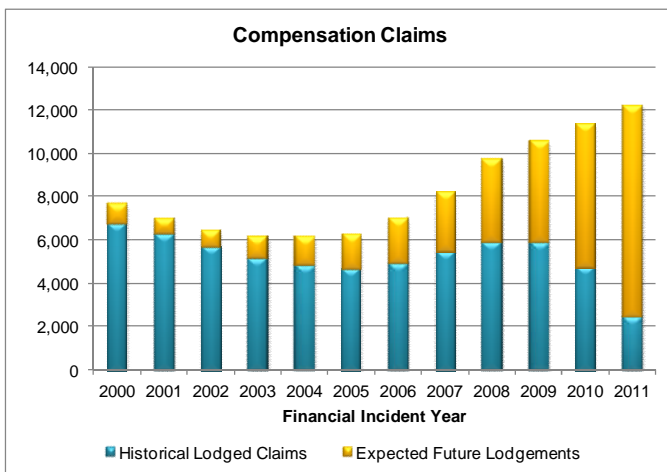
Figure 5.3-1 Compensation Claims Incurred



There are 50,278 compensation claims associated with past incidents expected to be lodged in the future, mainly arising from the Sexual Assault and Domestic Violence offence types. This is a significant number of claims, and reflects the significant increase in claims lodged for these offence types in recent years. However, it is important to note the high degree of uncertainty around this figure, due to changing trends in recent years and a large number of yet to be lodged claims from older incident years for which there is more uncertainty. In particular Figure 4.3-1 shows that the proportion of violent crime being reported to the VCF has been increasing. If this trend continues the number of yet to be lodged claims may exceed the number estimated.

Figure 5.3-2 shows the number of compensation claims lodged to date, and the number of expected future lodgements, by financial incident year.

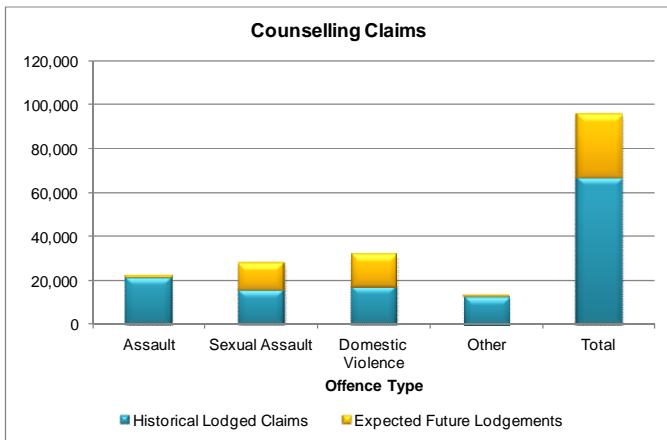
Figure 5.3-2 Compensation Claims Incurred by Incident Year



The number of claims incurred has been increasing since 2005, reflecting the increased utilisation of compensation benefits in recent years, in particular for Sexual Assault and Domestic Violence (Section 4.3 refers).

The following chart shows the number of counselling claims lodged to date, and the number of expected future lodgements by type of crime.

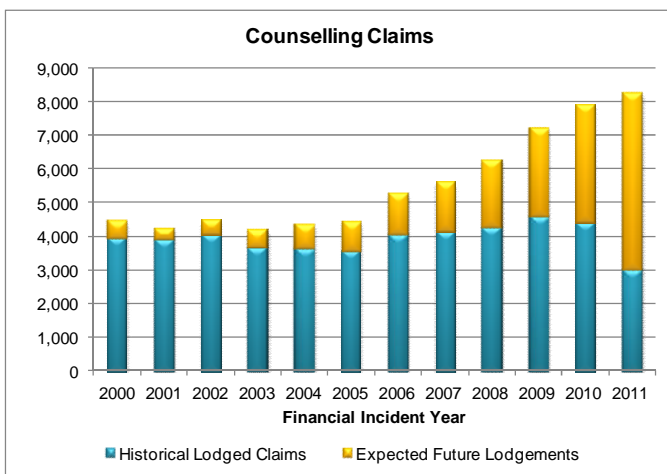
Figure 5.3-3 Counselling Claims Incurred



There are 28,681 counselling claims associated with past incidents expected to be lodged in the future. Similar to compensation claims, these are mostly arising from the Sexual Assault and Domestic Violence offence types.

Figure 5.3-4 shows the number of counselling claims lodged to date, and the number of expected future lodgements, by financial incident year.

Figure 5.3-4 Counselling Claims Incurred by Incident Year

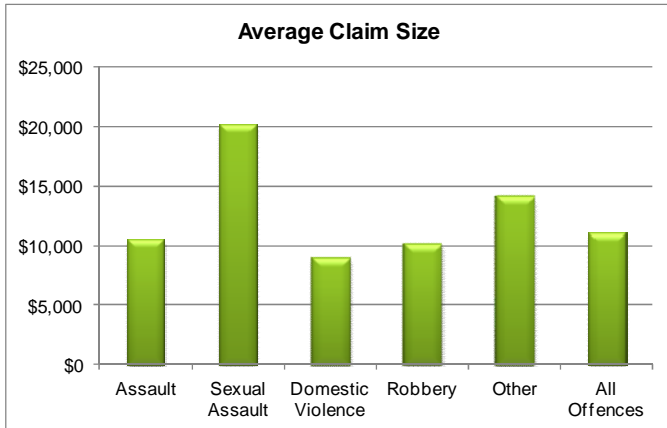


Similar to compensation claims, the number of claims incurred has been increasing since 2005.

5.4. Average Claim Size

The following chart shows the average claim size by offence type for compensation claims.

Figure 5.4-1 Average Compensation Claim Size

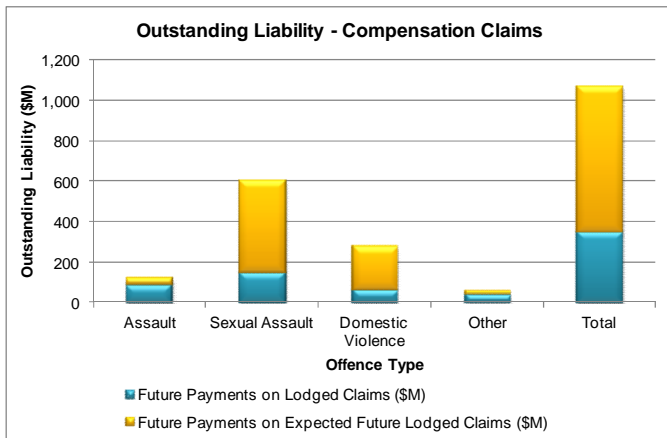


The average claim size differs significantly between offence types. In particular, the average claim size for Sexual Assault claims is significantly higher than the other offence types.

5.5. Estimated liability

The following chart shows the outstanding claims liability for compensation claims, split by offence type.

Figure 5.5-1 Expected Future Payments for Compensation Claims



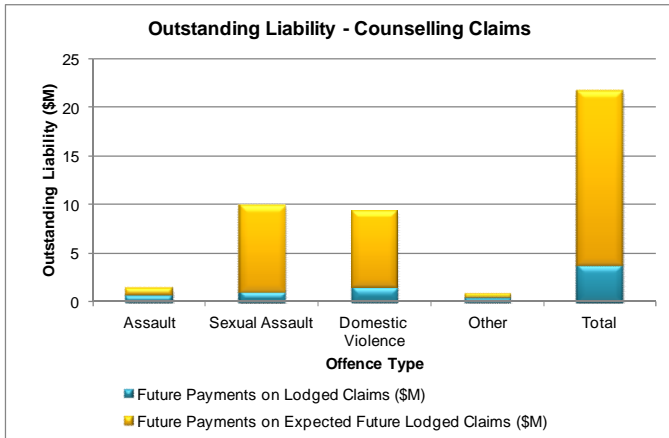
The liability on claims already lodged is \$351M, with \$111.5M arising from claims associated with incidents prior to 2000. This includes an allowance for future appeals on claims which have already finalised.

We note that this is higher than the estimate provided in the Chairperson's 2010/11 Report of \$239M. This is primarily due to our approach reflecting the relatively large proportion of pending Sexual Assault claims, which have a higher average claim size than other offence types, as well as the allowance for future appeals.

The contingent liability on claims yet to be lodged in respect of past acts of violence (IBNR claims) is \$718.9M. This mainly arises from the Sexual Assault and Domestic Violence offence types due to the high number of future claim lodgements expected for these types.

The following chart shows the outstanding claims liability for counselling claims, split by offence type.

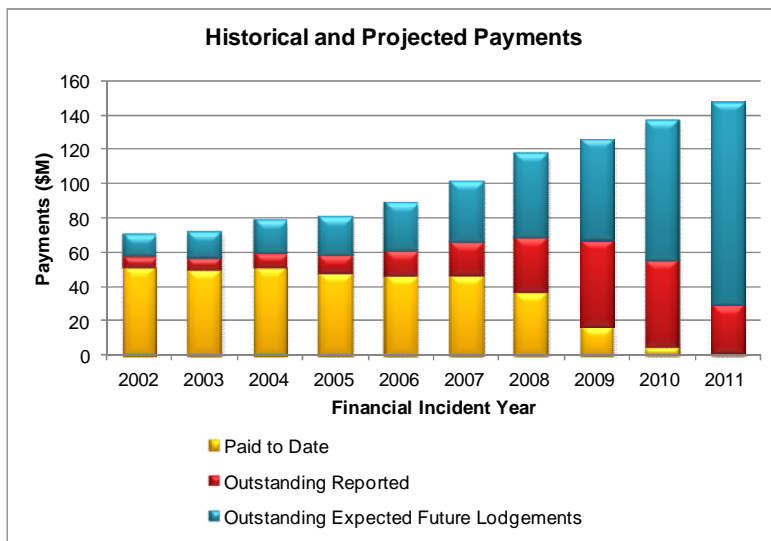
Figure 5.5-2 Expected Future Payments for counselling claims



The liability on counselling claims already lodged is \$3.8M, with \$0.5M arising from claims associated with incidents prior to 2000. The liability on counselling claims yet to be lodged (IBNR claims) is larger at \$17.9M.

The following chart summarises the payments to date and the expected future payments for each of the last ten years of incidents.

Figure 5.5-3 Historical and Projected Payments for All Claims



Consistent with the increase in the number of claims incurred/lodged in recent years, the estimated total liability has increased from \$70M in 2002 to \$148M in 2011.

5.6. Update of the accumulated liability using data to 30 June 2012

Shortly prior to finalising this report we were provided summaries of claims data showing the number of claims lodged and determined in the 12 months to 30 June 2012. While the data and time available for analysis was limited, we have estimated a revised accumulated liability using the data summaries at 30 June 2012.

5.6.1. Claims experience to 30 June 2012

The following tables compare the actual claims experience against that projected using data to 30 June 2011.

Table 5.6-1 Actual vs. Expected Compensation Claims

Offence	Actual	Expected	Diff	% Diff
Assault	2,048	2,770	-722	-26%
Sexual Assault	1,844	2,514	-670	-27%
Domestic Violence	2,303	3,681	-1,378	-37%
Other	775	799	-24	-3%
Robbery	293	388	-95	-25%
Total	7,263	10,153	-2,890	-28%

Based on recent trends in the claims data to 30 June 2011, we expected 10,153 claims to be lodged in the 12 months to 30 June 2012. The actual number of lodgements were 28% less than expected, with only 7,263 claims lodged in the 12 month period. This experience was broadly consistent across each offence category.

This is a significant reduction in the number of lodgements in comparison to past years and to the projections as at 30 June 2011. The most likely reason for the drop in claims is the recent reduction to legal fees paid to claimant solicitors resulting in fewer solicitors advocating the scheme to their clients.

The following table shows the actual versus expected determinations in the 12 months to 30 June 2012.

Table 5.6-2 Actual vs. Expected Compensation Determinations

Offence	Number of Determinations				Average Claim Size			
	Actual	Expected	Diff	% Diff	Actual	Expected	Diff	% Diff
					\$	\$		
Assault	2,126	1,654	472	29%	6,084	9,928	-3,844	-39%
Sexual Assault	1,654	1,204	450	37%	13,152	20,031	-6,879	-34%
Domestic Violence	2,214	1,569	645	41%	5,868	8,449	-2,581	-31%
Other	530	371	159	43%	8,089	12,221	-4,132	-34%
Robbery	307	231	76	33%	5,853	9,649	-3,796	-39%
Total	6,831	5,029	1,802	36%	7,871	12,043	-4,172	-35%

The table shows that there were 36% more determinations in the 12 months to 30 June 2012 than expected, with an average claim size that was 35% less than expected. We have been advised that this experience is a result of the amendments in the legislation at 1 January 2011 regarding lapsed and withdrawn claims. The amendments have enabled Victims Services to finalise a higher than usual number of claims which explains the high finalisation rates and the lower average sizes.

5.6.2. Revised Accumulated Liability at 30 June 2012

The summarised data provided on 4 July 2012 has been used to revise the estimated accumulated liability as at 30 June 2012.

Table 5.6-3 Revised Accumulated Liability at 30 June 2012

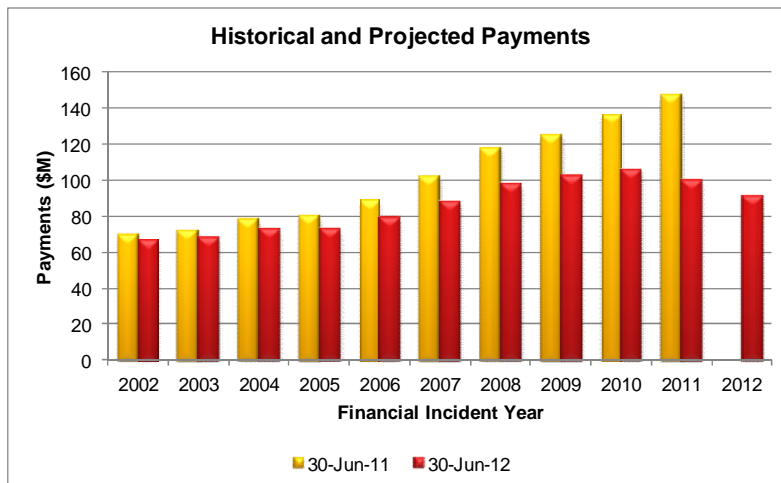
Item	\$M
Accumulated Liability at 30 June 2011	355
Expected payments in 2011/12	-65
Estimated Cost of Projected Lodgements in 2011/12	131
Projected Liability at 30 June 2012	421
Actual payments in 2011/12	-57
Estimated Cost of Actual Lodgements in 2011/12	95
Revised Liability at 30 June 2012	392

Using data to 30 June 2011 we projected that the accumulated liability would grow to \$421M by 30 June 2012. Based on the data to 30 June 2012, we have revised the accumulated liability at 30 June 2012 to \$392M. The reduction in the liability estimate is a result of the following:

- The actual number of lodgements in 2011/12 were less than expected.
- While the number of finalisations have been higher than expected during this period, Victims Services has finalised a high number of low award, lapsed and withdrawn claims. Consequently, actual payments in the 12 months to 30 June 2012 have been less than expected resulting in a smaller reduction in the accumulated liability than expected.

The following graph compares the estimates of the total cost of claims by year of incident for based on data to 30 June 2011 and data at 30 June 2012.

Figure 5.6-1 Estimated total cost of claims by year of incident



The graph shows that using data to 30 June 2011, the estimated per annum cost of the scheme has increased significantly in recent years, from \$70M in 2002 to \$148M in 2011. This increase has been due to the increasing number of claims being lodged under the scheme. However in the 12 months to 30 June 2012, the number of claims lodged dropped significantly in comparison to prior years. In response to this experience we have revised the estimated per annum costs for each financial incident year. The revised estimated per annum cost of the scheme increases from \$67M in 2002, peaking at \$106M in 2010 and dropping to \$91M in 2012.

The recent claims experience has resulted in revised projections significantly lower than those based on data to 30 June 2011. It is unclear whether these trends will continue and the difference in these projections highlights the high degree of uncertainty that exists in estimating the cost of this scheme.

Importantly, both sets of estimates project per annum costs that are significantly in excess of the funding currently available. The recent claims experience therefore still supports the conclusion that the scheme is financially unsustainable within the current funding constraints.

5.7. Implications of delay in addressing the accumulated liability

In Section 5.6 we estimated the liability in respect of claims already lodged is \$392M as at 30 June 2012. The backlog and associated liability of lodged claims will only be exacerbated the longer the disequilibrium between current funding levels (circa \$72M per annum) and benefits remains unaddressed.

The following table estimates how the accumulated liability in respect of claims already lodged can be expected to grow if there is no change in the Current Scheme. We have provided estimates using both data to 30 June 2011 and data to 30 June 2012.

Table 5.7-1 Projected Liability at Future Dates (\$M)

Projected Accumulated Liability at	Data at	Data at
	30 June 2011	30 June 2012
	\$M	\$M
30 June 2011	355	
30 June 2012	421	392
30 June 2013	486	430
30 June 2014	550	470

Based on data to 30 June 2012, the liability on claims lodged as at 30 June 2013 is expected to be \$430m, an increase of \$38M (10%) from the liability on claims lodged as at 30 June 2012, and then is expected to grow to \$470M by June 2014.

Our conclusion from this analysis is that the Current Scheme is unsustainable from a financial perspective in its current form and under the current funding levels.

Recommendations

- 1. To close the Current Scheme for new lodgements as soon as possible to avoid significant growth in the accumulated liability.***
- 2. To open a new victims support scheme (the “Proposed Scheme”), as described in Section 8.***

6. Funding

Key Points

The current level of funding is approximately \$72M per year and is mainly sourced from NSW Treasury.

There is limited scope for significantly increasing funding sources other than NSW Treasury.

The current level of NSW funding appears in line with other jurisdictions.

There is a fundamental mismatch between the present level of funding and the cost of the Scheme as it is currently structured.

Significant increases in short and medium term funding levels are required to pay off the Current Scheme accumulated liability in a reasonable time frame.

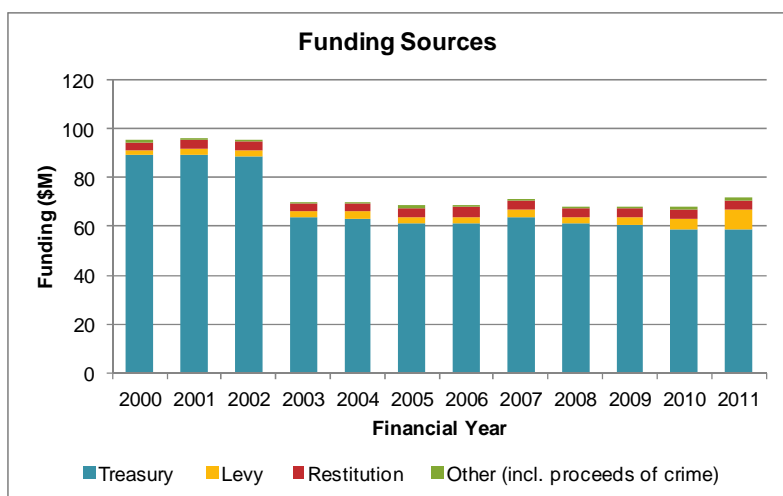
6.1. Current levels of funding

The current sources of funding can be considered a hierarchy with contributions from:

1. Specific perpetrators of violence – Restitution is made from convicted offenders associated with specific acts of violence
2. All offenders – via court fine levies and a share of proceeds of crime confiscations
3. Broader community funding – via treasury payments from consolidated revenue and the main source of revenue.

These sources of funding are discussed in more detail in Section 6.4. The following chart shows the sources of funding for the Scheme since 1999/00.

Figure 6.1-1 Sources of Funding

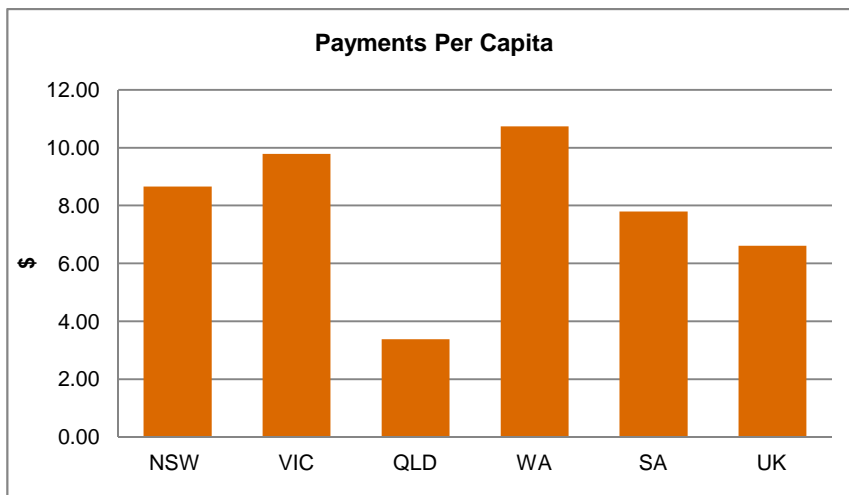


The level of funding has remained relatively unchanged since 2003 and in 2010/11 the level of funding was about \$72M. Since 2002/03, Treasury has contributed around \$60M of funding each year, a decrease from around \$89M prior to 2002/03. The reduction in funding at 2002/03 was due to an anticipated decrease in costs from amendments to the legislation, In 1998, the previous compensable injury of Shock was removed and the compensable injury of Category 1 and 2: chronic psychological or psychiatric disorder that is moderately or severely disabling was introduced, and in 2000, Category 1 was restricted to specific types of acts of violence only.

6.2. Benchmarking funding levels against other schemes

One way to establish a suitable level of funding would be to benchmark the payments from the NSW scheme with other comparable schemes. The following chart shows the payments per capita of various Australian states and of the UK (converted to Australian dollars), estimated from publicly available data sources.

Figure 6.2-1 Comparison of Payments per Capita



Note for QLD, the new financial assistance scheme (Victim Assist Queensland) commenced in December 2009. Based on discussions with the director of Victim Assist, we understand both the number of claims lodged and the average payment size under the new scheme has been lower than expected. This is reflected in the low payments per capita for QLD in the graph above. However, there is an expectation that the number of claims lodged and the average payment size will continue to increase as the scheme matures and as people become more familiar with the new scheme.

The comparison of payments per capita indicates that the current level of funding in NSW is probably not out of line with other jurisdictions.

Many submissions suggested that funding levels should, at a minimum, be increased with inflation. Many victim’s compensation schemes around Australia include benefits such as loss of actual earnings, medical and dental costs and living expenses. All of these are costs that are subject to inflationary pressures over time and it is therefore expected that the cost of the scheme will increase over time. In order to ensure that these schemes remain viable, funding should be indexed with an appropriate inflationary measure. The main argument against indexation of funding in the Current Scheme is because the benefits are not currently indexed to inflation. However, we note that the utilisation of benefits by victims of violent crime has been significantly increasing and that our Proposed Scheme in Part 2 of this report recommends the introduction of benefits that are indexed to inflation.

Recommendations

- 3. *Longer term funding of the Proposed Scheme should be set at about current levels, circa \$72M per annum. This would require funding by NSW Treasury to remain at current level of approximately \$60M per annum.***
- 4. *Longer term funding levels should be indexed with an appropriate inflation measure.***

6.3. Adequacy of funding compared to current benefits

The level of funding for the Current Scheme is around \$72M. This funding is used to cover the costs associated with the administration of the Current Scheme and the responsibilities under the Victims Rights Act. These currently cost around \$9M p.a. and the remaining balance of about \$63M p.a. is available to pay benefits. To the extent that expected annualised benefits exceed funding levels, an accumulated liability of unpaid benefits will emerge.

Thus, the current level of funding needs to be considered in relation to:

- An estimated annual cost of benefits for each incident year of over \$95M (see Section 5.6.2).
- An estimated accumulated liability for lodged claims of \$392M at 30 June 2012 (see Section 5.6.2).

There is clearly a fundamental mismatch between the present level of funding and the cost of the Current Scheme. The rapid growth in the number of unresolved claims and their associated liability demonstrates the fundamental imbalance between current funding levels and Current Scheme's benefit design and utilisation. Left unchanged, the size of the accumulated liability is expected to grow significantly over time. This is shown in Section 5.7 where the liability on lodged claims is expected to gradually increase over time from about \$392M at June 2012 to over \$470M by June 2014.

There are only two levers available to address this imbalance: increase funding levels and/or reduce scheme costs. Even with a substantial change to the scheme design, a significant increase in short to medium term funding would still be required in order to clear the accumulated backlog of claims lodged under the Current Scheme over a reasonable time frame.

The only other option would be to reduce the entitlements of currently lodged claims. This is explored further in Section 8.1.

Recommendations

- 5. *Funding should be significantly increased in the short to medium term to pay off the Current Scheme liability in a reasonable timeframe.***

6.4. Current and potential sources of funding

6.4.1. Treasury

Treasury currently provides about \$60M per annum to be used for operational costs, expenses (e.g. counselling, solicitors) and compensation. The majority of the revenue to the scheme is sourced from Treasury.

An increase in the funding from Treasury is the most obvious and efficient approach to increase funding. Increased funding could be justified alone from the increase in lodgement numbers in recent years. On the other hand, the benchmarking shown in Section 6.2 of the per capita funding provided to Victims Compensation and Support Authorities shows that current funding levels are broadly in line with other Australian states.

6.4.2. Levy

The compensation levy payable pursuant to Section 79(1) of the Act for indictable matters was \$148 and for other matters pursuant to Section 79(1)(b) of the Act was \$64. The levy payable from 1 July 2011 will be adjusted annually on the basis of increases in the CPI (all groups index) for Sydney. The 2010 amendments to the Act extended the victims compensation levy to cover all offences prescribed by regulation.

It may be possible to further increase levy amounts, although levy amounts have recently been doubled. However, levy amounts only account for approximately 11% of current funding levels. Even with quite radical increases in levy amounts the total quantum raised will be insufficient to reach the funding levels required to make the Current Scheme viable.

There are, however, arguments against increasing levy amounts significantly. Many parties required to pay levies are from low socioeconomic groups and large increases in levy amounts may reduce such individual's capacity to pay.

6.4.3. Restitution from Convicted Offenders

Once a victim has been awarded statutory compensation, the Act provides for restitution action to be taken against any person convicted of an offence that led to the compensable injury for which the victim was compensated.

The amount of restitution recovered from convicted offenders is significantly lower than the compensation paid out each year. This is because in many cases the offender may not be identified or convicted or may not have the capacity to pay. In the majority of cases restitution matters are paid by relatively low instalments. As a result of the above issues the majority of restitution amounts are ultimately written off. The NSW Auditor General noted that of the \$289 million payable by offenders in 2010/11, only \$18.8 million is expected to be recovered⁵.

Restitution is considered a very inefficient approach to raising revenue and ultimately only raises a very small proportion of the Scheme's current funding (6%). There are inherent difficulties with pursuing restitution as most convicted offenders are from low socio-economic backgrounds and have little ability to pay. This results in only a small proportion of restitution orders being paid compared with the size of provisional orders made. We note that Victim Services is about to commence a pilot to outsource debt recovery to the State Debt Recovery Office (SDRO). While the SDRO has greater enforcement powers, we expect the benefits of this arrangement to be marginal from a scheme funding perspective given the inherent difficulties in pursuing restitution from

⁵ NSW Auditor-General's Report, Volume Seven 2011, Department of Attorney General and Justice, p28

convicted offenders. We have no recommendations on how the restitution process can be made more efficient in order to improve the Scheme's funding situation.

Certain submissions argued that convicted perpetrators of violence have already been sanctioned via the justice system and that requiring restitution merely increases the obstacles for them to be rehabilitated successfully upon their release from jail.

Despite this argument, and despite the inefficiencies of the restitution process, it is considered that there would be broad community expectations that perpetrators of violence should be held accountable and required to contribute to addressing the consequences of their violence. It might also be considered that an element of justice occurs, and can be seen by the victim to occur, via the restitution process.

A number of submissions have raised restitution as a barrier for victims in certain circumstances from wishing to pursue support from the Scheme due to safety concerns from a fear of retaliation. For victims who are known to the offender and may still be in regular contact with them, there is a significant risk of retaliation (e.g. withdrawal of child support), harassment and an escalation of violence⁶. Anecdotally, we have heard of claimants being awarded compensation and not taking up the payment when they understood the restitution process which can limit the ability for a victim to find closure after the violence.

Recommendations

6. The principle of restitution is considered an important element in the Scheme and should be retained, although we recommend that victims have the ability to opt out of the restitution process in circumstances where they can demonstrate a safety concern as a result of restitution being pursued. Whilst the principle of restitution is important, the safety of the primary, secondary and family victims should take precedence.

6.4.4. Other (includes proceeds of crime)

The *Criminal Assets Recovery Act 1990* and the *Criminal Assets Recovery Amendment (Unexplained Wealth) Act 2010* (collectively termed the CAR Act below) give the NSW Crime Commission power to confiscate wealth from suspected criminals, or their families and associates, if they cannot prove that they obtained the assets legitimately.

The amendment to the CAR Act in September 2010 provided that 50% of funds recovered pursuant to proceeds assessment orders and unexplained wealth orders are to be paid to the Victims Compensation Fund. For the 2010/11 financial year there were no unexplained wealth order recoveries and the proceeds from proceed assessment orders totalled \$7,425,300.

There is another category of recoveries (asset forfeiture orders) for which \$13,563,849 was recovered during 2010/11, none of which is directed towards the Victims Compensation Fund.

There does appear to be some timing mismatch as the Victim Compensation Fund's 2010/11 Chairperson's Report only refers to \$1.3 million in other revenue, which includes recoveries from the CAR Act.

Potentially a greater proportion of recoveries under the CAR Act could be considered for distribution to the Victims Compensation Fund. However, the quantum of money recovered under all categories from the CAR Act

⁶ Victim Compensation and Domestic Violence: A National Overview, Isobelle Barrett Meyering, January 2010, p12

is not material compared with the quantum of the accumulated liability on lodged claims, nor of the overall prospective funding requirements of a new Proposed Scheme.

Victim Services has advised that they are investigating whether improvements in how the courts code CAR matters might lead to an increased monies classified as CAR and hence improve the quantum required to be distributed to the Scheme.

6.4.5. *Alcohol Taxes*

There is considerable literature which links violence with the consumption of alcohol. Given this link consideration could be given to the potential to raise funding through the taxation of alcohol. This could take two forms:

- a. The redirection of existing tax revenue to the Scheme
- b. Introduction of specific increase in tax rate or state-based levy designed to fund the Scheme

Alcohol taxation has the significant advantage in that it has the potential to raise a significant amount of revenue. If directed towards the Victims Compensation Fund this could alleviate the current funding shortfall.

There are currently four types of taxes applied to alcohol in Australia:

1. Goods and Services Tax (GST)
2. Customs duties
3. Excise duties
4. Wine Equalisation Tax

A particular challenge is that all of these taxes are levied via the Commonwealth Government rather than the NSW State Government.

We understand that the Northern Territory introduced a comprehensive alcohol harm reduction program in 1992 which was funded by a levy on alcoholic drinks per drink. The “Living with Alcohol” program was a unique public health program to reduce levels of alcohol related harm throughout the community and concluded in 2000.

The program funding consisted of a levy of 5 cents per standard drink for products containing more than 3% alcohol, and a 35 cent per litre levy on cask wines⁷. 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 alcohol⁸, with the remainder of the program being funded by the federal government⁹. As a result the scope for introducing a specific state based levy to fund the Scheme is limited and further research would need to be performed to determine whether it is a viable option following the High Court ruling.

The 2009 Henry Review highlighted the need to reform alcohol taxation in order to reduce the inefficiencies of the current taxation system. Although the Commonwealth Government is not currently looking to implement the recommendations from this review¹⁰, the case has been building for changes to the current alcohol taxation

⁷ <https://www.mja.com.au/journal/2009/190/8/alcohol-taxation-policy-australia-public-health-imperatives-action>

⁸ <https://www.mja.com.au/journal/2010/193/5/how-much-too-much-alcohol-consumption-and-related-harm-northern-territory>

⁹ <http://www.ncbi.nlm.nih.gov/pubmed/16277624>

¹⁰ http://www.vichealth.vic.gov.au/Media-Centre/Partner-media-releases/NAAA_HenryReview_response_2010May2.aspx

system. A tax increase or redirection of tax revenue to fund the Victims Compensation Fund could be incorporated with future reforms.

Because of the challenges presented in pursuing this potential funding source it is not considered any further in this review.

6.4.6. Conclusions on funding sources

This discussion illustrates the difficulties in increasing funding from existing sources and also limitations on sourcing other funding. The Current Scheme relies very heavily on broader community funding through Treasury payments and we have assumed that this reliance will continue under a Proposed Scheme.

***Part 2 –
Scheme Redesign***

7. *The Case for Reform*

Key Points

The objectives of the Act are to provide support and rehabilitation to victims of violent crime through counselling and compensation.

There are services and supports identified which are not currently provided by the scheme, but which would be beneficial to claimants and assist them to begin their healing process shortly following the act of violence.

Existing mainstream and specialised services can be challenging for victims to navigate and obtain services beneficial to their recovery.

Constraints in funding have led to a significant delay in claimants receiving compensation, undermining the objectives of the Act.

The scheme in its current form is financially unsustainable because of the large mismatch between funding levels and scheme costs.

Reform principles should ensure:

- **The Proposed Scheme is financially viable**
- **The allocation of the Proposed Scheme's funds are prioritised to:**
 - **Meet the immediate needs of victims of violent crimes**
 - **Provide financial assistance and rehabilitation**
 - **Recognise and acknowledge the trauma suffered**
- **The Proposed Scheme is consistent with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

7.1. *The case for reform*

7.1.1. *Best meeting the objectives of the Act*

The objectives of the Act are to provide support and rehabilitation to victims of violent crime through counselling and compensation. However, the constraints in funding have led to a significant delay in claimants receiving compensation (with the average time from claim lodgement to determination currently at 25 months). Also, whilst counselling in general is provided in a timely and effective manner, there were other services and supports identified which are not currently provided by the scheme, but which would be beneficial to claimants and assist them to begin their healing process shortly following the act of violence. These include relocation assistance, security upgrades and assistance with medical and dental expenses.

There are a range of mainstream and specialised services provided by both government and non-government organisations which collectively are available to help meet the needs of victims. However, these can be

challenging for victims to navigate to obtain services which would be beneficial to their recovery. More could be done to assist victims in accessing relevant services.

7.1.2. Scheme financial viability

Part 1 of this report showed that the scheme in its current form is financially unsustainable within current funding constraints. The scheme has an escalating number of victims pursuing compensation and counselling, while the funding available to meet those claims remains unchanged. Consequently, the determination of claims has slowed, with claims taking more than 25 months between lodgement and determination.

As at June 2011 the accumulated liability with respect of lodged but unresolved claims is estimated to be \$355 million. As at June 2012 the accumulated liability with respect of lodged but unresolved claims is estimated to be \$392 million. This is expected to increase by approximately \$38 million per annum if the Current Scheme, including funding levels, is left unchanged. At 30 June 2013 the accumulated liability for lodged but unresolved claims is expected to have increased to \$430 million.

7.1.3. Feedback from the consultation process

Consultation has been a mixed response of those that are generally supportive of the current balance of services and compensation, against those that recognise the current situation is unsustainable and/or believes the balance of support should be tipped towards meeting more immediate needs.

7.2. Reform principles

In order to recommend options for reform that best meet the needs of victims of violent crime, we have proposed certain key principles that should underpin any reform.

1. A Proposed Scheme is financially viable

A viable scheme is one where the amount of funding available in the year meets the demand for benefits. Under the Current Scheme the demand for benefits significantly outweighs the available funding. Over time, this has formed a queue of victims waiting for the funding to become available to pay their awards.

Scheme viability is crucial to ensuring that the queuing effect is minimised and that victims can receive timely support. Where claims consistently exceed available funds, over time these delays will be exacerbated.

2. The allocation of the Proposed Scheme's funds are prioritised to:

- a. Meet the immediate needs of victims of violent crimes***
- b. Provide financial assistance and rehabilitation***
- c. Recognise and acknowledge the trauma suffered.***

The most challenging step in recommending reform is ensuring that the scheme's funding is allocated to those in greatest need. During the stakeholder consultations and submissions we have canvassed a range of view points on how best to do this. Not surprisingly, many opposing viewpoints were provided.

There were however, a number of consistent views:

- Assisting victims at the earliest point after which the act of violence occurs delivers the best outcomes. The scheme should therefore provide financial assistance to meet the immediate needs of a broad range of victims.
- The provision of counselling is considered an important aspect of the scheme. The current Approved Counselling Scheme should continue in its current form, with some minor changes to improve the accessibility and amount of counselling available.
- The scheme should recognise that acknowledgement by way of a lump sum payment is an important part of the rehabilitation process of victims who have suffered from violent crime.

This reform principle acknowledges these views and prioritises the scheme's funds for immediate needs, financial assistance, counselling and recognition payments.

3. *The Proposed Scheme is consistent with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

Some of the key sections of this declaration that have been most relevant in our review and recommendations for the Proposed Scheme include:

6. *The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:*
 - c. *Providing proper assistance to victims throughout the legal process*
 - d. *Taking measures to minimize inconvenience to victims, protect their privacy, when necessary and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation*
 - e. *Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.*
8. *Offenders or third parties responsible for their behaviour should, where appropriate make fair restitution to victims, their families or dependents.*
12. *When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:*
 - a. *Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;*
 - b. *The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.*
14. *Victims should have received the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.*
15. *Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.*

8. *Proposal for a New Scheme*

Key Points

The current approach to providing a victim with lump sum compensation may not be aligned with the victim's support or rehabilitation needs.

The existing Victims Compensation Fund should be closed to new lodgements and a new Victims Support Fund should be introduced for all future lodgements.

Benefits available under the new Fund should be structured around four pillars of support:

- Pillar 1: counselling
- Pillar 2: immediate needs
- Pillar 3: financial assistance
- Pillar 4: recognition payment

Primary victims will be eligible for all four pillars of support. Pillar 1, Pillar 2 and Pillar 4 would also be accessible to the family members of homicide victims. The parents of child victims would be eligible for Pillar 3. All primary, secondary and family victims will be eligible for Pillar 1.

To be eligible for Pillar 2, Pillar 3 and Pillar 4, victims must lodge their claim in a reasonable timeframe, no later than two years after the incident. For child victims, this limit would be extended to two years after the victim reaches the age of 18. For domestic violence and sexual assault claims, this limit would be extended for access to Pillar 4 to 10 years (or 18 years of age plus 10 years for child claims).

Reporting requirements for Pillar 2 (immediate needs) should be simplified to allow timely access to these benefits.

Pillar 3 (financial assistance) and Pillar 4 (recognition payment) would require additional reporting requirements such as a police report, documented evidence of a financial loss as a direct result of the violent crime and evidence of an injury.

Eligibility to Pillar 1 (counselling) should be made available to as broad a group of victims as possible.

Case co-ordinators would be used to assist victims in assessing their immediate needs, navigating the various government and community support services and to help claimants through the claims process.

The appeals process should be simplified by moving to an administrative appeals process.

8.1. *A Proposed Scheme*

The first object of the Act is “a) to provide support and rehabilitation for victims of crimes of violence by giving effect to an approved counselling scheme and a statutory compensation scheme”. It is considered that the current approach to providing a victim with lump sum compensation may not be aligned with the victim's support or rehabilitation needs.

The word “compensation” brings to mind a narrow type of monetary payment and brings with it an expectation that losses are indemnified by the state (similar to common law damages). In reality the cost of violent crime cannot be quantified or monetised as its effects are felt physically, psychologically and emotionally for a lengthy period of time and it is not financially possible for the state to compensate victims to the fullest extent. What the state can do is to provide financial assistance and support so that victims can begin the healing process quickly and as an acknowledgement of the harm suffered and as an expression of regret. Referring to lump sum payments as “compensation” may set unrealistic expectations as to the quantum and purpose of the benefits available.

Section 5 of this report has shown that the Current Scheme is unsustainable from a financial perspective and we recommend that the Current Scheme should be closed as soon as possible and that a new scheme (the “Proposed Scheme”) be opened to new claim lodgements. As a result we make the following recommendations:

Recommendations

- 7. Repeal the Act and create new legislation (“the Proposed Act”) based on the recommendations in this report.***
- 8. To remove all reference to “compensation” in the Proposed Scheme and the Proposed Act.***
- 9. Name the Proposed Scheme the Victims Support Fund.***

Section 6 of our report recommended that the long term funding of the scheme remain at current levels (circa \$72M), albeit that this amount should be indexed with inflation and that additional short to medium term funding is required to assist in the timely payment of the accumulated liability in respect to already lodged claims under the Current Scheme (“accumulated liability”). The size of the accumulated liability on lodged claims under the Current Scheme is significant in comparison to current funding levels and is estimated to reach \$392M by 30 June 2012.

It would be prudent to set benefits under a Proposed Scheme below current funding levels in order to:

- Provide a buffer in case the utilisation of benefits under the Proposed Scheme emerges higher than anticipated.
- The buffer (if not needed to cope with higher than anticipated cost) can otherwise be used to assist in paying out the accumulated liability.

There is significant uncertainty in the estimation of the utilisation and cost of each element of the Proposed Scheme. In order to manage this risk, we have costed a scheme that has benefits and expenses of about \$65M p.a. This level lives within the current funding constraints and provides about a \$7M buffer between the funding and the expected cost. Once the Proposed Scheme is established and more is known about utilisation of scheme benefits, the Proposed Scheme can be reviewed and the benefits can be adjusted in order to align the cost and funding. In the meantime, any excess funding may be used to assist in helping to pay off the accumulated liability from the Current Scheme. If the buffer is the only funding available the accumulated liability will not be able to be paid out in any realistic timeframe.

Recommendations

10. The Proposed Scheme should target an annual cost of \$65M p.a. (indexed). The cost of the Proposed Scheme would lie below the current funding levels and provide a \$7M p.a. buffer between the funding and the expected cost.

Treatment of claims already lodged

There is a significant liability in respect to claims already lodged under the Current Scheme (estimated at \$392M at 30 June 2012). This is significant compared to the current funding levels.

As discussed in Section 6.3, there are only two levers available to address the accumulated liability: increase funding levels and/or reduce scheme costs. Unless the benefits for existing lodged but unresolved claims are reduced to nil, there will be a need for some form of short to medium term increase in funding to extinguish the accumulated liability. There are a number of options for policy makers depending on the decisions made in respect to the accumulated liability.

Option 1: The Proposed Scheme applies to new lodgements while the Current Scheme continues to apply for existing lodged but unresolved claims

Under this option, existing claims would have continuity and certainty in resolving their claims under the Current Scheme. It would also mean that any expectations already established on the level of compensation to be paid to the victim would not change as it would be unfair to change these goalposts mid-way.

This would mean running two schemes in parallel, so thought would need to be given on how best to manage this internally and to manage a gradual transition that phases out the Current Scheme. The size of the accumulated liability under the Current Scheme on already lodged claims shows that this will take a long time to implement. It is important not to have two schemes in operation for too long, as this is both a heavy administrative burden and means that existing victims will need to wait unacceptable times to receive their benefits.

In order to pay off the accumulated liability within a reasonable timeframe, a short to medium term increase in funding would also be required. This funding would be provided separately from the funding for the Proposed Scheme to distinguish between the two.

For example, in order for the \$392M in accumulated liability to be paid off over 5 years, additional funding of approximately \$78M will be required for 5 years over and above the current funding of \$72M per year.

Option 2: All new and existing lodgements fall under the Proposed Scheme

An alternative recommendation that could also be considered is paying existing lodged but unresolved claimants based on the amounts available under the Proposed Scheme.

An advantage of this approach is that there would be no need to maintain the Current Scheme and Proposed Scheme in parallel.

The eligibility requirements of the Proposed Scheme (outlined in Section 8.4) would prevent many of the existing claimants from accessing some categories of the financial support available under the Proposed Scheme (see Section 8.3 and 8.4 regarding Pillar 2 (immediate needs) and Pillar 3 (financial assistance)).

A possible option would be to restrict access for existing claimants who are eligible under the Current Scheme to only Pillar 4 (recognition payments) and counselling. The accumulated liability in this scenario is estimated to be \$100M as at 30 June 2012. This estimate includes:

- \$23M to cover the cost of Counselling for existing claimants
- \$67M to cover the cost of Pillar 4 payments to existing claimants who were eligible for benefits under the Current Scheme. In costing this option we have considered the current number of compensation claims that are awaiting determinations (approximately 28,000), the proportion that will be eligible (based on eligibility under the Current Scheme) and the amounts that each claim will be eligible under Pillar 4.
- \$10M to cover the cost of solicitor fees and disbursements that have already been incurred on existing claims.

An alternative is to allow for some access to Pillar 2 (immediate needs) and Pillar 3 (financial assistance). This would be complex for existing lodgements as many would not meet the reporting requirements to access these benefits under the Proposed Scheme and may have missed the window of opportunity to access services and support when immediately needed due to the restrictions under the Current Scheme. It is estimated that new lodgements under the Proposed Scheme will on average receive \$5,000 per eligible claim for benefits under Pillar 2 (immediate needs) and Pillar 3 (financial assistance).

In lieu of accessing these benefits an additional compensation payment could be provided as part of the transition of these claims to the Proposed Scheme. This arrangement could work as follows:

- Existing claimants who are eligible under the Current Scheme can access Pillar 4 (recognition payments) and counselling.
- Existing claimants who lodged their claims within the Pillar 2 (immediate needs) and Pillar 3 (financial assistance) time limits receive an additional \$5,000 to compensate them for the benefits they would have received had the Proposed Scheme been in operation prior to their claim lodgement. Existing claimants who lodged their claims outside of the time limits would not be eligible for the additional \$5,000 lump sum.

The \$5,000 compensation provided in this package is expected to cost \$72M in addition to the \$100M costs associated with Counselling, Pillar 4 and incurred solicitor fees and disbursements. If this option was adopted then the accumulated liability at 30 June 2012 is expected to be \$172M in total.

Both of these options would result in a significant reduction in the current estimated accumulated liability of \$392M as at 30 June 2012. In order to pay off the accumulated liability within a reasonable timeframe, a short to medium term funding increase would still be required on top of the existing funding for the Proposed Scheme.

It would allow Victims Services to move entirely to an administrative scheme and the Tribunal would no longer be required to run down the claims from existing lodgements. We envisage that this would also require all existing unresolved claims who seek an appeal to have their claim reviewed under the provisions of the Proposed Scheme.

Option 3: The benefits under the Current Scheme are reduced and apply for existing but unresolved claims

For example, halving the benefit schedule would reduce the accumulated liability at a stroke of a pen by half (from \$392m to \$196m as at 30 June 2012). However, retrospectively changing the benefit structure mid-

process is likely to be poorly received by claimants as they may have already formed expectations on their anticipated compensation amount.

Even if the accumulated liability was reduced by scaling down benefits for existing lodged but unresolved claims, a short to medium term increase in funding would still be required to pay off the reduced accumulated liability over a reasonable timeframe.

This option would also require both the Current Scheme (at reduced benefit levels), and the Proposed Scheme to run in parallel.

Option 4 (not recommended): For existing lodged but unresolved claimants to be given the option to have their claim assessed and awarded under the Proposed Scheme

This option is not recommended due to potential gaming behaviour by claimants who may choose to opt-in to the Proposed Scheme only where they expect to receive a higher level of benefits compared to the Current Scheme (for example, common assault claimants who require dental treatment). This is likely to result in an overall increase in costs to the scheme.

Recommendations

11. The Proposed Scheme is applied to newly lodged claims.

12. The treatment of claims lodged but unresolved will depend on the level of additional funding available and on the timeframe over which the accumulated liability is reasonably expected to be paid. The following options have been considered:

- a. The Current Scheme continues to apply for existing lodged but unresolved claims**
- b. All existing lodgements fall under the Proposed Scheme**
- c. The benefits under the Current Scheme are reduced and will apply for existing lodged but unresolved claims**

8.2. Summary of Proposed Scheme

The Victims Compensation Fund is not the only support provided for victims of violent crime. There are a range of mainstream government and non-government services relevant to the needs of victims, as well as various victim support groups. These all provide valuable services and support to victims through their times of greatest need. In addition, family and friends often provide support during a victims' time of need and we recognise that not all victims want, or need, financial assistance.

The Proposed Scheme has been developed to complement these existing services, to fill in gaps from current support services and to acknowledge the pain and suffering for the most severely impacted victims of violent crime. We recognise that the needs of individual victims can be very different.

Lump sum compensation can be an inefficient way of allocating limited funding because the lump sum is based on a table of injuries that may not relate directly to a victim's unique needs. The Proposed Scheme is structured to focus on the needs of individual victims instead of non specific lump sum compensation and should enable a more efficient allocation of the scheme's limited funding.

The structure of the Proposed Scheme is based on four pillars of support:



Pillar 1: Counselling

Counselling is considered to play an important role in the Current Scheme and should be extended and enhanced.

Pillar 2: Immediate needs

The support provided under the second pillar is intended to cover the costs that would assist victims in escaping further violence and environments that are detrimental to their recovery or to otherwise provide emergency support critical to their recovery. It is intended to include financial assistance for urgent support such as short term relocation and accommodation costs, crime scene clean up, security upgrades, funeral costs and urgent medical and dental expenses.

Pillar 3: Financial assistance

The purpose of the third pillar of support is to provide financial or other support for victims of crime on a “needs” basis. For example, this may cover out of pocket expenses for medical or dental bills as a result of the violent crime and loss of income or living expenses in certain circumstances.

Pillar 4: Recognition payment

Under this pillar of support, victims are paid a moderate lump sum to acknowledge the violence suffered by the claimant, to recognise the trauma of the experience and as an expression of the state’s sympathy and regret. Changes to the existing process and benefits are proposed to recognise the prioritisation of the other pillars of support over Pillar 4 in terms of access to available funds.

To deliver the Proposed Scheme, we also recommend a **case co-ordinator** role to be added to Victims Services. The role of case co-ordinators will be to structure a package of benefits that meet victims’ needs and to help victims navigate the range of other services and support available.

The following table summarises some of the key features of these pillars of support.

	Pillar 1 Counselling	Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment
Need	Reasonable costs of counselling.	Immediate financial assistance to improve victim outcomes. Reduction in the risk of harm for a victim at risk of further violence.	Other out of pocket financial expenses not covered under Pillar 2.	Acknowledgement of violence suffered by victim and token of sympathy.
Coverage	<ul style="list-style-type: none"> • Counselling 	<ul style="list-style-type: none"> • Relocation costs • Security upgrades • Crime scene clean up • Funeral expense • Emergency medical/dental 	<ul style="list-style-type: none"> • Other medical/dental • Loss of actual earnings • Cost of living and other expenses • Damage to clothing 	<ul style="list-style-type: none"> • Recognition of trauma • Pain and suffering • Non-specific
Maximum benefit	<ul style="list-style-type: none"> • 22 hours (with discretion to approve more) 	<ul style="list-style-type: none"> • \$5,000 excluding funeral expense • Funeral expense of \$8,000 	\$30,000	\$15,000
Sub limits	n/a	n/a	Loss of actual earnings \$20,000. Cost of living and other expenses \$5,000. Damage to clothing \$1,500.	n/a

Appendix E provides some case studies to illustrate the support victims with different characteristics might expect to receive under the Proposed Scheme.

Recommendations

13. The Proposed Scheme has 4 pillars of support for victims of violent crime:

- i. Counselling***
- ii. Immediate needs***
- iii. Financial assistance***
- iv. Recognition payment***

8.3. Discussion on each element of scheme design

8.3.1. Pillar 1: Counselling

The Approved Counselling Scheme has received very positive feedback from victims and is highly regarded by stakeholders. Claimants are currently able to access up to 22 hours with discretion for further hours to be approved upon application. We believe that there is no need to change the number hours available.

Issues have been raised regarding the limited coverage of counselling services in rural and regional areas and the uncompetitive rates offered to practitioners compared with private practice and Medicare rates. We are aware Victims Services are currently trialling a pilot where counsellors are flown in and out of remote areas.

Some stakeholders have commented that there should be an increase in the number of hours of counselling available. A number of submissions flagged that, particularly for domestic violence and sexual assault, it can take a long period to build up rapport and trust with a counsellor. A number of legal providers in the submissions indicate that they also perform a quasi-counselling role, and again it can take a long period for claimants to feel comfortable and able to tell their story. However, we note that there is currently discretion to apply for up to 22 hours of counselling and further Registrar discretion to approve more.

Counsellors are currently required to be listed under the Approved Counselling Scheme. The argument for an approval process is to ensure quality in counselling and counsellors who are appropriately skilled to meet the needs of victims. In order to be eligible for approval, counsellors must have the appropriate qualifications and membership in the professional body, insurance and demonstrate experience in counselling victims of violent crimes. A number of submissions flagged potential downsides of this including:

- The approval process can be restrictive for victims with a preferred counsellor who is not under the Approved Counselling Scheme. In these cases, victims may have already established a level of trust with the preferred counsellor and the Approved Counselling Scheme should build on this rather than start afresh with an Approved Counsellor.
- The approval process hampers the ability of claimants to source counsellors in rural and remote locations, as well as restricting the availability of counsellors with specialty expertise. Approved Counsellors reside in NSW and so claimants living interstate and overseas have difficulties accessing the counselling scheme.

Almost all stakeholders agreed that the rates that the scheme currently pays Approved Counsellors are too low. The following table compares the Victim Service's rates with Medicare rates.

Hourly rate (excl. GST)	Victims Services	Medicare	Medicare Item Number
Social Workers	\$77.00	\$86.30	80160
Psychologists	\$99.00	\$97.90	80110
Clinical Psychologists	\$99.00	\$143.70	80010
Psychiatrists	\$121.00	\$255.45	296

Stakeholders agree that the relatively uncompetitive rates offered to counsellors under the Current Scheme contributes to the problems that the scheme faces with finding the supply of counsellors needed to meet claimant demand. There is a strong consensus that the schemes counselling rates should be increased in order to generate greater participation by counsellors in the scheme.

The main issue regarding counselling in regional and remote areas is the limited number of Approved Counsellors in these areas. This can be further exacerbated by claimant preferences, for example female sexual assault victims may not feel comfortable talking with male counsellors. To improve the coverage of counselling services in regional and remote areas, reimbursement for the time and cost of travel could encourage Approved Counsellors to provide services to claimants in regional and remote locations.

Recommendations

- 14. Increase counselling hourly rates to a level consistent with Medicare rates.***
- 15. Pay counsellors for travel time in excess of two hours.***
- 16. In exceptional circumstances, allow discretion for higher counselling rates to be approved for the counsellors of claimants who reside interstate and overseas.***
- 17. Continue to allow counsellors to be approved on an interim basis, especially in certain circumstances such as where a pre-existing counselling relationship exists, or where the claimant resides in rural or remote locations.***

8.3.2. Pillar 2: Immediate needs

The Current Scheme has focused on providing lump sum compensation to victims of violent crime, with compensation payments making up around 85% of total payments from the scheme. The remainder includes payments for counselling, legal costs and Authorised Report Writers (required for claims with psychological injury). With the exception of the Approved Counselling Scheme and referral services, the Current Scheme has been limited in providing victims with immediate financial and practical assistance following the crime.

Many stakeholders acknowledged that the Current Scheme is limited in its ability to provide timely financial assistance which would enable victims to begin their rehabilitation. The extensive waiting times for compensation to be awarded (currently 25 months from date of lodgement to determination¹¹) are believed in many cases to exacerbate the victims' distress.

¹¹ Victims Compensation Tribunal – Chairperson's Report 2010/11 p19

As stated in the principles for reform, in order to effectively provide support and rehabilitation to victims, support must be provided shortly after the act of violence. This will help the victim to recover physically, to get back on their feet and to begin the healing process. This principle is supported by comments from the Chief Magistrate of the Victims of Crime Assistance Tribunal (“VOCAT”) scheme who comments that *“delay discourages victims of crime and ultimately, undermines the effectiveness of the assistance”*¹².

The Current Scheme has two mechanisms to assist claimants in circumstances of urgent need:

Victims Assistance Scheme

The Victims Assistance Scheme (VAS) reimburses certain expenses for primary victims who do not reach the \$7,500 compensable injury threshold. VAS requires an excess of \$200 to be paid before benefits become payable. There is also a very low cap on total financial assistance available to be provided of \$1,500. This low cap particularly affects assault victims who require dental work as a result of their injuries and as dental costs are not covered by Medicare, it can result in significant out of pocket payments for victims, who may then be unable to afford treatment.

Expenses which can be reimbursed in the VAS include ambulance costs, medical appointments, medical services and dental services, medical aids such as hearing aids and prostheses, domestic assistance while recovering (such as personal care and home help) and security (such as changing locks). Expenses which cannot be reimbursed in the VAS include loss of earnings, counselling services, medical reports or loss of personal effects.

Due to the low level of benefits, limited range of services and supports, onerous paperwork and a general lack of awareness of this scheme, very few claims utilise VAS. In 2010/11, a total of around \$85,000 was paid under the VAS for 102 claims¹³.

A number of submissions raise the challenges of claimants particularly those from disadvantaged socio-economic backgrounds retaining the receipts necessary to access this service. It was also raised that the ability to benefit from financial assistance was reduced because a number of victims from these backgrounds may not be able to fund either the excess, or quantum needed above the low cap to make the support useful to meet their immediate needs. Further issues raised include the limitation on the range of services and support which could be compensated for.

Interim Payments

Under the Current Scheme, interim payments can be provided to claimants in severe financial hardship or to meet urgent expenses. However, in order to be eligible for interim payments, assessors are required to be satisfied that claimants will be eligible for full compensation. In most cases, the process for approving interim payments is as involved as the process of determining a final compensation award.

In order to apply for an interim payment, claims are required to demonstrate severe financial hardship and provide receipts for their expenses. As such, there are significant barriers to receiving these interim payments and this may result in victims not having access to immediate assistance at a time they need it the most.

Clearly, both of the current mechanisms for delivering timely financial assistance have problems. We believe the Current Scheme requires a pillar of support that directly addresses the urgent needs of victims. It is

¹² VOCAT Annual Report 2010-11, p4

¹³ Victims Compensation Tribunal – Chairperson’s Report 2010/11 p21

considered that a broader range of support could be offered as Pillar 2 (immediate needs) including (but not limited to):

- Providing emergency financial support for accessing flexible refuge style accommodation for domestic violence victims and their children in the short term, and assistance for longer term housing such as rental support and moving costs
- Reimbursement for changing locks, installation of security cameras etc.
- Emergency medical and dental expenses
- Crime scene clean up
- Funeral expenses

These services are primarily aimed at moving the victim out of a violent situation, mitigating the risk of future injury or a deterioration in injuries sustained as a result of a violent crime.

A case co-ordinator would help the claimant apply for a package of appropriate benefits. This application would be reviewed by an assessor and the package would be paid subject to a cap of \$5,000, with funeral costs subject to a separate cap of \$8,000. The case co-ordinator role is discussed in more detail in Section 8.5.1.

Case co-ordinators would be able to settle invoices directly as an alternative to reimbursement of receipts. In extreme situations the Registrar should be provided with the authority to reimburse claimants who are not able to provide receipts.

Recommendations

18. Eligible claimants with critical immediate needs may apply for a package of support under Pillar 2 (immediate needs) up to a maximum of \$5,000. Funeral expenses would be exempt from this limit and would be subject to a separate limit of \$8,000.

19. A Pillar 2 (immediate needs) benefit package would be payable for items of reasonable cost where intervention and/or assistance are critical to the recovery outcomes of the victim or there is an emergency financial need. For example:

- a. Relocation costs of the victim from a situation of potential violence (such as in domestic violence circumstances where the victim cannot afford the costs of relocation).***
- b. Implementation of safety measures (such as installation of locks or security doors where there is still the threat of violence).***
- c. Medical and other costs where the victim is unable to make the appropriate financial payments and the delay in payment or treatment would result in significantly poorer recovery outcomes for the victim (such as ambulance costs or emergency dental treatment).***
- d. Funeral expenses in the case of homicides.***

8.3.3. Pillar 3: Financial assistance

The purpose of the third pillar of support is to provide targeted needs-based assistance to aid victims in their rehabilitation and recovery following a violent crime. This includes provision of needs-based “gap” financial assistance and appropriate information and support. The information and support services would be provided by a case co-ordinator and this is discussed further in Section 8.5.1.

The financial benefits paid under this pillar would include:

Loss of actual earnings

The majority of stakeholders we met with felt the provision of benefits to replace the victim's loss of actual earnings played an important part in the victim's rehabilitation and support. The third pillar of support would provide these benefits for victims who can provide evidence of being in paid employment prior to the crime and had been unable to work as a direct result of the violent act. The evidence that claimants would need to provide in order to lodge a successful claim for loss of actual earnings would include items such as payslips and medical certificates.

Loss of actual earnings would be paid to claimants based on the weekly benefits payable under the *Workers Compensation Act 1987*¹⁴, subject to a maximum of \$20,000.

Cost of living and other expenses

Stakeholders stressed that due to the engendered nature of domestic violence and sexual assault crimes, in many cases the female victims were not in paid employment prior to the crime occurring. The victims of these crimes would be significantly disadvantaged if the only financial assistance available under this Pillar is for loss of actual earnings. To ensure the needs of these victims are also met, we recommend that this Pillar provides financial assistance to victims who were not employed at the time of the crime.

The financial assistance would cover short term costs of living such as rent assistance, furniture and white good needs, child care and household bills. In order to be eligible for this support, claimants would need to demonstrate that they have suffered a loss (i.e. loss of dependency) and that they have a need for this financial assistance over and above any government or other financial support that they may receive from the general welfare or other compensation systems.

Other expenses include damage to clothing the victim was wearing when the act of violence occurred, and reasonable travel expenses incurred or reasonably likely to be incurred by the victim as a direct result of the act of violence.

Cost of living and other expenses would be subject to a maximum of \$5,000, damage to clothing would be subject to a maximum of \$1,500 and it is not possible to claim for both cost of living and loss of actual earnings.

Medical and dental expenses

A criticism of the Current Scheme is that the awards paid to claimants, despite varying by injury, are often not enough to meet the gap medical and dental costs of treating the injuries. A common theme in submissions was the cost of dental work and that in many cases claimants with injuries to teeth did not make the \$7,500 threshold. If the claimant is unable to afford the dental work out of their own pocket, the injury can have an ongoing impact on their ability to find work and be self sufficient.

Under the Proposed Scheme, gap medical and dental expenses associated with the injuries caused by the act of violence would be covered under Pillar 3. A problem that has been identified with providing financial assistance is the reliance on victims keeping receipts and records. To avoid this problem, one of the roles of case co-ordinators recommended in Section 8.5.1 would be to assist by directly settling invoices for items such as medical and dental treatment as an alternative to reimbursement of receipts. This would also give service providers some certainty that payment will be received.

¹⁴ See *Workers compensation benefits guide (April 2012)*. Available at <http://www.workcover.nsw.gov.au>

Assessors would be responsible for determining whether the claimant is eligible and whether the amounts requested in the assistance package is reasonable based on the evidence they provide with their claim. We envisage that the package available would be:

- A total limit on amounts under Pillar 3 of \$30,000
- A sub limit on amounts awarded for loss of earnings of \$20,000
- A sub limit on amounts awarded for cost of living and other expenses of \$5,000
- A sub limit on amounts awarded for damage to clothing of \$1,500
- No sub limit on amounts available for medical and dental expenses, apart from the total Pillar 3 limit.

Recommendations

20. A Pillar 3 (financial assistance) package would provide claimants who have suffered an economic loss with amounts under Pillar 3 not exceeding \$30,000 with:

- a. Loss of actual earnings up to \$20,000 for victims who can demonstrate a loss of actual income as a result of the crime.***
- b. Financial assistance up to \$5,000 for victims who cannot demonstrate a loss of actual income, but can demonstrate a loss as a result of the crime. A further sub limit of \$1,500 would apply to amounts awarded for damage to clothing.***
- c. Medical and dental expenses directly related to the injuries caused by the act of violence.***

8.3.4. Pillar 4: Recognition payment

A consistent theme from our stakeholder consultations has been that for victims, lump sum payments are an important part of the rehabilitation process both symbolically and practically. Lump sum payments are viewed by claimants as an acknowledgement that they were a victim and can help provide closure to the incident. A lump sum payment gives victims a degree of financial independence, which can be empowering where the victims are financially dependent on the offender.

However there are currently significant delays in paying lump sum compensation to claimants. Processing of claims in most jurisdictions around Australia that we have benchmarked against is generally below a year and the broad consensus from our consultations is that this is the limit to an acceptable waiting period. The current time frames in excess of two years are clearly unacceptable. In order for waiting periods not to continue to grow, the scheme needs to be financially viable. Unfortunately, this requires a significant downscaling of the benefits available to claimants.

The Current Scheme pays compensation based on the nature of the victim's injury, with the exception of domestic violence and sexual assault, and the amounts available are listed in *Schedule 1 Compensable Injuries*. As noted in Section 8.1 we believe that all references to compensation should be removed from the Proposed Act. In many cases, the amounts paid for particular injuries are not sufficient to meet the medical costs associated with that injury. The cost of repairing damage to teeth was an example that stakeholders used frequently to demonstrate the shortcomings of the Current Scheme.

Under the Proposed Scheme, victims with urgent medical or dental needs would have the gap costs provided under Pillar 2 and Pillar 3. The amounts under Pillar 4 are intended to serve as recognition of the trauma of the

violent act. Accordingly, these Pillar 4 amounts are based on the nature of the violent act rather than the nature of the victim's injury.

In designing this Pillar, we looked to Victim Assist Queensland and Victims of Crime Assistance Tribunal (VOCAT), Victoria who provide a moderate lump sum payment to claimants as a symbolic gesture from the state to acknowledge the crime committed against them. Both of these schemes have structures which are similar, increasing amounts of lump sum payments according to the severity of the act of violence and the seriousness of the injuries sustained.

The following table shows the amount of recognition payments we recommend to be paid under the Proposed Scheme for eligible claimants.

Table 8.3-1 Recognition Payment Awards

	Examples	Award
Category A	Homicide (financially dependant family)*	\$15,000
	Homicide (non dependant parents)*	\$7,500
Category B	Corresponding to Category 3 sexual assault in Current Scheme	\$10,000
Category C	Corresponding to Category 2 sexual assault in Current Scheme, grievous bodily harm	\$5,000
Category D	Corresponding to Category 1 sexual assault in Current Scheme, robbery, assault	\$1,500

* Note: total Pillar 4 payments per Homicide are subject to a cap of \$50,000. Where number of claims exceeds this cap individual amounts to be paid are scaled down.

These payment amounts are similar to those in Queensland and Victoria, although we note that the type of violence for each category does vary. More detail on the Queensland and Victorian schemes are shown in Appendix C.4.

The lump sum payments in the Proposed Scheme are significantly lower than under the Current Scheme. The greatly reduced lump sum sizes reflects the introduction of increased needs-based financial assistance and because the current levels of payments are not sustainable under current funding levels.

Recommendations

- 21. That the Proposed Scheme continues to provide eligible victims of violent crime with lump sum amounts to acknowledge the violence suffered by the claimant and to recognise the trauma of the experience.***
- 22. The benefits available under Schedule 1 Compensable Injuries are discontinued and replaced with recognition payments based on the nature of the violent act with the amounts payable consistent with those shown in Table 8.3-1.***

8.4. Coverage

The reporting and eligibility requirements to access each of these four Pillars would be different. For Immediate Needs, Financial Assistance and Counselling the key would be to ensure that fast support is provided to victims without the need for excessive administrative hassle.

8.4.1. Eligibility

The Current Scheme provides compensation to a broad range of victims. These include:

Type of victim	Description
Primary victim	Victim of an act of violence and are injured as a result
	Injured while trying to: <ul style="list-style-type: none">• Prevent someone from committing an act of violence• Arrest someone who is committing an act of violence• Help or rescue someone against who an act of violence is being committed
Secondary victim	Injured as a result of witnessing an act of violence
	Parent or guardian of a primary victim of an act of violence who was under 18 years at the time of the act and are injured as a result of learning of the act of violence
Family victim	Immediate family member of a homicide victim

The needs of each type of victims listed in the above table will vary depending on the circumstances of the crime. However, in many cases secondary and family victims will not need the benefits under every Pillar in the Proposed Scheme.

Counselling (Pillar 1)

Counselling has been widely acclaimed by stakeholders as being a very valuable component of the scheme. Our recommendations for this particular pillar have focused on extending its availability as broadly as possible. Accordingly, we would recommend that all primary, secondary and family victims of violent crimes be eligible for access to counselling.

Immediate needs (Pillar 2)

The services to be provided under this Pillar are primarily aimed at moving the primary victim out of a violent situation, mitigating the risk of future injury or a deterioration in injuries sustained as a result of a violent crime. In our view, these services are relevant only for primary victims. In reality, family victims will indirectly access some of these benefits. For example, children may be transported away from a situation of domestic violence and placed in a refuge with the primary victim.

The only exception we see for this category is for the family members of homicide victims. These victims often need urgent financial support for items such as crime scene clean up and funeral costs.

Financial assistance (Pillar 3)

The purpose of the third pillar of support is to provide assistance to aid victims in their rehabilitation and recovery following a violent crime. The financial assistance that will be provided under this pillar includes loss of actual earnings, medical and dental costs and living and other expenses in some cases. It is our view that only primary victims should be eligible for these categories of financial assistance. As for Pillar 2 it is likely that some family members may indirectly benefit from financial assistance given to the primary victim.

However, parents of child victims may require financial support in order to provide care for their child. We would see these secondary victims also having access to this pillar of support.

Recognition payment (Pillar 4)

The lump sums paid under this pillar are to acknowledge the violence suffered by the claimant, to recognise the trauma of the experience and as an expression of the states sympathy and regret. Primary victims experience this trauma most directly and we believe that this pillar should be restricted to these victims.

Again, the exception we see for this category is for the family members of homicide victims. The trauma of a homicide is experienced by the family members of the primary victim and we believe that access to Pillar 4 should be granted in this case. However, in order to direct the limited funding to those victims who most require the support, we would see the following rules applying for homicide family victims:

- Family members who can demonstrate financial dependence would be eligible for \$15,000.
- Parents of homicide victims who are not financially dependent would be eligible for \$7,500.

Recommendations

23. Victims eligible for Pillar 1 (counselling) would include primary, secondary and family victims

24. Victims eligible for Pillar 2 (immediate needs) support would include:

- a. Primary victims**
- b. The family members of homicide victims**

25. Victims eligible for Pillar 3 (financial assistance) support would include:

- a. Primary victims**
- b. The parents of child victims**

26. Victims eligible for Pillar 4 (recognition payment) support would include:

- a. Primary victims**
- b. In cases of homicide, dependent family members and non dependant parents.**

8.4.2. Limitation periods

There is a two year limitation period under the Current Scheme, with provisions for domestic violence, sexual assault and child sexual assault claims to be granted leave for out of time claims. These provisions recognise the impediments for victims of these crimes to lodge a victim compensation claim, such as shame and guilt and fear of retaliation from the violent partner.

The recommendation from the Chairperson to impose a final limitation of 20 years drew many responses in the submissions to the issues paper. These included comments that 20 years was too short a time and that it was inappropriate for victims of domestic violence or sexual assault or where it may take many, many years before the victim feels able to report. Comments supporting a final limitation period include the complexities and challenges of substantiating the violence occurred after such a long period of time.

We support the view that a two year statute of limitation period is too short for the reporting of many cases of domestic violence and child sexual assault (two years post age eighteen). We do however appreciate the potential difficulties in providing evidence and determining matters where there is a substantial delay before reporting.

Designing a new scheme which would be financially viable within existing funding levels involves extremely difficult fundamental choices of either restricting the number of victims accessing the scheme or by reducing the average size of claims. Reduction in claim numbers could be achieved by tightening limitation periods and reporting requirements and reduction in average size could be achieved by capping the level of benefits.

We recognise that any change in eligibility requirements would have a significant impact on victims. In particular, imposing stricter time limitations would have a significant impact on victims of violence which occurred many years ago, in particular those related to child sexual assault and domestic violence. We acknowledge that as the societal attitude to violence has changed and victims of historical claims have had time to reflect and come to terms with their past trauma, and feel more supported by changing cultural attitudes, they have started to come forward in increasing numbers and report these acts of violence.

One of the principles of reform followed was that support should be prioritised in meeting the immediate needs of the widest group of victims as possible with benefits available being provided in a hierarchy.

Recommendations

27. To provide counselling (Pillar 1) to all victims with no limitation period restrictions.

28. Claimants must lodge their claim for Pillar 2 (immediate needs) and Pillar 3 (financial assistance) in a reasonable timeframe, no later than the maximum of 2 years or 18 years of age plus 2 years.

29. Claimants must lodge their Pillar 4 (recognition payment) within 2 years of the incident (or 18 years of age plus 2 years). In the case of Domestic Violence and Sexual Assault these time limits would be extended to an absolute time limit of 10 years (or 18 years of age plus 10 years for child claims).

8.4.3. Reporting requirements

There are currently no requirements for claimants to lodge a police report prior to lodging a claim for compensation. The Act allows assessors, in determining whether a matter relating to a victim was reported to the police in reasonable time, to take into account things such as the age of the victim, when the act of violence occurred, the nature of the relationship between the victim and offender and any fear of retaliation.

One argument in favour of reporting to police is a community expectation that people benefiting from a scheme funded by the general taxpayer should at the least have reported the act of violence to the police. Also, by reporting the violence to the police, the mechanism of the criminal justice system can begin and offenders can be questioned and charged. The significant majority of claims are currently reported to police (circa 85%) but this has reduced significantly over the last decade.

On the other hand, a number of submissions point out the barriers which reporting to police may present for many victims, such as those from indigenous or certain ethnic backgrounds, or for those in fear of retribution. The support of a case co-ordinator role and a police liaison officer embedded within Victims Services may go some way to breaking down these barriers.

Currently statutory declarations are accepted. We consider that this can create challenges for an assessor or tribunal member proving to their satisfaction that on the balance of probability the act of violence has occurred in the absence of any other evidence. This must be particularly challenging when many years have passed since the supposed assault or abuse and there is the potential that recollection is influenced by more recent events.

Recommendations

- 30. Pillar 2 (immediate needs) benefits be made available upon the claimant supplying one piece of evidence that supports, on the balance of probability, that the claimant is a victim of violent crime, such as a police or medical report.**
- 31. For Pillar 3 (financial assistance) and Pillar 4 (recognition payment) benefits, a higher standard of evidence is required. A police report is required and there must also be evidence of injury (by a medical, dental or counselling report). There may also be other documentary evidence required depending on the Pillar 3 assistance required (e.g. evidence of actual or relevant receipts).**
- 32. In tandem with the Pillar 3 and Pillar 4 requirement for police reporting, to have a police liaison officer embedded within Victims Services.**
- 33. That statutory declarations are no longer accepted as sufficient evidence for acceptance of a claim.**

8.4.4. *Contributory conduct*

We note that there are two sections of the Act which deal with this behaviour:

- Section 24 (3) “Offenders. A person is not eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was engaged in behaviour constituting an offence
- Section 30 – Reasons for not making awards - (a) any behaviour (including past criminal activity), condition, attitude or disposition of the primary or secondary victim concerned that directly or indirectly contributed to the injury or death sustained by the victim and (c) whether that victim participated in the commission of the act of violence, encouraged another person to commit the act of violence or otherwise gave assistance to any person by whom the act of violence was committed

We believe these sections of the Act adequately protect the scheme.

In the UK, Section 13 (e) and 14 (2) of the Criminal Injuries Compensation Scheme 2008, a claims officer can take into account a claimant’s character as shown by any prior criminal convictions and whether excessive consumption of drugs or alcohol contributed to the act of violence when assessing the claim. Previous convictions are taken into account by applying points to the sentence and time passed since it was imposed to decide if a reduction or refusal or an award is appropriate. In January 2012 a change was proposed to tighten existing provisions relating to an applicant’s unspent criminal convictions so that all applicants with any unspent criminal conviction would not be eligible to claim from the Scheme¹⁵. “*The Scheme is a taxpayer-funded expression of public sympathy and it is reasonable that there should be strict criteria around who is deemed “blameless” for the purpose of determining who should receive a share of its limited funds. We consider that, in principle, awards should only be made to those who have themselves obeyed the law and not cost society money through their offending behaviour.*”

We have received feedback from stakeholders that compensation should be available to all victims of crime. It was noted by some stakeholders that many incarcerated people have been victims of crimes themselves and that denying these people access to “support and rehabilitation” and rights outlined in the Victim’s Charter of Rights would be discriminatory, prejudicial and in violation of basic human rights.

¹⁵ “*Getting it right for victims and witness*”, Consultation Paper CP3/2012, January 2012, Ministry of Justice UK (https://consult.justice.gov.uk/digital-communications/victims-witnesses/supporting_documents/gettingitrightforvictimsandwitnesses.pdf)

We also received some opposing views that for those who have been perpetrators of violence, when they become victims themselves that the benevolence and generosity of the community need not be extended to such persons in the same way as blameless members of the community. It was also noted that claimants with a long history of criminal activity were far more likely to become victims themselves due to their criminal lifestyle or due to lifestyle choices of circumstance.

In the ACT, the amount of compensation awarded is reduced if the victim was intoxicated at the time of the offence. The reduction in award is calculated by reference to the degree of injury the victim would have sustained if he or she was not intoxicated at the time. Exemptions to this intoxication clause are granted to sexual assault victims.

In summary, the current provisions in the Act are sufficient to ensure that opportunistic behaviour by criminals will not be awarded compensation and the current provisions should be included in the new legislation.

8.4.5. Psychological injury

Under the *Schedule of Compensable Injuries*, there are two categories for psychological injury:

- Category 1: chronic psychological or psychiatric disorder that is moderately disabling
- Category 2: chronic psychological or psychiatric disorder that is severely disabling

Category 1 is restricted to victims of armed robbery, abduction or kidnapping offences only. This means that for victims of sexual assault and domestic violence, they must satisfy the conditions for Category 2 to receive compensation for psychological injuries.

Claimants seeking compensation for psychological injury Category 1 or 2 are required to be assessed by an Authorised Report Writer (ARW). ARWs assess the claimant's psychological injuries and its impact on their daily routines to produce a medico-legal report for assessors who then determine whether the claimant has satisfied the conditions for Category 1 or 2.

We have received feedback from several legal practitioners that Category 2 has been very difficult to establish for their clients. This is supported by comments in the Chairperson's report where of the 2,884 claims accompanied by an ARW report, only 379 claims received awards for the compensable injuries of a chronic psychological or psychiatric disorder Category 1 or 2. This low success rate of 13% suggest the limitations of Category 1 to specific offences and the high threshold of Category 2 result in very limited numbers of victims receiving compensation for psychological injury.

An assessment by an ARW does not have any therapeutic benefits and can be traumatic for the claimant. Also, in regional and rural areas where there is a limited number of Approved Counsellors, counsellors who act as ARW cannot counsel the victim due to a conflict of interest. There is also the additional cost of ARWs, where a report can cost up to \$1,100 plus GST. In 2010/11, the cost of 2,884 ARW reports was \$1.5 million.

We note that under the Proposed Scheme, the benefits that victims receive will no longer be based on nature of their injury. Support will be provided on a needs basis and we anticipate that counselling will form a crucial part of many victims' rehabilitation and recovery. Victims with psychological injuries will therefore be treated no differently from those with physical injuries.

Recommendations

34. Psychological injury to be implicitly included in the recognition payment under Pillar 4, and that there be no further requirements for claimants to be assessed by Authorised Report Writers in the claims process.

8.4.6. Related acts of violence

In Section 5 (3) of the Act, related acts are defined as two or more acts that are related because:

- They were committed against the same person and
- They were committed at approximately the same time or over a period of time by the same person or groups of persons

Assessors have discretion to treat multiple claims as unrelated acts, as per Section (3A) of the Act.

We received feedback from various victim advocacy groups that the related acts restrictions has a disproportionate impact on domestic violence victims, who are subjected to prolonged periods of violence by their partner over a length of time.

However, the support to be provided to victims under Proposed Scheme will be needs based and multiple acts of violence do not necessarily result in multiple needs. Providing victims with access for each individual act of violence is also financially prohibitive and would prevent the Proposed Scheme from providing support to a broader range of victims.

While the benefits provided under Pillar 4 are not needs based, we would also recommend that claimants be eligible for a single recognition payment under Pillar 4 for related acts of violence.

Recommendations

35. Claimants are eligible to access each pillar of support only once for related acts of violence. This means:

- a. The limits, sub limits and amounts available under each pillar of support apply to related acts of violence rather than individuals acts of violence.**
- b. Claimants are eligible for a single recognition payment under Pillar 4 (recognition payment) for related acts of violence.**

8.4.7. Coverage for victims of terrorist attacks abroad

One of the proposed changes to the UK victims compensation scheme announced in January 2012 is to include victims of terrorist attacks abroad in their scheme. The rationale for this is so that victims of terrorist attacks abroad and victims of terrorist attacks locally are treated in the same way by the compensation scheme.

We note that the South Australian scheme also allows ex gratia payments to be made to victims of terrorist attacks abroad, such as the Bali bombings.

However, we also understand the Federal Government provides assistance to Australians affected by local or international disasters through Disaster Assist. This assistance includes:

- The Australian Government Disaster Recovery Payment – a one-off payment to assist permanent Australian residents who suffered serious injury, witnessed the devastation of the disaster, or who are one of the immediate family members of a permanent Australian resident who was a victim of the disaster
- Funeral/Memorial Assistance to the immediate family member of a permanent Australian resident who has died as a result of the disaster
- Support from Centrelink including crisis intervention, personal support, referral and practical assistance to affected individuals and families.
- Other assistance specific to the circumstances, such as travel assistance and out-of-pocket health expenses

Given the comprehensive nature of the Disaster Assist program, we do not recommend the Proposed Scheme covers victims of overseas terrorist attacks.

8.5. Administration of the Scheme

8.5.1. Navigating the system – the role of case co-ordinators

One of the guiding principles of reform is to meet the immediate needs of victims, followed by practical and financial assistance where needed. We recognise that to do this the claims application process needs to be as simple and efficient as possible to ensure the support is delivered in a timely and effective manner.

Under the current system, victims in most cases rely on legal providers for assistance with completing and submitting their application for compensation. Legal providers represented 71% of claims lodged in 2010/11¹⁶. The reliance on legal providers removes a significant administrative burden from the scheme.

During our discussions with stakeholders, we identified a number of areas where the scheme requires improvement. For a victim of violent crime, the initial reactions of shock, anger and feelings of helplessness and panic can overwhelm and render the victim unable to carry out everyday tasks. Against this backdrop, the current claim process with its delays, lack of information and lack of direct contact with Victims Services, can be highly daunting and create ongoing trauma for victims.

In order to overcome some of these problems currently, Victims Services have provided some specialist support to a few high needs individuals. Victims Services have told us that the feedback by the people able to access this support has been very positive. Feedback we have collected from other victims suggests that this type of support is needed for a wider range of claimants.

Any changes to the scheme should ensure that all claimants have an equal opportunity to receive support with completing and submitting their applications. The scheme should also ensure that claimants are provided with the assistance they need in order to navigate the criminal justice system, the legal system, Centrelink, Medicare and other government agencies and non government organisations that victims rely on for support.

¹⁶ Victims Compensation Tribunal – Chairperson's Report 2010/11 p15

In light of this, we recommend that Victims Services provides claimants with a case coordinator to assist the claimant with immediate needs, navigating the various government and community support services and to help claimants through the claims process.

The role of case co-ordinators is proposed to be wide and varied. The case co-ordinator would need to be proficient in navigating the criminal justice system, the legal system, Centrelink and other government agencies and non government organisations that victims rely on for support. They would also need to be able to assist and support victims through emotionally difficult times by assessing the level of financial assistance required and also to guide them through the claiming process under the Proposed Scheme.

While we understand that Victims Services have some capacity to convert existing staff into these roles, additional staff will be required in order to accommodate the volume of claims expected to be lodged under the Proposed Scheme. The scope of these roles is likely to require significant new training requirements for existing staff so that they are able to be effective in providing such a wide and diverse range of support to victims.

The case co-ordinator role would be defined as follows:

- Assess the immediate needs of the victim and help them collect the documents required to lodge a claim under Pillar 2
- Provide claimant with referrals to the appropriate court support services to help the victim navigate the criminal justice system
- Provide the claimant with information and referrals to other available government and community support systems
- Assess the level of financial assistance that the claimant may be eligible for under Pillars 3 and 4 and help with the collection of the required evidence and lodgement of the claim application

Assessors would act as an independent person within Victims Services who determines the level of support and financial assistance the claimant is eligible for under each of the four Pillars of the Proposed Scheme. Each claim lodged under each Pillar would be passed to an Assessor who would:

- Confirm the claimant meets the reporting and eligibility requirements.
- Use the claim application and supporting documents to determine the amount of assistance that the victim is able to claim under each Pillar.

This separation of roles between the case coordinator and the assessor is also extremely important from a governance perspective (further discussed in Section 10.1).

We anticipate that there will be minimal involvement by legal providers in the Proposed Scheme.

Recommendations

- 36. Victims Services provides claimants with a case coordinator to assist the claimant with immediate needs, navigating the various government and community support services relevant to the victims needs and to help claimants through the claims process.***
- 37. That each claim in the Proposed Scheme is reviewed by an assessor who acts as an independent person within Victims Services that determines the level of support and financial assistance the claimant is eligible for under the scheme.***

There are particular subgroups within the community who face greater barriers to access the Proposed Scheme. These subgroups include Aboriginal and Torres Strait Islanders, people from culturally and linguistically diverse communities, people from rural and remote communities, people with disabilities, homeless people and convicted and incarcerated people.

Victims Services already have some services in place for these groups of people. For example, Victims Services is currently trialling a pilot on providing counselling in some select women's prisons and they currently provide interpreter services for some subgroups.

Recommendations

38. Victims Services to establish dedicated case co-ordinators for victims from backgrounds that require greater help in seeking assistance such as Aboriginal and Torres Strait Islanders, culturally and linguistically diverse communities, rural and remote communities, the homeless and people with disabilities.

8.5.2. Appeals

In the Current Scheme, if a claimant disagrees with an assessor's decision on their application for compensation, the claimant may appeal to the Victims Compensation Tribunal. There are currently only two restrictions on the grounds of appeal – claimants cannot appeal for the correction of a miscalculation in the amount awarded under VAS and they cannot appeal a determination in relation to the costs of application.

Staff at Victims Services commented that the current system does not allow for an internal review process by a more senior assessor before the claim is sent to the Victims Compensation Tribunal, although Section 37 (2) of the Act is intended to allow magistrates from the Tribunal to send a claim back to assessors to correct administration errors. Administration errors are easy to rectify (such as a missed eligible injury) and an internal review process would save on both costs and time.

Another concern raised by staff at Victims Services was the lack of restrictions on the grounds of appeal. As a result, dissatisfied claimants were bringing appeals on items which relied on an assessor's judgement and discretion rather than a strict interpretation of the Act. An example discussed was an appeal where the assessor awarded an amount within a range and the claimant appealed against this amount awarded.

The Proposed Scheme involves low average quantum financial payments, especially when compared to the Current Scheme. This needs to be considered in the context of the appeals process. The current system is a legalistic appeals process where the claimant needs to appeal to the Victims Compensation Tribunal. This can be time consuming and expensive. An administrative appeals process would be more appropriate to the quantum amounts of financial assistance that is available to claimants under the Proposed Scheme.

Recommendations

- 39. Appeals are in the first instance addressed by an internal review process conducted by a senior assessor.***
- 40. That Victims Services establish prescriptive guidelines on which components of an assessor's determination may be appealed, and for there to be additional restrictions on the grounds for appeal.***
- 41. That the powers vested in the Victims Compensation Tribunal to deal with appeals be transferred to the Administrative Decisions Tribunal.***
- 42. The decision of the Administrative Decisions Tribunal is final and no further appeal or review is permitted.***

8.5.3. Administration

One of the guiding principles of reform is to meet the immediate needs of victims, followed by practical and financial assistance where needed. We recognise that to do this the claims application process needs to be as simple and efficient as possible to ensure the support is delivered in a timely and effective manner.

The Proposed Scheme has many different requirements to the Current Scheme. This will require the development of new claim forms and internal claim processes. Sufficient time needs to be dedicated to ensuring that these are as effective as possible and minimise the barriers for victims of violent crime to access timely financial assistance.

Pillar 2 and 3 are for the provision of immediate needs and needs based financial assistance. The timeframe in which this assistance needs to be delivered to be most effective is quite short. There is a need for a simpler claims process which is easier to complete and assess to assist in the quick turnaround of a claim. There is therefore the need for a simpler application form for Pillar 2 and 3.

A number of submissions commented on the difficulty of victims to keep and provide receipts. Examples of this include the homeless or a victim of domestic violence forced to leave a previous residence where receipts were stored. We believe there is merit in giving the Registrar the authority to exercise discretion in extreme or unusual situations to approve financial payments reimbursing a claimant without the need for receipts being provided. While this may open the scheme up to opportunistic claimants, we believe case co-ordinators would have a good understanding of the expenses incurred by victims, and we have recommended various caps and sub-limits on the amount of financial assistance available for different items. We note that part of the assessors role is also to provide some governance and a "check and balance" to ensure that appropriate monies are reimbursed in specific circumstances.

Recommendations

- 43. That a simpler claims form and claims process be established to enable timely provision of immediate needs and financial assistance to victims.***
- 44. The Registrar be given the discretion to authorise financial payments reimbursing a claimant without the requirement for receipts to be provided in extreme or unusual circumstances.***

Under the Current Scheme, a claim was deemed closed once a determination had been made by an assessor and there were no further appeals. Under the Proposed Scheme, we consider a claim to be closed at the earlier of when a claim had reached the sub limits and limits under each Pillar or 5 years from date of lodgement irrespective of the amount of financial assistance awarded.

9. Costing of a New Scheme

Key Points

The estimated cost of the Proposed Scheme takes into account:

- the number of future violent crimes in NSW
- the proportion of violent crime victims that will lodge a claim in the Proposed Scheme
- the proportion of lodgements that will use each category of support
- the average cost for each category of support
- the administrative costs of running the scheme

The introduction of significant changes to the Current Scheme provides many challenges in estimating usage rates and average claim sizes under the Proposed Scheme. In particular, it can be difficult to predict the behavioural effects of significant changes in scheme design.

In order to manage this uncertainty, we have costed a scheme that has a \$6.5M buffer between the funding and the expected scheme cost. Once the scheme is established and more is known about the utilisation of the scheme, the benefits can be adjusted in order to align the cost and the funding.

The size of the accumulated liability on claims already lodged will require two schemes to be running in parallel for an extended period of time and this will need to be managed effectively.

The recommended scheme reforms outlined in Section 8 are aimed at broadening claimant access to support and rehabilitation and ensuring that this can be accessed in an easy and timely manner. This section outlines the cost of the proposed reforms and their affordability given the current funding constraints.

9.1. Methodology

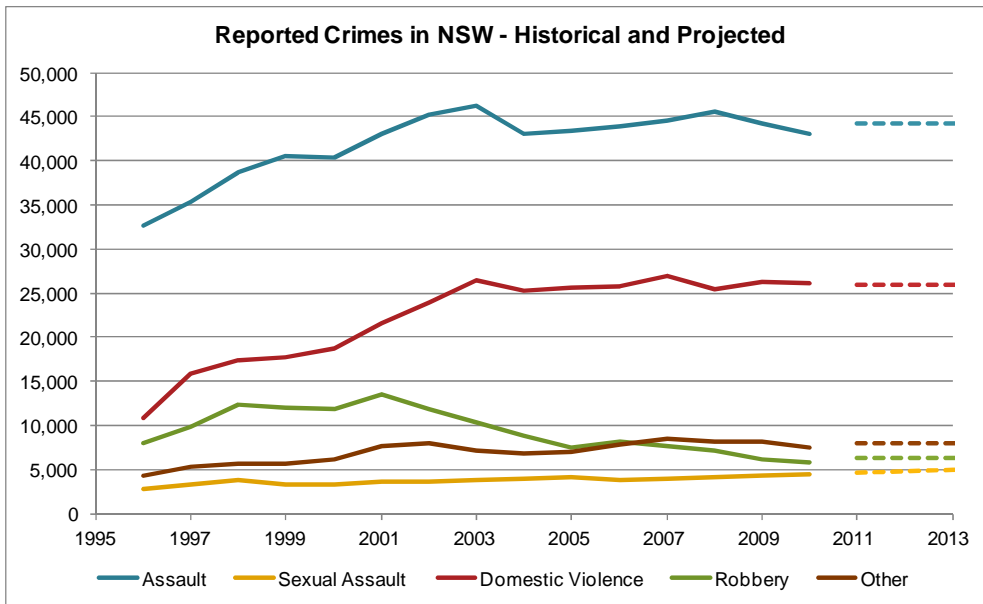
Our approach to projecting the cost of the Proposed Scheme is as follows:

1. Project the number of violent crimes in NSW
2. Project the proportion of violent crime victims that will lodge a claim with the Victims Support Fund
3. Estimate the proportion of claims that will use each category of support by offence
4. Estimate the average cost per claim of each category of support
5. Project the total cost of each category of support
6. Add an allowance for case management costs and the expected administration costs of the scheme.

9.2. Analysis

9.2.1. Number of violent crimes in NSW

The following graph shows the number of historic and projected violent crimes in NSW from 1996.



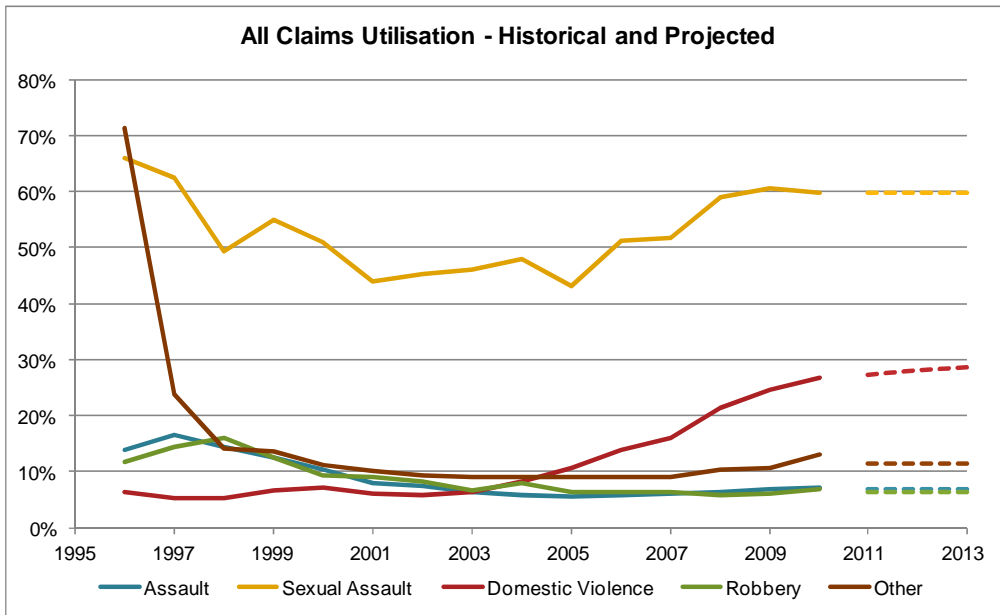
Source: BOCSAR

Most offence categories have had a reasonably stable number of crimes over the past five to ten years. The notable exception is sexual assault, which has grown from approximately 2,800 crimes in 1996 to 4,400 cases in 2010. The number of robberies has fallen in recent years, following a peak of 14,000 robberies in 2001.

To project the number of future offences, in most cases we have used the average number of crimes over the past five years. To allow for the consistent growth in the number of sexual assault cases, we have assumed the number of sexual assaults will increase further by 3.0% per annum.

9.2.2. Projected number of claim lodgements

The number of future claim lodgements has been projected based on the expected proportion of violent crimes that will lodge a claim with the scheme. The following graph shows the historic and projected proportion of victims who lodge claims under the scheme.



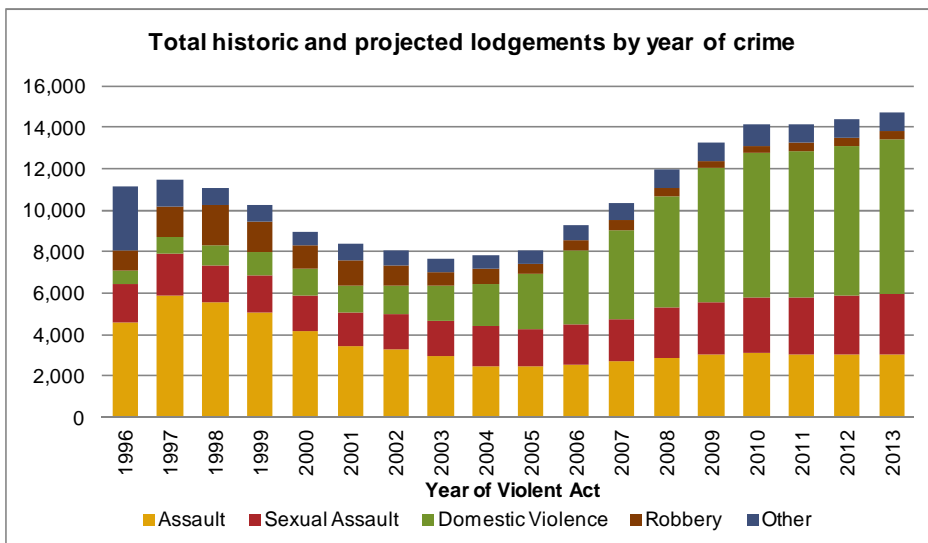
The trends we have observed in claim lodgements are discussed in detail Section 3.

The proportion of sexual assault victims lodging claims under the Current Scheme has increased significantly since 2001, flattening out at 60% from 2008. We have assumed that the proportion of sexual assault victims lodging claims will continue at approximately 60%.

The proportion of domestic violence victims lodging claims under the Current Scheme have increased significantly from 2003, reaching a peak of 27% in 2010. We have assumed that the proportion of victims who lodge claims will continue to grow at a rate of 2.5% for the next five years.

Assault, robbery and other violent crimes have much lower proportions of victims accessing the scheme and these proportions have been moderately stable over the past ten years. We have assumed that these proportions will continue at the average proportions observed for each offence over the past three years.

The following graph shows the historic and projected number of claim lodgements.

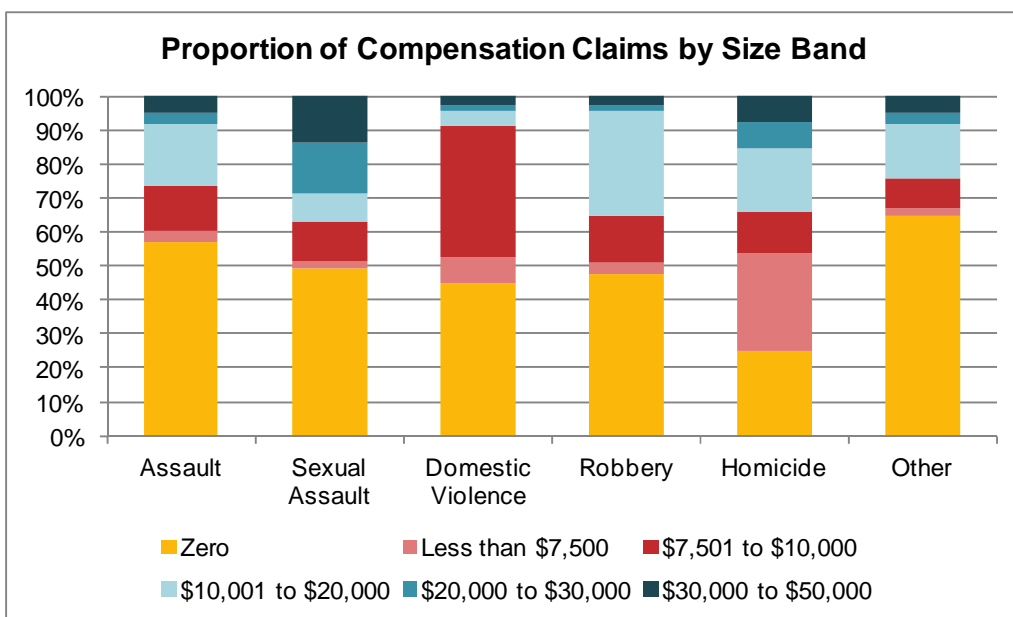


This graph shows the number of claims lodged by the year in which the act of violence occurs. This allows for an estimate of the claims yet to be lodged on incidents that have already occurred, as outlined in Section 5.3 of this report.

We note that if the number of future claim lodgements does not increase at our assumed rate by the different offence types, then the costs estimated under the Proposed Scheme would be lower compared with what we have projected.

9.2.3. Usage of each pillar of support

Under the Current Scheme, the final amount awarded to lodged claims varies significantly depending on the nature of the violent act and the severity of injuries. The following chart shows how the size of the amounts awarded to claimants varies by each offence based on determinations from 2006 to 2010.

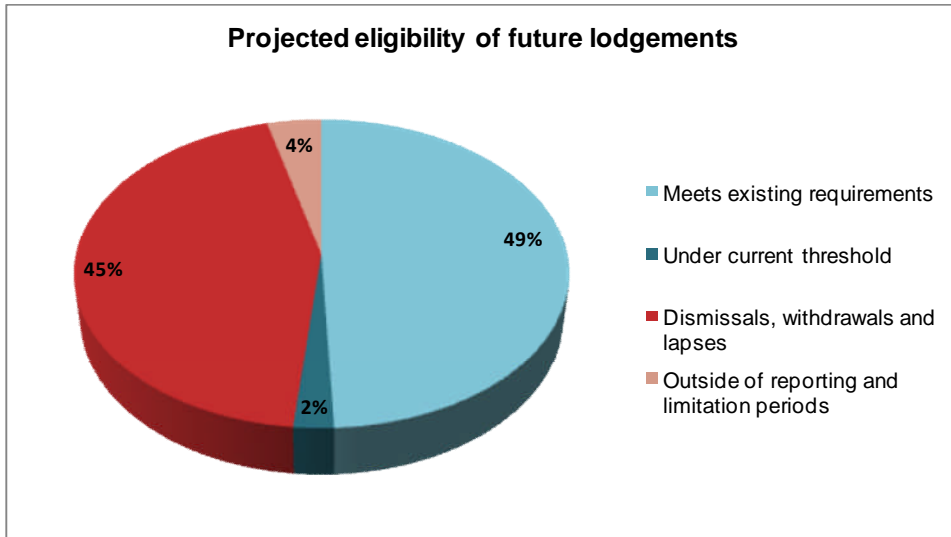


This chart shows that under the Current Scheme, around 50% of claims lodged end up with no compensation or other benefit.

- The majority (around 95%) of these claims are dismissed for reasons including failure to establish an act of violence, no evidence of a compensable injury and the claimant already being covered by other forms of support (i.e. workers compensation). A small proportion of the dismissed claims (8%) are from claims that fall below the current threshold of \$7,500
- The remaining 5% of these claims do not receive compensation as a result of lapsing or withdrawing.

With the exception of the claims that fall below the current threshold of \$7,500, we do not anticipate that the claims dismissed in the Current Scheme will be eligible for support under the Proposed Scheme. The Proposed Scheme still requires evidence that an act of violence occurred and that the victims suffered an injury. It would also no longer allow claimants to submit statutory declarations as the sole source of evidence of the act of violence.

The following graph shows the proportion of lodgements that we anticipate will be eligible for support under the Proposed Scheme.



Of the claim lodged under the Proposed Scheme, we expect 51% of claims to meet the proposed eligibility criteria. Around 49% will be from claims that are eligible for claims on the existing criteria, while 2% will come from claims that are currently below the existing threshold of \$7,500 that we believe will now be eligible for support under the Proposed Scheme.

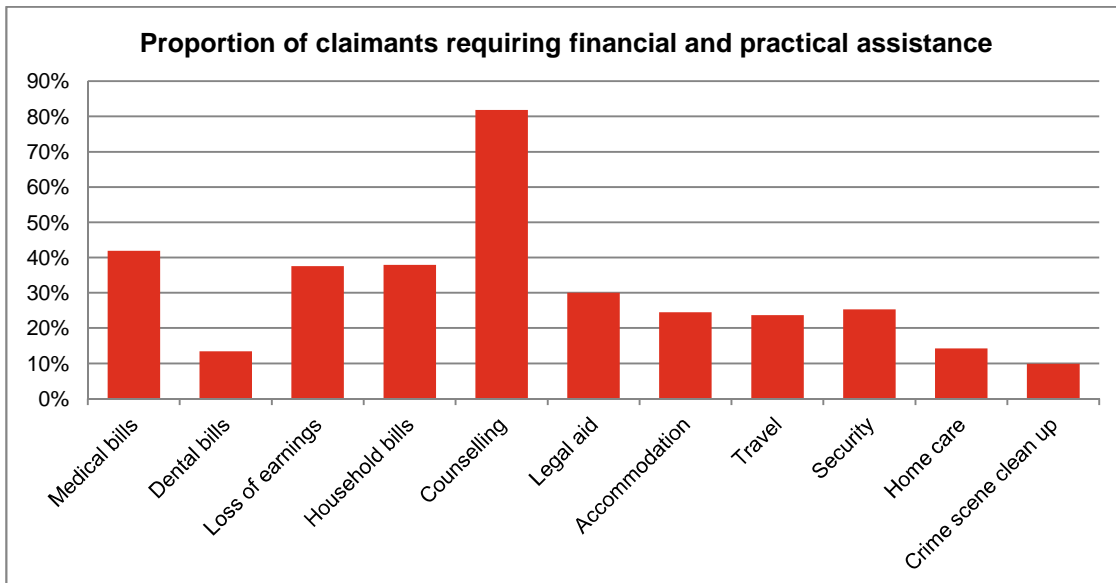
However, given the current dismissal, withdrawal and lapse rates, we expect 45% of the projected claim reports under the Proposed Scheme to not receive support under the Proposed Scheme. Further to this, we expect that the recommended reporting requirements and limitation periods will prevent a further 4% of claims receiving financial assistance or a recognition payment under the Proposed Scheme.

Given the similarities of the Proposed Scheme with the schemes in Victoria and Queensland, we have compared the assumed number of eligible lodgements with the number of claims in those schemes on a per capita basis. While the benefits in these schemes do differ from the Proposed Scheme (i.e. higher relocation support in the Proposed Scheme, but lower limits for loss of earnings), our projections are broadly in line with claims per capita in these schemes.

To estimate the cost of each pillar of support we have relied on two sources of information:

- In May 2012, we received over 1,000 completed claimant surveys from which we extracted data from a sample of over 250 surveys. Claimants were asked to list the types of financial assistance they needed following the violent crime and how quickly they needed it
- Victims Assist QLD kindly provided us with data showing the number and cost of claims using their scheme. The Victims Assist QLD scheme is a financial assistance scheme which has some similarities to the scheme proposed in this review.

The following graph shows the proportion of claimants who stated in the claimant survey that they required some form of financial or practical assistance some time following the act of violence.



The assistance that is most commonly required by victims following an act of violence is counselling, followed by medical bills. Most claimants nominated a variety of other support that would also be of use including income replacement, support for living expenses such as household bills and accommodation. Some victims also had a need for support for expenses that are likely to be borne out of the violent crime such as legal aid, security upgrades and crime scene clean up.

We now comment on the expected usage of each pillar of support by offence category.

Pillar 1: Counselling

The first pillar under the Proposed Scheme is the existing Approved Counselling Scheme. We have recommended several changes that will increase the availability of counselling to a greater number of claimants. The key changes are:

- To increase the rates paid to counsellors
- To pay counsellors for approved travel time in excess of two hours
- To allow higher counselling rates to be approved for claimants who reside overseas

We have also recommended that the counselling scheme be open to any primary, secondary or family victims who can demonstrate on the balance of probabilities that they were a victim of a violent crime and would benefit from counselling. Also indirectly, the removal of Authorised Report Writing (ARW) will provide claimants with a wider choice of counsellors.

The following table shows the assumed proportion of all claims lodged that will use counselling and the assumed average counselling cost of each claim.

Counselling	Usage	Average Cost
	Assumed under Proposed Scheme	48%
Observed under Current Scheme	43%	\$587
% change	10%	65%

We have assumed that the combination of each of our recommended changes will increase the use of counselling by 10% and the average cost of counselling from \$587 to \$968 per claim.

Pillar 2: Immediate Needs

The support provided under Pillar 2 is intended to include financial assistance for urgent support such as short term relocation and accommodation costs, crime scene clean up, security upgrades, funeral costs and urgent medical and dental expenses.

In order for this pillar of support to be most effective, it is crucial that this financial assistance is delivered in a timely manner. The case co-ordinator would help identify the urgent needs of the claimant and assist the claimant to lodge a claim under this pillar. This would be determined by an assessor using one piece of evidence, such as a police or medical report, to determine that the claimant was a victim on the balance of probability. We have recommended that assessors have discretion to award up to \$5,000 under Pillar 2, although funeral costs would lie outside of this limit and would be subject to a sub-limit of \$8,000.

To estimate the cost of this pillar of support we have relied on the results of the claimant survey. The findings from this survey are not entirely unexpected.

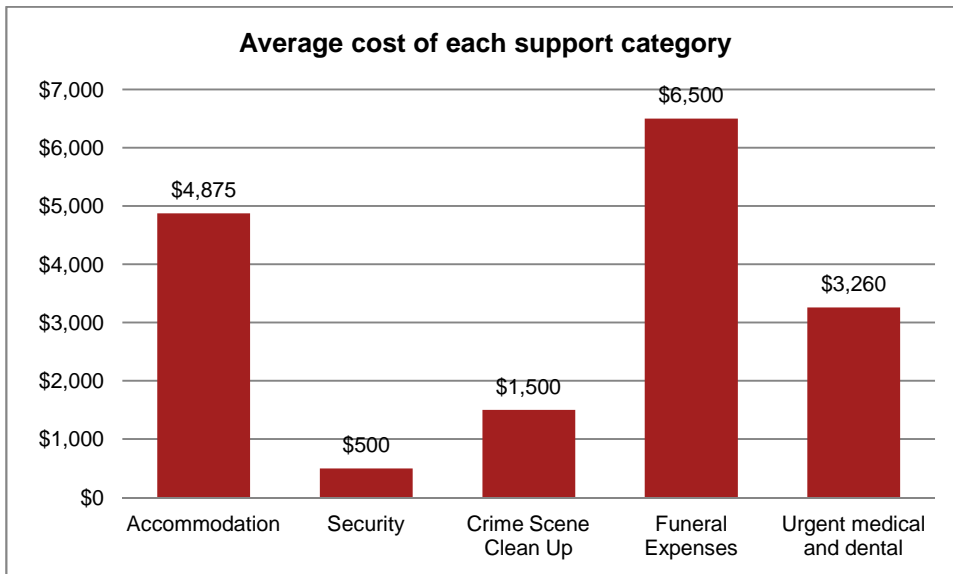
- Between 30% to 35% victims of domestic violence required urgent accommodation support and security upgrades. For other offences, this support was needed by a much smaller proportion of respondents.
- A high proportion of claimants also required urgent medical and dental assistance following a violent crime. Assault victims were the most frequent respondents that required medical assistance.
- Crime scene clean up was not widely required with the exception of the 'other' category (which includes homicide).

The following table shows the assumed proportion of eligible claims that will access each component of support under Pillar 2.

Service	Selected assumptions				
	Assault	Sexual Assault	Domestic Violence	Robbery	Other
Accommodation	15%	10%	36%	0%	20%
Security	16%	8%	33%	18%	18%
Crime scene clean up	9%	6%	6%	11%	23%
Funeral expenses	0%	0%	0%	0%	13%
Urgent medical and dental	18%	8%	12%	14%	7%

The assumed usage rates are based on the proportion of survey respondents that stated they required these areas of support within three months of the act of violence.

The assumed average costs of providing each claim with these areas of support within this pillar are shown in the following graph.



The average cost of each area of support has been estimated to provide a reasonable amount of immediate financial assistance for each of the urgent needs flagged by respondents in the claimant survey. Case co-ordinators would be responsible for identifying areas of support that the claimant urgently needs, while assessors would be responsible for approving the amount of support to be provided under Pillar 2, subject to the limits available for each area of support.

While this report recommends sub-limits for each area of support, the costing of the Proposed Scheme assumes that the majority of claims will require support that is significantly less than these limits. In order to avoid the cost of the scheme exceeding its funding, Victims Services need to establish appropriate processes to ensure that overall the assessors awards are broadly in line with the expected average cost.

Pillar 3: Financial assistance

The purpose of the third pillar of support is to provide assistance to aid victims in their rehabilitation and recovery following a violent crime. The benefits paid under this pillar include amounts for loss of earnings, medical and dental expenses and costs of living in circumstances where the victim was not employed at the time of the crime.

Case co-ordinators would help identify the financial assistance that the claimant needs and assist with lodging the claim. Assessors would then determine the amounts to be awarded to each claim, with a total limit on Pillar 3 benefits of \$30,000, and sub-limits of \$20,000 for loss of earnings and \$5,000 for costs of living.

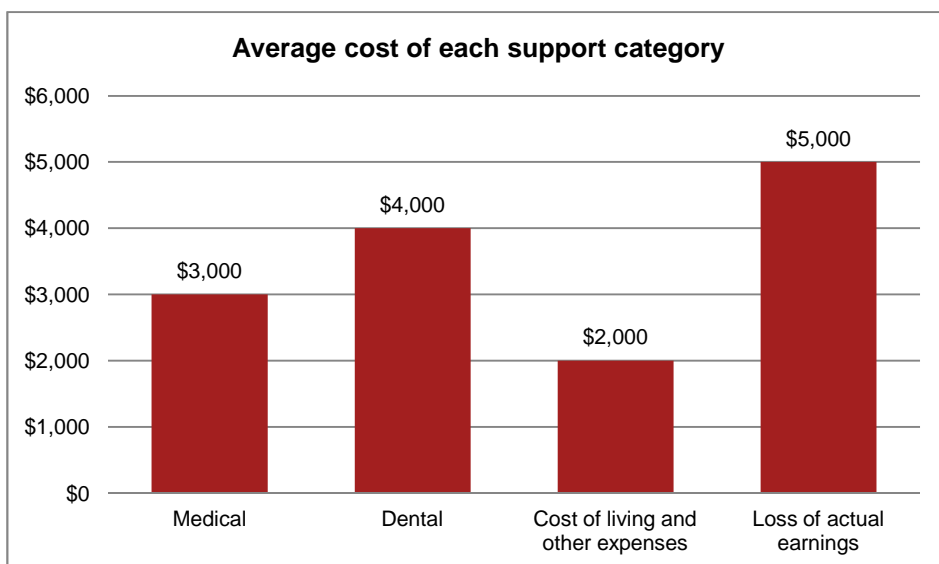
The following table shows the estimated proportion of eligible claimants expected to access each component of support under Pillar 3.

Service	Selected assumptions				
	Assault	Sexual Assault	Domestic Violence	Robbery	Other
Medical	42%	21%	27%	32%	15%
Dental	15%	5%	9%	11%	8%
Cost of living and other expenses	16%	43%	49%	4%	18%
Loss of actual earnings	51%	24%	18%	63%	10%

We note the following:

- The estimated usage of medical and dental assistance is based on the proportion of claimant survey respondents who nominated these forms of support as needs following the violent crime.
- Loss of earnings benefits will be accessible to victims who can demonstrate they were employed prior to the crime and suffered a loss as a result of the crime. The usage of these benefits has been estimated based on the proportion of claims who were employed by offence type.
- The costs of living category of support will be available to victims who cannot demonstrate that they were employed prior to the crime, but can demonstrate that they suffered a loss as a result of the crime. We have estimated the use of this category of support by deducting the number of victims we expect will be eligible for loss of earnings and the number of victims we expect will be unable to demonstrate a financial loss as a result of the crime.
- Dependant family members of homicide victims will be unable to access loss of earnings or costs of living and instead have access to a higher category of Pillar 4 recognition payment. The “other” offence type therefore has low utilisation rates for these categories.

The assumed average cost of each category of support for each claimant is shown in the following chart.



The average costs shown in the above graph are amounts that, based on the stakeholder consultations, we feel would provide eligible claimants with a reasonable level of support following the violent crime. Assessors would be ultimately responsible for determining the amount received by each individual.

We note that the average costs shown in the above graph are significantly lower than the sub-limits set on each category of support. To prevent the cost of Pillar 3 becoming excessive, Victims Services will need to provide Assessors with guidance on the appropriate determination of benefits for the needs of the range of individual circumstances.

Pillar 4: Recognition payment

Under this pillar, victims are paid a moderate lump sum to acknowledge the trauma they have suffered. We recommended this pillar to have four categories of lump sum awards that vary according to the nature of the crime.

	Offence and/or injury	Award
Category A	Homicide (financially dependent family)	\$15,000
	Homicide (non dependent parents)	\$7,500
Category B	Corresponding to Category 3 sexual assault in Current Scheme	\$10,000
Category C	Corresponding to Category 2 sexual assault in Current Scheme, grievous bodily harm	\$5,000
Category D	Corresponding to Category 1 sexual assault in Current Scheme, robbery, assault	\$1,500

The following table shows the expected proportion of eligible claimants that will access each category of Pillar 4.

Recognition payment	Selected assumptions				
	Assault	Sexual Assault	Domestic Violence	Robbery	Other
Category A	0%	0%	0%	0%	68%
Category B	0%	27%	0%	0%	0%
Category C	11%	45%	6%	5%	5%
Category D	62%	22%	79%	82%	23%

We note the following:

- Category A can be accessed only by the family members of homicide victims. These represent approximately 68% of the 'Other' offence type. We have assumed an average cost for this pillar per claim of \$9,600. This has been estimated based on the proportion of claims that we would expect to be able to establish that they are financially dependent on the primary victim and the proportion of claims that are parents.
- Category B can be accessed only by claimants who are currently classified as Category 3 sexual assault claimants in the Current Scheme. We have estimated the use of this category by considering the current proportion of sexual assault claimants who meet this criterion.
- The use of Categories C and D was estimated by mapping the proportion of the claims from each offence type, using the amounts awarded under the Current Scheme as a proxy for the severity.

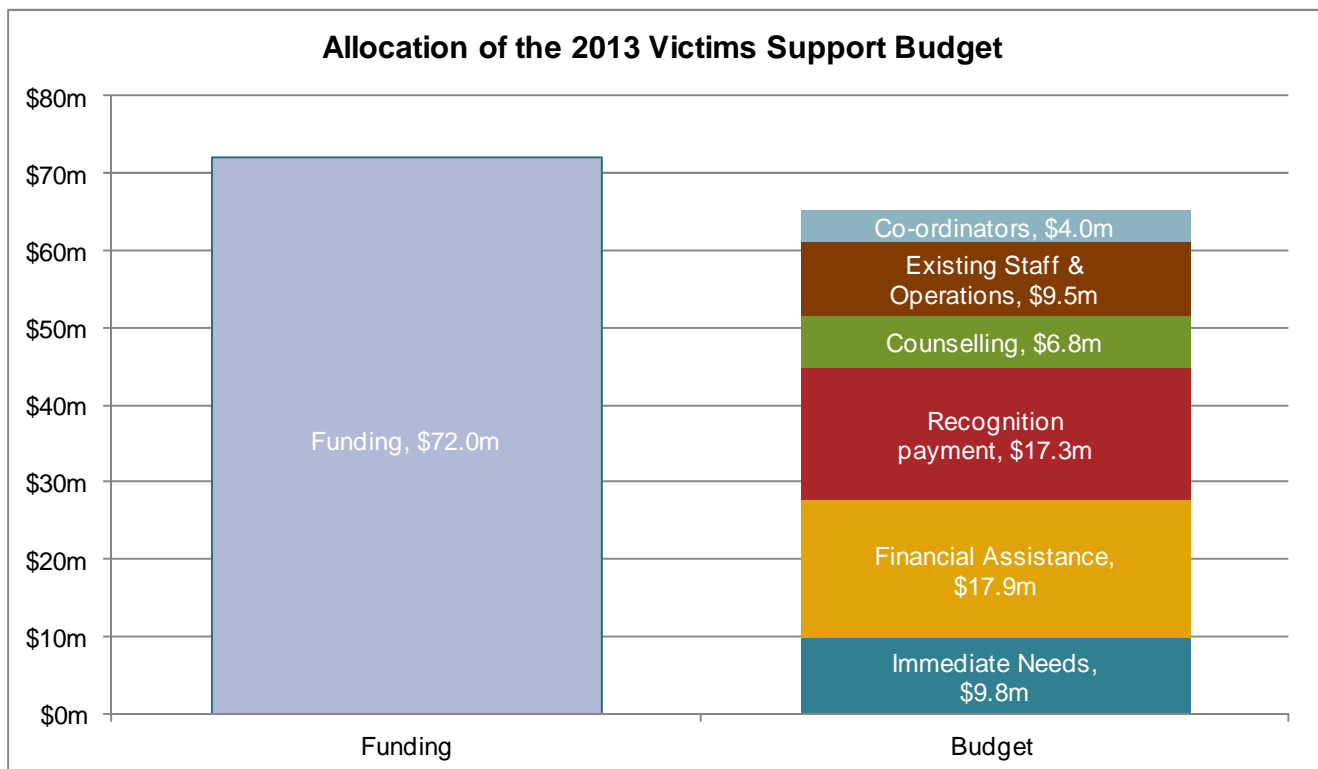
9.2.4. Cost of Administering the Scheme

One of the key recommendations to enable the Proposed Scheme to run efficiently is the introduction of case co-ordinator roles embedded within Victims Services. The cost of these roles would be met within the current funding constraints. We have assumed that the additional cost associated with establishing the staffing for these new roles is approximately \$4.0M per annum. This allows for 45 case co-ordinators at an average salary of \$90,000 per annum.

In addition to the case co-ordinator roles, we have also assumed that the current staffing levels and operational costs will continue. In 2011 this cost approximately \$8.8M. Offsetting this will be reductions in legal costs (\$3.9M¹⁷) and ARW report costs (\$1.5M in 2010/11¹⁸).

9.3. Results

The following chart shows the expected cost of each pillar of support under the Proposed Scheme if it were introduced in 2013 and compares it to the funding allocated to the scheme.



Funding is expected to remain unchanged at around \$72.0M per annum. The total expected cost of the Proposed Scheme would be \$65.3M if it were to be introduced in 2013.

- Pillar 1 (counselling) is expected to cost \$6.8M per annum
- Pillar 2 (immediate needs) is expected to cost approximately \$9.8M per annum
- Pillar 3 (financial assistance) is expected to cost approximately \$17.9M per annum
- Pillar 4 (recognition payment) is expected to cost approximately \$17.3M per annum
- The administrative structure of the Proposed Scheme is expected to cost \$13.5M per annum

We note that there is significant uncertainty in the estimation of the utilisation and cost of each element of the Proposed Scheme. In order to manage this risk, we have costed a scheme that has a \$6.7M buffer between the funding and the expected cost. Once the scheme is established and more is known about the utilisation of the scheme, the benefits can be adjusted in order to align the cost and the funding. In the mean time, any excess

¹⁷ Information provided by Victims Services

¹⁸ Chairperson's report 2010/11, p21

funding may be used in order to help pay out the accumulated liability from the Current Scheme. We address the risks and uncertainties in greater detail in the following section.

9.4. *Uncertainty of estimates*

The introduction of significant changes to the Current Scheme provides many challenges in estimating usage rates and average claim sizes under the Proposed Scheme. In particular, it can be difficult to predict the behavioural effects of significant changes in scheme design.

There are a number of key risks that could result in the cost of the scheme exceeding our initial estimates. The key risks are:

- That the number of claims applying and the usage of each category of support being higher than anticipated as a result of higher rates of violent crime and/or an increased awareness of the scheme and the support available.
- That support is not provided to victims on a needs basis, resulting in a higher proportion of claimants applying and having approved financial assistance that they do not need.
- That the cost of the support under the Proposed Scheme increases as a result of an greater acceptance of what victims are able to claim under the scheme, beyond what would be considered “reasonable needs”.

To illustrate this uncertainty we have provided a number of different scenarios of alternative assumptions that may be equally plausible.

Scenario	Annual Cost \$M	Difference to Baseline
No Change to Assumptions	65.1	
Lodgements		
5% increase in crime rate	70.7	9%
5% fall in crime rate	59.8	-8%
5% increase in lodged claims	73.7	13%
5% fall in lodged claims	57.3	-12%
Counselling		
Increase the usage of Counselling by 100%	72.6	12%
Increase the cost of Counselling by 20%	66.5	2%
Pillar 2 Usage and Size		
Increase the usage of Pillar 2 by 100%	74.9	15%
Decrease the usage of Pillar 2 by 50%	60.2	-8%
Increase the usage of Pillar 2 by 100%	67.1	3%
Decrease the usage of Pillar 2 by 50%	63.2	-3%
Pillar 3 Usage and Size		
Increase the usage of Pillar 3 by 100%	82.6	27%
Decrease the usage of Pillar 3 by 50%	56.2	-14%
Increase the cost of Pillar 3 by 20%	68.7	6%
Increase the average size of loss of earnings from \$5,000 to \$10,000	72.8	12%
Pillar 4 Usage and Size		
Allow for 20% bracket creep between Recognition Categories	68.4	5%
Decrease the usage of Pillar 4 by 50%	60.6	-7%

These scenarios illustrate the uncertainty in the estimates of the cost of the Proposed Scheme. The most notable area of uncertainty is the usage and cost of Pillar 3 (financial assistance). This table shows that if the usage of this area of support were to be double the anticipated usage, the cost of the scheme would increase by over 27%.

While these scenarios show the uncertainty of each key assumption in isolation, in reality it is plausible that a number of these assumptions could emerge higher than anticipated. For example, if we were to assume a 5% increase in the crime rate, a 50% increase in the usage of each of the pillars and a 20% increase in the average cost of Pillar 1, Pillar 2 and Pillar 3, then the cost of the scheme would be \$110.2M.

Part of this uncertainty can be mitigated through the introduction of a robust governance framework and this is discussed in the Section 10.

9.5. Transition considerations

In Section 5.7 we recommended that the Current Scheme be closed for new lodgements as soon as possible to avoid significant growth in the accumulated liability. This would limit the risk that a significant number of claims will be lodged prior to the closing of the Current Scheme for people who are eligible under the Current Scheme but not under the Proposed Scheme, and also for people who are likely to receive an overall lower level of financial assistance under the Proposed Scheme compared with the Current Scheme (with the exception of counselling). This is a particular risk for domestic violence and sexual assault victims where the violence occurred over 10 years ago which would not be eligible under the Proposed Scheme.

We recommend a clear cut-off date where lodgements from the cut-off date onwards are assessed under the Proposed Scheme, and where lodgements made prior to the cut-off date are assessed under the Current Scheme. As such, there will be no interim period between the Current and Proposed Scheme in order to keep the transition as administratively straightforward as possible.

After the Proposed Scheme has been announced, an education program for staff, claimants under the Current Scheme, government agencies, victims support groups and community legal centres should commence. This would help to provide information and answer questions which this broad group of stakeholders may have and enable them to provide correct and up-to-date information to victims of violent crime. It would also be helpful if a “Frequently Asked Questions” information brochure is published on the Victims Services website.

It is vitally important that the staff at Victims Services are familiar with the Proposed Scheme so that consistent and helpful answers can be provided to victims and victim advocates.

Other implementation issues which will need to be considered prior to the Proposed Scheme being introduced include drafting of the Proposed Act, recruitment and training of staff for roles within the Proposed Scheme, setting up policies and guidelines, claims processes and controls and monitoring tools.

We now consider a couple of specific issues likely to be encountered during transition to the Proposed Scheme.

9.5.1. Developing a hierarchy of payments

The Scheme currently receives funding of approximately \$72M per annum. In Section 8 the Proposed Scheme is expected to be financially sustainable based on this level of funding in the longer term.

However, the Current Scheme has an accumulated liability on lodged claims that is projected to be \$392M at 30 June 2012. In Section 6.3 we recommended that NSW Treasury consider significant short term increases in funding to ensure more timely payment of the liability in respect to these lodged claims to help reduce the

waiting times for compensation payments. Notwithstanding this, in the short to medium term it is likely that there will be limited funding to pay expected future benefits because of the accumulated liability in respect of the Current Scheme.

The effectiveness of the Proposed Scheme will be influenced by the ability to meet payments for immediate needs in a timely manner so that victims are able to access financial support for their needs in their time of crisis to help improve victim outcomes. It is therefore important to consider the best way to allocate any limited funding.

The following table proposes a hierarchy of payments so that the limited funding goes to those claimants where the greatest utility can be achieved, essentially those that need the payment the most, consistent with the reform principles outlined in Section 7.2.

Financial Need	Payment Types	Reason for Payment Hierarchy
1. Emergency Needs	Pillar 2 (immediate needs)	Pillar 2 payments under the Proposed Scheme should be prioritised first. These payments are intended to respond to a victim’s emergency needs to ensure that the victim of a violent crime is removed from a situation in a timely manner. If these payments are delayed, then the usefulness of Pillar 2 is brought into question.
2. Immediate Needs	Pillar 1 (counselling) Pillar 3 (financial assistance) VAS (Current Scheme)	Financial assistance and counselling under the Proposed Scheme plus VAS under the Current Scheme should be prioritised next. Benefits under these may not be “emergency”, but they represent immediate financial needs to assist a victim to “get back on their feet” sooner rather than later. A delay in payment reduces the effectiveness of these payments.
3. Deferred Needs	All Other	The remaining payments should be queued as per normal, on a first in first served basis. This primarily represents lump sum payments under the Current Scheme and recognition payments under the Proposed Scheme. A decision may be made to prioritise these payments on a “needs” basis according to claimant’s individual circumstances, especially under the Current Scheme.

Recommendations

45. Funding is firstly directed to emergency needs, then immediate needs and finally deferred needs.

One of the outcomes from such a hierarchy of payments is that payments under the Current Scheme are likely to continue to be paid out over many future years. The duration of this time lag will depend on the availability of additional short term funding. However, we note that if there were no changes to the Current Scheme then it is likely that payments would be delayed by many years anyway.

10. Governance

Key Points

A strong governance framework is required to measure and manage emerging experience under the Proposed Scheme.

The roles and responsibilities of case co-ordinators and assessors should be delineated to provide an independent review of the package of assistance and help manage the risk of an escalation of costs under Pillar 2 and 3.

It is difficult to predict the behavioural effects of significant changes in scheme design on the utilisation of benefits so it is recommended that the scheme be reviewed in five years time.

It is important to incorporate a strong governance framework around the Proposed Scheme. This includes the establishment of appropriate controls to measure and manage emerging risks so that they are identified early and addressed in an appropriate timeframe to ensure that the limited pool of funding is used effectively for the support and rehabilitation of victims of violent crime.

General principles include having clearly defined roles and responsibility, adequate internal controls and policy guidelines, frequent monitoring of KPIs and other measures and regular audit and review processes.

10.1. Case co-ordinators and assessors

The delineation in the roles and responsibilities of case co-ordinators and assessors are an important feature of the Proposed Scheme.

Case co-ordinators are responsible for finding out the needs of the victims and in particular the practical and financial assistance requested to put together a package of assistance to victim. This package is then reviewed by an assessor to test that the items in the package are of reasonable cost and critical to the support and rehabilitation of the victim and to ensure all eligibility requirements are met. This allows for an independent review of the package of assistance and helps to manage the risk of an escalation of costs under Pillar 2 and 3.

10.2. Monitoring and review

Our estimation of the cost of the Proposed Scheme is based on assumptions we have made regarding:

- By offence type, the proportion of victims who will lodge a claim based on experience under the Current Scheme and BOCSAR data (“utilisation”)
- The proportion of victims by offence types who will use the different types of assistance available under each Pillar (“usage”)
- An assumed average cost of the different types of assistance (“average cost”)

As the Proposed Scheme is very different to the Current Scheme, our assumptions regarding the usage and average cost of the different types of assistance have been based on results of both the claimant survey and

experience in the Queensland scheme. There is uncertainty whether the experience in NSW will be similar to QLD.

In addition, the Proposed Scheme introduces a significant level of discretion to the provision of benefits as it focuses on a “needs based” assessment. Case co-ordinators need to assess the needs of an individual victim and provide a level of benefits appropriate to each victim’s unique circumstances. This approach introduces a number of risks. For example, there is scope for benefits to increase faster than general inflation over time if new types of assistance are consistently introduced into the benefits provided. This may particularly be the case for Pillar 3 benefits. This need to be tested in practice and adherence to clear policies and guidelines for case co-ordinators and assessors are needed to ensure a consistent and fair approach is adopted. Reviews of assistance packages paid to claimants will also be an important tool to assess whether policies and guidelines have been followed, and highlight areas where greater clarity is needed in these policies and guidelines.

As such, it will be important to monitor the utilisation, usage and average cost as it emerges in the Current Scheme. A comparison of the emerging experience to the projections should be made so that a more accurate projection of costs under the Proposed Scheme can be calculated which will assist in budgeting and future decision making. We also recommend that the Scheme be subject to a more formal review on a regular basis.

Recommendations

46. The initial scheme review should be conducted after 3 years and subsequent reviews should be conducted every 3-5 years to provide the opportunity to recalibrate either funding or benefits to ensure that the scheme is delivering on its objectives.

A strong governance framework, with assessors acting as gate keepers to independently assess and award benefits, frequent monitoring and regular scheme reviews with the capacity to recalibrate benefits if scheme costs emerge higher than expected will help to reduce the risk that another blowout in the accumulated liability will occur in the Proposed Scheme.

10.3. Regulatory powers

While the funding of the scheme is fixed, the cost of the Proposed Scheme is uncertain and it is not possible to completely eliminate the possibility of the scheme accumulating another liability. In order to mitigate this risk, we recommend that the Registrar or Director of Victims Services be given the regulatory power to restrict or expand the benefits and support available to claimants.

The advantage of these powers would be to allow the scheme to easily restrict benefits if the regular monitoring or scheme reviews showed deteriorating trends in claimant utilisation or benefit precedents. By way of example suppose packages of support began to include provision of smart phones with associated payment of usage costs. Such a benefit is not contemplated in the design of the scheme and would likely materially add to scheme costs. The Registrar or Director would have the power to overturn the precedent.

Alternatively, the scheme would also be more easily able to expand the range of support and benefits provided if the utilisation of the scheme is less than expected. These powers would assist the scheme maintain financial viability and reduce the need for major reform in the future.

Recommendations

47. That the Registrar or Director of Victims Services be given the regulatory power to restrict or expand the benefits and support available to claimants.

11. *Alternative Models*

Our Proposed Scheme represents a significant shift in the design of the Current Scheme from a legal compensation awarding process to an administration needs based process. We feel such a shift produces result which better optimise the support and rehabilitation outcomes of as broad a group of victims as possible whilst being sustainable within current funding levels.

Other (not recommended) approaches to addressing the financial viability of the scheme are possible. Types of options which could be considered requiring less fundamental change in the design and operation of the scheme include:

- Very strict reporting timeframe limits
- Significant revision (reduction) to the current compensation table

Other variations on the Proposed Scheme which could also be considered include:

- Have a fully needs based scheme, with no Pillar 4 (recognition payment). This would decrease the total expected cost in 2013 from \$65.3M (with Pillar 4, Section 9.3 refers) to \$47.9M (with no Pillar 4).
- Extend counselling

We considered each of the above options and on balance we felt that our Proposed Scheme best balances the diverse range of views of stakeholders, the sustainability of the scheme and meeting victims needs.

12. Reliances and Limitations

This report has been prepared at the request of the Department of Attorney General and Justice (DAGJ) in accordance with our Terms of Reference dated 10 January 2012, for the purpose of the long term viability review of the Victims Compensation Scheme and evaluation of the statutory compensation scheme in NSW. It is not intended, or necessarily suitable, for any other purpose.

The report relies on the completeness and accuracy of information compiled and provided by DAGJ. We have not conducted any independent review of this information, but we have checked it for internal consistency and for consistency with information from other publicly available external reports.

It is the responsibility of DAGJ to ensure that recipients of copies of this report understand the reliances on which any conclusions are based, including those set out in Section 9.4 'Uncertainty of Estimates'.

We accept no liability for loss or damage howsoever arising in the use of this report by DAGJ for other than the purpose stated in our Terms of Reference, nor for any use of this report, without full understanding of the reliances and limitations noted above, or for errors or omissions arising from the provision of inaccurate or incomplete information to us.

PwC accept no responsibility in any way whatsoever for the use of this report by any other persons or for any other purpose.

This report must be read in its entirety. Individual sections of this report could be misleading if considered in isolation from each other.

Appendix A Data Familiarisation and Preparation

1. Sources of data

Data was extracted from Victim Services' CARES data system on 23 January 2012. This data contained a full history of claims activity from the inception of the fund to 23 January 2012, including report, determination, payment, and appeals activity.

Data was also obtained from the NSW Bureau of Crime Statistics and Research (BOCSAR). This data was publicly available, and contained the number of reported crimes by location and offence type from January 1995 to December 2010.

2. Data verification

Reconciliation of data with external sources

The data extracted from the CARES system was reconciled with the Chairperson's Report 2010/2011 and a summary report from Victim Services' SUN finance system.

Table 10.3-1 Reconciliation with External Sources

	Financial Year				
	2006/07	2007/08	2008/09	2009/10	2010/11
Compensation Claims Reported - CARES	5,618	7,034	8,214	9,246	8,857
Compensation Claims Reported - SUN	5,636	7,031	8,212	9,245	8,854
Difference	-18	3	2	1	3
Difference (%)	0%	0%	0%	0%	0%
Counselling Claims Reported - CARES	5,223	4,982	5,494	6,670	6,718
Counselling Claims Reported - Chairperson's Report	4,948	4,731	5,270	6,501	6,543
Difference	275	251	224	169	175
Difference (%)	6%	5%	4%	3%	3%
Final Determinations - CARES	4,512	3,967	4,749	4,411	5,019
Determined Claims - SUN	4,492	4,013	4,893	4,374	4,973
Difference	20	-46	-144	37	46
Difference (%)	0%	-1%	-3%	1%	1%
Counselling Payments - CARES (\$M)	2.99	3.09	2.85	3.64	3.63
Counselling Payments - SUN (\$M)	2.79	2.87	2.66	3.39	3.42
Difference	0.20	0.22	0.19	0.25	0.21
Difference (%)	7%	8%	7%	7%	6%
Compensation Payments - CARES (\$M)	64.87	64.10	62.86	60.67	63.50
Compensation Payments - SUN (\$M)	64.25	63.87	62.94	60.30	63.20
Difference	0.62	0.23	-0.08	0.37	0.30
Difference (%)	1%	0%	0%	1%	0%
Appeals Lodged - CARES	604	622	636	835	628
Appeals Lodged - SUN	587	639	684	817	635
Difference	17	-17	-48	18	-7
Difference (%)	3%	-3%	-7%	2%	-1%

We make the following points with respect to the reconciliation:

-
- The number of compensation claims lodged reconciled closely, with no material differences. Total compensation payments (includes awards, costs, disbursements, appeal awards, expenses, and approved counselling) reconciled closely, with no differences greater than 1% in a financial year.
 - There were discrepancies in the number of counselling claims lodged, with the largest difference in a financial year being 6%. There were also discrepancies in counselling payments, with the largest difference in one financial year being 9%. However, while the percentage differences are large, the magnitude of these discrepancies is small, and hence the overall impact is not material.
 - The DAGJ has informed us that it can be difficult to reconcile CARES data with reports from the SUN system.
 - Overall, the claims data extracted from the CARES database is consistent with the SUN system, and while there are some discrepancies, their impact on modelling results is not material when other sources of uncertainty are taken into account.

Materiality of data issues

After performing our data checks and reconciliations, we are satisfied that the data is appropriate for use in our analysis.

Appendix B Valuation Results

This appendix provides further detail on the financial status of the fund as at 30 June 2011.

Table 10.3-2 Summary of Compensation Claims Incurred

Financial Incident Year	Historical Lodged Claims					Expected Future Lodgements (IBNR)					Total Incurred Claims				
	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total
Earlier	24,654	16,203	3,705	38,319	82,881	365	9,826	4,073	91	14,356	25,019	26,029	7,778	38,410	97,237
2000	3,681	976	611	1,507	6,775	22	442	428	11	903	3,703	1,418	1,039	1,518	7,678
2001	2,966	1,016	716	1,606	6,304	18	337	314	15	684	2,984	1,353	1,030	1,621	6,988
2002	2,733	952	702	1,299	5,686	19	380	374	15	789	2,752	1,332	1,076	1,314	6,475
2003	2,434	961	793	982	5,170	21	456	506	16	999	2,455	1,417	1,299	998	6,169
2004	1,972	1,002	914	952	4,840	22	559	691	20	1,292	1,994	1,561	1,605	972	6,132
2005	1,931	847	1,111	788	4,677	29	556	989	23	1,597	1,960	1,403	2,100	811	6,274
2006	1,931	877	1,258	868	4,934	41	677	1,310	35	2,063	1,972	1,554	2,568	903	6,997
2007	2,192	842	1,547	869	5,450	67	784	1,877	48	2,777	2,259	1,626	3,424	917	8,227
2008	2,346	931	1,794	856	5,927	106	1,102	2,529	68	3,805	2,452	2,033	4,323	924	9,732
2009	2,393	821	1,859	822	5,895	173	1,272	3,095	95	4,634	2,566	2,093	4,954	917	10,529
2010	1,845	532	1,644	731	4,752	805	1,605	3,884	345	6,639	2,650	2,137	5,528	1,076	11,391
2011	908	202	974	405	2,489	1,615	2,251	5,138	736	9,739	2,523	2,453	6,112	1,141	12,228
Total	51,986	26,162	17,628	50,004	145,780	3,304	20,247	25,208	1,519	50,278	55,290	46,409	42,836	51,523	196,058

Table 10.3-3 Summary of Counselling Claims Incurred

Financial Incident Year	Historical Lodged Claims					Expected Future Lodgements (IBNR)					Total Incurred Claims				
	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total
Earlier	5,163	8,873	2,317	3,222	19,575	274	6,604	2,198	15	9,090	5,437	15,477	4,515	3,237	28,665
2000	1,856	555	561	968	3,940	16	269	245	8	539	1,872	824	806	976	4,479
2001	1,496	642	625	1,134	3,897	11	175	160	11	356	1,507	817	785	1,145	4,253
2002	1,618	677	656	1,077	4,028	13	221	201	14	449	1,631	898	857	1,091	4,477
2003	1,443	648	752	806	3,649	15	251	273	13	551	1,458	899	1,025	819	4,200
2004	1,209	697	885	826	3,617	15	316	375	17	723	1,224	1,013	1,260	843	4,340
2005	1,212	586	1,063	697	3,558	20	313	522	18	873	1,232	899	1,585	715	4,431
2006	1,257	585	1,441	755	4,038	27	372	815	24	1,238	1,284	957	2,256	779	5,276
2007	1,239	580	1,535	755	4,109	36	442	994	31	1,503	1,275	1,022	2,529	786	5,612
2008	1,195	579	1,823	680	4,277	48	546	1,347	37	1,977	1,243	1,125	3,170	717	6,254
2009	1,267	559	2,082	670	4,578	81	687	1,821	57	2,646	1,348	1,246	3,903	727	7,224
2010	1,235	468	2,032	657	4,392	246	895	2,232	123	3,495	1,481	1,363	4,264	780	7,887
2011	850	232	1,497	415	2,994	622	1,157	3,195	267	5,241	1,472	1,389	4,692	682	8,235
Total	21,040	15,681	17,269	12,662	66,652	1,424	12,246	14,376	635	28,681	22,464	27,927	31,645	13,297	95,333

Table 10.3-4 Projected Future Compensation Payments

Financial Incident Year	Future Payments on Lodged Claims (\$'000)					Future Payments on IBNR Claims (\$'000)					Total Outstanding Liability (\$'000)				
	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total
Earlier	15,542	72,843	9,837	13,292	111,515	3,620	225,982	34,245	1,079	264,927	19,162	298,826	44,082	14,371	376,442
2000	2,066	3,444	846	899	7,254	218	10,131	3,599	127	14,074	2,283	13,575	4,445	1,026	21,329
2001	1,487	3,350	1,137	904	6,878	177	7,701	2,641	174	10,693	1,664	11,051	3,778	1,077	17,570
2002	1,199	3,096	1,079	866	6,239	192	8,686	3,143	178	12,199	1,391	11,782	4,223	1,044	18,439
2003	1,705	3,361	1,352	709	7,128	211	10,403	4,253	186	15,052	1,916	13,764	5,605	895	22,180
2004	1,476	4,083	1,562	1,035	8,156	220	12,727	5,811	227	18,985	1,696	16,810	7,373	1,262	27,141
2005	2,335	4,840	2,471	881	10,528	290	12,611	8,312	275	21,488	2,626	17,451	10,783	1,156	32,016
2006	3,257	6,496	3,238	1,601	14,593	406	15,308	11,013	413	27,140	3,663	21,804	14,251	2,014	41,732
2007	5,595	7,710	4,546	1,832	19,682	663	17,647	15,782	563	34,655	6,258	25,357	20,327	2,395	54,337
2008	10,197	11,698	7,273	2,986	32,155	1,047	24,653	21,264	793	47,758	11,244	36,352	28,537	3,779	79,912
2009	17,724	14,846	11,184	6,157	49,911	1,716	28,236	26,019	1,113	57,084	19,441	43,082	37,203	7,269	106,996
2010	18,157	10,417	13,764	7,600	49,938	7,972	34,866	32,656	3,978	79,471	26,129	45,283	46,420	11,578	129,409
2011	9,530	4,043	8,641	4,492	26,706	16,004	47,749	43,196	8,404	115,353	25,534	51,792	51,837	12,896	142,059
Total	90,269	150,227	66,931	43,254	350,681	32,736	456,700	211,935	17,508	718,879	123,005	606,927	278,866	60,762	1,069,560

Table 10.3-5 Projected Future Counselling Payments

Financial Incident Year	Future Payments on Lodged Claims (\$'000)					Future Payments on IBNR Claims (\$'000)					Total Outstanding Liability (\$'000)				
	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total	Assault	Sexual Assault	Domestic Violence	Other	Total
Earlier	18	480	634	20	538	152	4,755	4,204	9	5,674	170	5,234	4,838	29	6,212
2000	5	23	30	3	39	9	194	171	5	336	14	217	201	8	375
2001	4	23	30	3	41	6	126	113	6	221	10	149	143	9	263
2002	5	23	29	5	45	7	159	143	8	280	13	183	172	14	325
2003	7	25	31	6	55	8	180	162	8	343	16	206	193	14	398
2004	7	30	36	8	65	8	227	204	10	450	15	257	241	18	515
2005	11	30	37	9	80	11	225	203	11	544	22	255	240	20	624
2006	15	38	49	14	116	15	268	242	15	771	31	306	291	29	887
2007	21	46	60	22	152	20	318	288	18	936	41	364	348	41	1,088
2008	39	66	90	36	250	26	393	357	22	1,232	65	460	447	57	1,481
2009	99	104	144	70	463	45	494	448	34	1,647	144	598	592	104	2,110
2010	195	137	192	122	864	136	644	585	74	2,174	331	781	777	196	3,038
2011	286	105	148	151	1,116	344	833	754	161	3,252	630	938	902	311	4,368
Total	713	1,131	1,510	469	3,822	788	8,817	7,875	381	17,861	1,501	9,948	9,384	850	21,683

Appendix C Literature Review

1. Introduction

As part of our review we have collected information from a variety of other victims compensation schemes in Australia and overseas. This enabled us to benchmark the NSW scheme with other jurisdictions to gain a greater understanding of some of the approaches that other schemes have adopted.

We scanned the literature in the following Australian jurisdictions – Queensland, Victoria, Western Australia and South Australia. We also scanned the literature in the following overseas jurisdictions – United Kingdom (UK), New Zealand (NZ), Germany (GER) and the United States of America (USA).

The main findings from this literature review are summarised in this Appendix under the headings scheme objectives, eligibility, compensation and other issues.

2. Scheme Objectives

In Australia, victims of crimes compensation schemes have their own legislated scheme, operating under a State Government department with the aim to provide compensation or financial assistance to victims of crime to aid recovery.

State	Name of Scheme	Legislation	Objects of the Act
NSW	Victims Compensation Scheme	<i>Victims Support and Rehabilitation Act 1996</i>	<ul style="list-style-type: none"> a. To give effect to a statutory scheme of compensation for victims of crimes of violence, b. To enable compensation paid under the statutory scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation, c. To impose a levy on persons found guilty of crimes punishable by imprisonment for the purpose of funding the statutory scheme, d. To give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.
VIC	Victims of Crime Assistance Tribunal (VOCAT)	<i>Victims of Crime Assistance Act 1996</i>	<ul style="list-style-type: none"> a. To assist victims of crime to recover from the crime by paying them financial assistance for expenses incurred, or reasonably likely to be incurred, by them as a direct result of the crime; and b. To pay certain victims of crime financial assistance (including special financial assistance) as a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime; and c. To allow victims of crime to have recourse to financial assistance under this Act where compensation for the injury cannot be obtained from the offender or other sources.
QLD	Victim Assist Queensland	<i>Victims of Crime Assistance Act 2009</i>	<ul style="list-style-type: none"> a. To help victims of acts of violence to recover from the acts by giving them financial assistance; and b. For primary victims, to give the victims amounts representing a symbolic expression by the State of the community's

State	Name of Scheme	Legislation	Objects of the Act
			<p>recognition of the injuries suffered by them; and</p> <p>c. For related victims who have suffered distress, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the distress suffered by them and;</p> <p>d. To add to other services provided by or for government to victims of acts of violence.</p>
WA	Criminal Injuries Compensation Scheme	<i>Criminal Injuries Compensation Act 2003</i>	<p><i>Objects not specified in the legislation</i></p> <p>To enable victims of crime to apply for compensation for injury or loss as a result of an offence or an alleged offence.</p>
SA	Victims of Crime Compensation (VOCC)	<i>Victims of Crime Act 2001</i>	<p>a. To give statutory recognition to victims of crime and the harm that they suffer from criminal offending; and</p> <p>b. To establish principles governing how victims of crime are to be treated by public agencies and officials; and</p> <p>c. To help victims of crime recover from the effects of criminal offending and to advance their welfare in other ways; and</p> <p>d. To provide from public funds limited monetary compensation to victims most directly affected by criminal offending.</p>

The overseas schemes we researched all have legislation governing their schemes at a national level except for the USA where national legislation exists to determine how a national fund supports its state-operated schemes. In New Zealand, there is no separate victims compensation scheme as victims of violence crime are covered under the Accident Compensation Scheme, which is a no-fault personal injury scheme for all residents and visitors to New Zealand.

The objects of the overseas scheme are similar to the Australian schemes – to provide victims of violent crime some form of financial assistance.

3. Eligibility

Reporting

The eligibility criteria for reporting is similar across the states, with most states (except NSW) requiring a police report and requiring that the victim co-operate with police in their investigations. In addition, injuries sustained generally need to be supported by the health professionals (including psychologists for psychological injury) who have treated them. QLD also allows reports to the victim's counsellor, psychologist or doctor in place of a police report. All of the states do not require a criminal conviction from the offender (if known) in order for the victim to lodge a claim.

Although NSW does not require the victim to report the violence to police, Section 30 of the Act allows the assessors, in determining whether a matter relating to a victim was reported to the police within a reasonable amount of time, to take into account things such as the age of the victim when the act of violence occurred, the nature of the relationship between the victim and perpetrator and any fear of retaliation.

Time Limits

State	Time Limits	Exceptions
NSW	2 years from act of violence	Leave granted for out of time claims in cases of sexual assault, domestic violence or child abuse
VIC	2 years from act of violence	Extension of time can be granted taking into account age, intellectual disability or mental illness and whether the perpetrator was in a position of power and influence in relation to the victim
QLD	3 years after act of violence	Extension of time can be granted taking into account age, impaired capacity and whether the perpetrator was in a position of power and influence in relation to the victim
WA	3 years from act of violence	Extension of time can be granted taking into account age, intellectual disability or mental illness
SA	3 years from act of violence, or 1 year if the victim of the act of violence died	Children can claim at any time up to their 21 st birthday.. Extension of time can be granted taking into account intellectual disability
UK	2 years from act of violence	Extensions of time can be granted but reasons must be clearly stated

Coverage of scheme

Primary, secondary and family or related victims are all similarly defined and covered under schemes in NSW, VIC and QLD. The only notable difference is the definition of related victims in VIC which extends to cover a person who had an intimate personal relationship with the primary victim. Schemes in SA and WA do not cover secondary victims, only primary victims and family or related victims. All Australian schemes include provisions for family or related victims.

The UK and German schemes have very similar coverage to Australian schemes where the primary victim of violence and dependant and/or close relative of a homicide victim may be entitled to compensation. In addition to covering these types of victims of crime, the UK scheme also covers a person injured as a result of trespass on the railway.

There is currently a proposal in the UK scheme to include coverage for UK residents who suffer terrorist attacks abroad. The SA scheme also allows ex gratia payments to be made to victims of terrorist attacks abroad, such as the Bali bombings. In USA, there is a separate scheme for victims of the September 11 terrorist attacks (the September 11th Victim Compensation Fund) which is designed to provide compensation for both economic and non-economic loss¹⁹.

Contributory conduct clauses

In the determination of an award to a claimant, all Australian schemes consider whether the victim's conduct contributed to the offence. Some common requirements include:

- The victim's conduct before and at the time of the act of violence to not have contributed to their injuries (all states)
- The victim took reasonable steps after the act of violence to mitigate their injury (NSW and SA)

¹⁹ "Repairing the Harm: A New Vision For Crime Victim Compensation", The National Center for Victims of Crime 2004, p47

-
- The victim was not involved in criminal activity at the time of injury and/or that the criminal activity did not lead to the injury (NSW, QLD, WA, SA)
 - The victim did not collude or conspire with the offender to make a claim (VIC, QLD)

In the ACT, the compensation awarded is reduced if the victim was intoxicated at the time of the offence (except for sexual assault victims).

Relationship clauses

In the WA, an award will be refused if the victim has a relationship with the offender such that any money paid under the award is likely to benefit the offender.

Standard of proof

The standard of proof required for most Australian schemes is on the balance of probabilities, with the exception of SA which is beyond reasonable doubt. However, an ex-gratia payment may be made in some circumstances.

Other

There are general exclusions and reductions which apply in some states if the victim does not co-operate with the police investigations and where compensation is available from other sources (such as motor vehicle accident schemes and workers compensation schemes). In addition, property claims are excluded for all states.

4. Compensation, financial assistance and services

For the states where compensation is paid, the amount of compensation awarded is either based on a schedule of injuries (NSW) or awarded on a discretionary basis (WA and SA). For states with financial assistance models, the different components of financial loss are determined by different categories (VIC and QLD).

Compensation

In NSW, compensation amounts are specified in the Schedule of Injuries. One particular feature of the NSW scheme is the offence-based domestic violence and sexual assault compensable. These were introduced in 1996 and one of the benefits is that the standard of proof is lower than for other applications. For example, claimants for the domestic violence injury require evidence the injury has occurred, but they do not need to undergo a psychiatric assessment by an Authorised Report Writer. Also, having a separate injury provision allows domestic violence and sexual assault victims access to compensation even if their physical injuries do not meet the \$7,500 threshold.

The UK scheme also calculates the amount of compensation based on a tariff system set according to the type of injury suffered or degree of impairment. It should be noted the UK scheme was first to introduce these provisions for sexual assault victims.

In SA, compensation may be sought directly from the offender in a criminal court, assuming they are able to pay. There are also circumstances where a victim of crime may claim money from the SA government, although there are reasonably strict time limits on this, such as 3 years from the offence, with time limits starting from 18 for children. The amount awarded is discretionary and will depend on several factors such as when the offence happened, the severity of the injury and contributory factors using a points system.

In WA the amount awarded is also discretionary and includes amounts for pain and suffering, loss of enjoyment of life, loss of income and treatment expenses.

Whilst the main mode of compensation is via lump sum payments, these states also provide some practical assistance to victims of crime. For example:

- Counselling services (NSW, WA)
- Funeral expenses (all states)
- Practical assistance such as crime scene clean up, relocation costs and security upgrades (SA as discretionary payments)

Financial assistance

The focus in the VIC and QLD scheme is on financial assistance to cover expenses such as the following

- Counselling expenses
- Medical expenses
- Incidental travel expenses
- Loss of earnings
- Loss of or damage to clothing
- Exceptional circumstances – such as safety related expenses for cost of relocation, upgrading security

These schemes also include a lump sum component (“Special financial assistance”) as a symbolic gesture from the state to acknowledge the crime committed against them. In both VIC and QLD, the special financial assistance is only available to primary victims and is based on a categorisation of the crime, with some discretion to change the categorisation of the crime to a higher level depending on the severity of the injuries sustained.

Special financial assistance in VIC

Category	Examples	Limits
Category A	Rape and attempted murder	\$4,667 - \$10,000
Category B	Attempted rape and armed robbery	\$1,301 - \$3,500
Category C	Serious injury and death threats	\$651 - \$1,300
Category D	Assault	\$130 - \$650

Special financial assistance in QLD

Category	Examples	Limits
Category A	Rape and attempted murder	\$5,000 - \$10,000
Category B	Grievous bodily harm, attempted rape	\$1,301 - \$3,500
Category C	Robbery, assault occasioning bodily harm	\$651 - \$1,300
Category D	Assault and unlawful stalking	\$130 - \$650

Services

Typically, victims of violent crime not only require compensation or financial assistance, they also require other different types of support services. Other forms of assistance provided by the states include:

- Interpreting services
- Witness assistance programs – Familiarisation of the court processes, what to expect in court, support person present at court
- Court support services – Understanding of the court and its processes, understanding the victim’s rights, specialist services for domestic violence and sexual assault victims
- Support services – referral to victims support groups and other counselling, information and health services and legal services

Minimum and maximum benefits

The table below summarises the minimum and maximum benefits payable for different states.

	Minimum Benefit to Primary Victim	Maximum Benefit to Primary Victim
NSW	\$200 for Victims Assistance Scheme \$7,500 for compensation	\$1,500 for Victims Assistance Scheme \$50,000 for compensation
VIC	-	\$60,000, plus \$10,000 special financial assistance
QLD	-	\$75,000
WA	-	Time of incident related - currently \$75,000
SA	More than \$2,000 for non-financial loss No minimum for financial loss	\$50,000
UK	£1,000	£250,000

Interim Payments

All states allow interim payments to be made in circumstances where the victim has likely incurred expenses in relation to and that compensation is likely to be paid. Payments are deducted from any final settlement amount.

The table below shows the maximum amount payable as an interim payment and allowable reasons for an interim payment to be made.

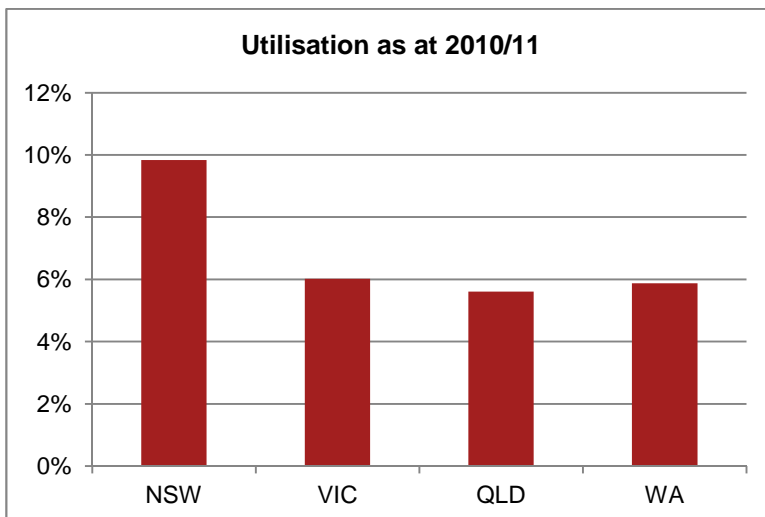
	Maximum Interim Payment	Reason for Interim Payment
NSW	No maximum	Severe financial hardship, money needed for urgent treatment, funeral expenses
VIC	\$5,000	Pending final determination of an application
QLD	\$6,000	Reasonable expenses that the assessor is satisfied that the victim will incur before general application is determined
WA	\$2,250	For treatment, medical reports or funeral expenses
SA	3% maximum amount that could be awarded if the application were for compensation in relation to a single offence	

5. General issues

Utilisation of victims compensation

We define utilisation of victims compensation as the number of claims lodged in 2010/11 for each state expressed as a proportion of violent crimes committed based on crime statistics from the relevant state.

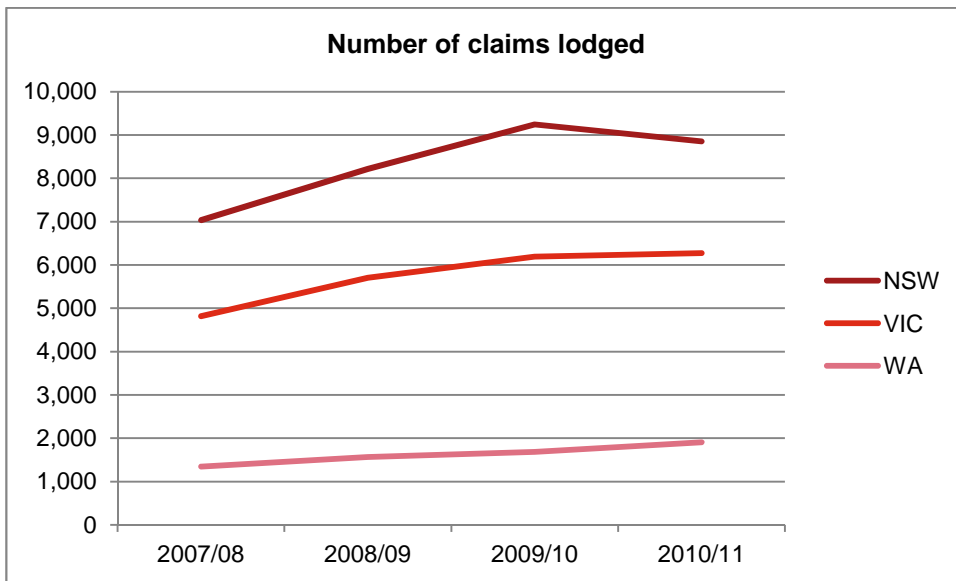
We note that the utilisation for NSW calculated below is slightly different to the utilisation calculated in Section 4.3 as it uses the number of claims incurred defined as the number of claims lodged for the year of incident plus an allowance for expected future lodgements in respect of acts of violence from the year of incidence, resulting in a slightly higher number.



As can be seen, the utilisation in NSW is higher than the other three states. This can be due to factors such as community awareness of the scheme, accessibility and types of benefits available from the scheme.

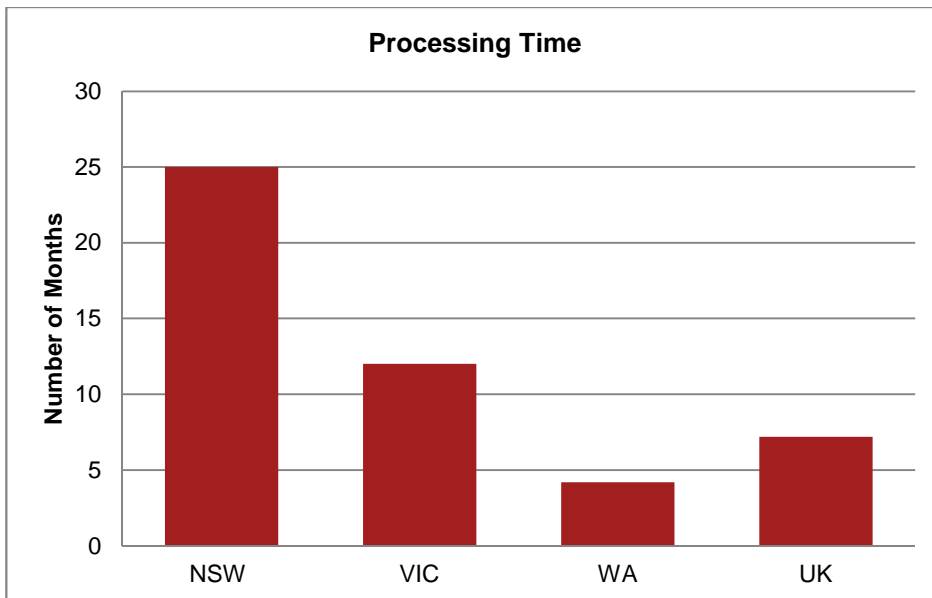
We note that a common trend among many victims compensation scheme has been an increase in the number of claims lodged in recent years. The graph below shows the number of claims lodged from 2007/08 to 2010/11

for NSW, VIC and WA, with data extracted from each scheme’s annual reports. Note QLD has been excluded from the graph as its financial assistance scheme only came into effect in December 2009 and hence has limited experience to date.



Administration

The following chart shows the average processing time for a claim (in months) where this information is publicly available. This shows that the current processing time in NSW is significantly higher than in other jurisdictions, and is expected to increase further if no changes are made to the Current Scheme.



Some jurisdictions have implemented target timeframes, such as in Queensland, to ensure that timely processing of claims is achieved, recognising that timely intervention can lead to better longer term outcomes²⁰.

²⁰ For example, Victims of Crime Review Report, November 2008, page 17, “There is a significant body of research which demonstrates that early intervention increases the likelihood of recovery and generates higher levels of satisfaction for victims in their dealings with the justice system.”

Disputes

All states have well defined pathways for claimants who are aggrieved by the assessor's decision to lodge an appeal within certain time limits, as shown in the table below.

	Grounds for appeal	Time limit	Appeal jurisdiction
NSW	A person aggrieved by the determination of an assessor except for (a) correction of miscalculation of VAS award and (b) determination in relation to costs	Within 3 months	Appeals heard at the Victims Compensation Tribunal. Appeals on questions of law are heard in the District Court
VIC	Decisions regarding refusal to make or vary and award and determining the amount of assistance	Within 28 days	Appeals heard at the Victorian Civil and Administrative Tribunal (VCAT)
QLD	A person aggrieved by a decision identified in Schedule 1 - Reviewable Decisions	Within 28 days	First, an internal review of decision is made and if the claimant is still not satisfied, then the claim will go to QCAT for a review of the internal review decision
WA	Decisions regarding making or refusing to make a compensation award or the amount of a compensation award	Within 21 days	Appeals heard in the District Court (whose decision is final)
SA	An appeal is only available for compensation orders made against convicted offenders. If statutory compensation is made by consent of the Crown, this decision cannot be appealed.	Not specified	Appeals heard in the Full Court of the Supreme Court
UK	Decisions regarding extension of time limits and making or refusing to make a compensation award	Within 30 days	First, an internal review of decision is made and if the claimant is still not satisfied, then the claim will go to the First-tier Tribunal (which is independent of the Criminal Injuries Compensation Authority) for a review of the internal review decision

Legal assistance

The levels of legal assistance available vary by the different states. For example, WA does not reimburse claimants for legal fees, and QLD and SA have caps on legal fees payable per claim and most states do not allow lawyers to charge applicants for costs. The table below shows the differing amounts and caps which apply to legal costs in different states, with some statistics on the legal costs paid or proportion of claims legally represented where available.

	Legal costs paid	Paid in 2010/11	% of claims legally represented in 2010/11
NSW	For applications: (a) Where an award of compensation is made – up to \$825 (b) Where the compensation claim is dismissed – up to \$400 For appeals: (c) Determined without a hearing – up to \$500 (d) Determined with a hearing – up to \$1,500	\$3.9M	71% ²¹
VIC	For example, for applications of modest complexity, preparation fees of \$755 to \$870 and appearance fees of \$630 to \$745. Lawyers cannot charge the applicant costs unless approved by the Tribunal.	\$5.3M ²²	N/A
QLD	Capped at \$500 and lawyers cannot charge the applicant	N/A	Around 5% ²³
WA	Legal costs are not reimbursed	N/A	N/A
SA	Capped at \$1,000 and lawyers cannot charge the applicant. Note there is only one legal firm in SA which provides assistance for victims compensation claims.	N/A	N/A
UK	Legal costs are not reimbursed	N/A	N/A

Sources of funding

All jurisdictions receive a significant proportion of their funding from the state. There are also other small additional sources of funding in some states such as victims of crime levies, restitution orders and proceeds of crime.

	Revenue from the State	Victims of crime levy	Restitution	Proceeds of crime
NSW	✓	✓	✓	✓
VIC	✓	✗	✓	N/A
QLD	✓	✗	✓	N/A
WA	✓	✗	✓	N/A
SA	✓	✓	✓	✓

²¹ Chairperson's Report 2010/11, Figure 4a, p15

²² VOCAT Annual Report 2010/11, Table 10 p40

²³ Based on discussions with the Director of Victim Assist QLD

Appendix D

Summary of submissions received

We received 32 submissions on the Issues Paper. These included responses from victims support groups, government agencies, community legal centres and individuals whose lives have been affected by violence in some way.

The following list details the organisations and individuals who have submitted a response to the Issues Paper.

Organisation
Australian Domestic & Family Violence Clearinghouse
Australian Lawyers Alliance
Care Leavers of Australia Network (CLAN)
Carlos Felix
Child and Adolescent Sexual Assault Counsellors (CASAC) Inc.
Community Legal Centres NSW
David Jones
David Shoebridge, Greens MP in the NSW Legislative Council
Department of Family and Community Services, ADHC
Edwina Birch
Elizabeth Evatt Community Legal Centre
Graham Hercus
Hawkesbury Nepean Community Legal Centre
Hawkesbury Sexual Violence Prevention Network
Homeless Persons' Legal Service
Hunter Community Legal Centre
In Confidence (two submissions)
Inner City Legal Centre (ICLC)
Jewel Jones (first submission)
Jewel Jones (second submission)
Kingsford Legal Centre
Legal Aid NSW

Organisation

Liverpool/Fairfield/Bankstown Sexual Assault Service (South Western Sydney Local Health District)

Macarthur Legal Centre

MacKillop Family Services

MetWest Violence Prevention Network

Outer West Domestic Violence Network

The Law Society of NSW

Wirringa Baiya Aboriginal Women's Legal Centre

Women in Prison Advocacy Network

Women's Domestic Violence Court Advocacy Service Network Inc.

Women's Legal Services NSW

Appendix E Case Studies

Case Study 1: Domestic violence victims

Jason and Nicole are married and have a 6-month old baby. Nicole has been subject to domestic violence by Jason over the last few years. This violence has included episodes of physical assault, psychological and verbal abuse and financial control. After a recent escalation of physical violence, she sustains a fracture around the eye and a sprained ankle. Nicole fears for the safety of herself and her baby, packs a small number of personal items and leaves home.

Following a short stay at a refuge, Nicole contacts Victims Services and a case co-ordinator helps Nicole to work through the subsidies she could receive from Victims Services and to apply for other forms of assistance (e.g. Centrelink benefits and waiting list for social housing).

Nicole finds a private rental accommodation for \$220 a week. She has no furniture or whitegoods and only a small amount of personal belongings.

Proposed Scheme - \$6,300			Current Scheme
Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment	
Nicole is eligible for Centrelink benefits of around \$1,100 per fortnight. Relocation costs which includes a 50% subsidy of 2 months rent (\$880), payment of bond (4x\$220 = \$880) and payment of \$1,500 for whitegoods and furniture. This totals to \$3,260.	Living expenses of \$700 to help cover utility bills initially, physio appointments for the sprained ankle (4 x \$60 = \$240) and cost of child care for when Nicole attends counselling sessions and physio appointments (12 x \$50 = \$600).	Category D - \$1,500 for assault	Nicole would be awarded \$7,500 to \$10,000 under the Domestic Violence injury, less \$750 excess
Pillar 2 - \$3,260	Pillar 3 - \$1,540	Pillar 4 - \$1,500	
Pillar 1 – Counselling			
Counselling is available for Nicole			

Case Study 2: Sexual assault victims

Kylie is 14 years old and is sexually assaulted when walking home from school alone. She sustained cuts and bruises, a broken leg and internal injuries and needed to stay in hospital for 4 weeks. She required physio treatment for 2 months following the violence.

Kylie develops PTSD, is fearful of being alone, suffers panic attacks and cannot go to school. Her mother has quit her part-time work to care for her daughter, and has developed depression as a result of the violence and needs to be on constant medication.

During the court case of 2 weeks, the father attends and is on unpaid leave for these 2 weeks.

Kylie, her father and mother require counselling, with Kylie and her mother requiring more intensive counselling. Kylie's mother requires respite care for her daughter in order to attend her counselling sessions.

Kylie's mother earned \$150 per week part time and Kylie's father earns \$700 per week.

Proposed Scheme - \$26,033			Current Scheme
Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment	
As Kylie is treated in a public hospital for her injuries, these are paid for by the Medicare scheme. Additional security is added to the family home at Kylie's request, costing \$700, which is reimbursed.	Physio appointments for Kylie's broken leg (8 x \$60 = \$480) and cost of respite care (15 x \$50 = \$750). Loss of earnings for the mother (\$150 at 95% x 13 wks + \$150 at 80% x 91 wks = \$12,773) and for the father (\$700 at 95% x 2 wks = \$1,330) to a total of \$14,103.	Category A - \$10,000 for child sexual assault	Kylie would be awarded either \$10,000 to \$25,000 for Category 2 Sexual Assault injury or \$30,000 to \$50,000 for Category 2, chronic psychological injury (following assessment by an ARW).
Pillar 2 - \$700	Pillar 3 - \$15,333	Pillar 4 - \$10,000	
Pillar 1 – Counselling			
Counselling is available for Kylie and her family			

Note the loss of actual earnings is calculated on the most up-to-date WorkCover basis, which includes changes made in the *Workers Compensation Legislation Amendment Bill 2012*.

Case Study 3: Out of time claims

Martha is 50 years old, and was sexually assaulted by her uncle from ages 5 to 10. She has just reported her claim to the police and lodged a claim with Victims Services.

Proposed Scheme - \$0			Current Scheme
Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment	
As Martha's claim is lodged more than 10 years after she turned 18, her claim is not eligible for assistance under Pillar 2, 3 or 4.			
Pillar 1 – Counselling			
Counselling is still available for Martha			

Case Study 4: Family victims

Michelle is a single mother with a 17 year old dependent son, David. While home alone one night, she is confronted by an armed robber and receives a fatal gunshot wound. Michelle has a sister who lives in QLD and is in regular contact with the family.

David pays \$8,000 in funeral expenses and received a quote for the crime scene cleanup of \$2,200. He also had concerns for his safety when he returned home and arranged for a locksmith to put additional locks on the windows and doors, which cost \$650.

Proposed Scheme - \$25,850			Current Scheme
Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment	
-Reimbursed \$8,000 of the \$8,000 funeral expense -Crime scene cleanup quote of \$2,200 was paid for in full -Cost of lock upgrades of \$650 was reimbursed in full	None	Category A - \$15,000 for homicide – as David is the only dependent, he receives the full amount	A total of \$50,000 is available for distribution to all immediate family members As a dependant, would receive the full \$50,000 less the funeral expenses Counselling is available for both David and his aunt
Pillar 2 - \$10,850	Pillar 3 - \$0	Pillar 4 - \$15,000	
Pillar 1 – Counselling			
Counselling is available for both David and his aunt			

Case Study 5: Victims with psychological injuries

Kevin is a 30 year old who works at a petrol station. While at work one night, his store is held up by armed robbers.

Kevin does not sustain any injuries, but he suffers PTSD as a result of the armed robbery, with frequent panic attacks and he cannot go out alone.

He is also unable to work following the armed robbery.

Proposed Scheme - \$1,500			Current Scheme
Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment	
None	As Kevin has not sustained any physical injury, he is not eligible for loss of earnings. However he would be eligible for workers compensation benefits as the act of violence occurred during work.	Category D - \$1,500 for armed robbery	Following assessment by an ARW, Kevin receives \$7,500 to \$15,000 for Category 1, moderately disabling chronic psychological injury, less \$750 excess
Pillar 2 - \$0	Pillar 3 - \$0	Pillar 4 - \$1,500	
Pillar 1 – Counselling			
Counselling is available for Kevin			

Case Study 6: Common assault victims

James is a 22 year old male who gets is assaulted on the way home from the pub one night.

He sustains a dislocated jaw and fractures to his two front teeth.

He is treated in a public hospital for his dislocated jaw. His two front teeth require root canal treatment and crowns and he receives a quote from a dentist for \$6,000.

Due to his injuries, he is unable to work for 2 weeks and his weekly earnings are \$600 per week.

Proposed Scheme - \$8,640			Current Scheme
Pillar 2 Immediate needs	Pillar 3 Financial assistance	Pillar 4 Recognition payment	
James is treated in a public hospital for his dislocated jaw and this is paid for by the Medicare scheme.	As the front teeth were fractured in the course of the violent act, Victims Services pays the dentist \$6,000 to undertake treatment for James. Loss of earnings for James is (\$600 at 95% x 2 wks = \$1,140)	Category D - \$1,500 for common assault	James' injuries fall below the \$7,500 threshold (100% x \$4,800 and 10% x \$2,400 = \$5,040) and he would receive no compensation However, he would be eligible for VAS payment to the maximum of \$1,500
Pillar 2 - \$0	Pillar 3 - \$7,140	Pillar 4 - \$1,500	
Pillar 1 – Counselling			
Counselling is available for James			

Note the loss of actual earnings is calculated on the most up-to-date WorkCover basis, which includes changes made in the *Workers Compensation Legislation Amendment Bill 2012*.