

Victorian Law Reform Commission

GPO Box 4637

Melbourne, Victoria, 3001

31 October 2017

RE: Review of the Victims of Crime Assistance Act 1996

My name is Dr Cassandra Cross and I am a Senior Lecturer with the School of Justice, Faculty of Law, Queensland University of Technology. I teach policing, crime prevention and cybercrime. For the last nine years I have been researching online fraud, identity theft and cybercrime more broadly. As part of this, I have received various grants and awards to pursue this research. My work has primarily been from a victim perspective, where I have been privileged to speak with a large number of victims about their personal experiences of the fraud itself, reporting it to police and other agencies, as well as their ability and need to access support services.

It is on that basis that I put forward this submission. I commend the Victorian Law Reform Commission for the terms of reference offered in this review, particularly the willingness to look at extending victim support beyond those who experience violent crime. From my own perspective, I believe this would have a significantly positive impact on many individuals, including those who have experienced online fraud.

The following outlines a summary of the knowledge and literature that exists in the area of online fraud and how it relates to the current terms of reference. It specifically uses the case study of online fraud to demonstrate how the current restrictions in eligibility are disadvantaging a large number of victims, and their ability to recover as a result of victimisation.

I look forward to the outcomes of this review. I thank the Commission for the opportunity to contribute to this change.

If you have any further questions, please do not hesitate to contact me on the details below.

Dr Cassandra Cross

Senior Lecturer & Undergraduate Director
School of Justice, Faculty of Law
Queensland University of Technology

Available now! [Cyber frauds, scams and their victims](#)

Publications: http://eprints.qut.edu.au/view/person/Cross,_Cassandra.html

International Journal for Crime and Justice: www.crimejusticejournal.com

Crime and Justice Research Centre: <http://www.cjrc.qut.edu.au/>

The following submission addresses the terms of reference as follows:

- Chapter five, as it relates to the current eligibility of a victim;
- Chapter eight, as it relates to the requirement to report to police and the actions of the victim;
- Chapter 13, as it relates to victim needs; and
- Chapter 14, as it relates to reforming the current system to include non-violent victims.

For the past nine years, my research has focused on victims of online fraud, identity theft and cybercrime more broadly. As part of several projects I have undertaken, I have spoken directly with approximately 150 victims of online fraud, identity theft, and cybercrime and heard directly about the impact that their experiences have had on them. The large bulk of these victims have experienced online fraud of some kind. This is in addition to the large number of victims I have spoken with as a result of presenting my work at various academic, government and community forums across the world.

There are a number of myths and stereotypes that exist surrounding online fraud. The first is that victims only lose money. This is simply not true. The impacts of online fraud extend far beyond pure financial losses to a deterioration of their physical health, a decrease in their emotional and psychological wellbeing (manifesting in some level of depression), relationship breakdown, unemployment, homelessness and in some cases suicide ideation. There are a number of cases documented worldwide, where victims of fraud have taken their own lives.

The second myth is around who becomes a victim of online fraud. There is a belief that victims are greedy, gullible, uneducated and somewhat deserving of their victimisation. That they should have been able to identify the fraudulent approach and not responded. In blaming victims of online fraud for their own victimisation, this completely underestimates the role of the offender. While fraud is unique in that there is active participation from victims (in the sending of money or personal details), this is done deceitfully through manipulation by the offender. Offenders are highly skilled and tech savvy individuals who are able to identify a weakness or vulnerability of a person and target their approach to exploit this. Further, everyone has a weakness or vulnerability, that if targeted in the right way, at the right time, could lead to victimisation. It is a mistake to think that online fraud only affects those with certain characteristics (for example, the elderly). Different types of fraud and their approaches can successfully target all individuals.

While most of my research has targeted fraud that has originated from an online request, it is important to recognise that fraud exists across all mediums of communication and that offenders will utilise a combination of means to communicate with their victims. This can include email, messenger, social media platforms, chat rooms, telephone calls, text messages, and in some cases, in person. It is also important to recognise the ways in which offenders will seek to develop trust and rapport with victims. They will frequently use social engineering techniques and grooming techniques, which have been established in other contexts. Further, there is also evidence to suggest that offenders use techniques of psychological maltreatment (as established within the field of domestic violence), in order to exert power, control and authority against the victim. The dynamics of the relationship between the victim and offender are complex and can be very intense, with

offenders spending their efforts to overwhelm and destabilise the victim with the amount of communication as well as the timing of the communication.

The above points are all relevant to consider in the current context of financial assistance being provided to victims of crime. At the current point in time, the majority of Australian jurisdictions, including Victoria, have an eligibility of experiencing a “violent offence” in order to access financial assistance in the aftermath of a crime. In this way, victims of online fraud (and fraud and cybercrime more broadly) are currently excluded.

The current inability for victims of online fraud to access financial assistance to help with their recovery is detrimental in a number of ways:

The impact of online fraud can be devastating. There is research that indicates the effects of fraud can be as severe as those who experience violent crime. It extends beyond financial losses, to all spheres of the person’s wellbeing and life.

The level of harm experienced by some victims can have a debilitating effect on the individual, with many suffering a combination of severe impacts. While not all fraud victims experience significant levels of trauma (similar to victims of violent crime in general), there is a proportion who will experience severe and ongoing impacts across many aspects of their lives.

The likelihood of recovery for many online fraud victims is minimal, given the current lack of acknowledgement and lack of support services that are currently available.

There is a strong sense of shame, embarrassment and stigma associated with online fraud victimisation. The level of victim blaming that currently exists means that victims are reluctant to disclose to those around them, for fear of how they will react. For many, this fear is justified, as when they have shared their victimisation with family, friends, and other third parties, they have experienced negative outcomes. This can include isolation from family and friends, and in some cases, being denied access to grandchildren (for older victims) and being disowned by family members.

There is strong evidence to suggest that there is a high level of negativity associated with reporting online fraud to authorities across the fraud justice network (being the range of agencies who can take a fraud complaint, which includes police, consumer protection, banks etc). Many victims have detailed the additional trauma and suffering they experienced at the hand of the system, in addition to what they experienced as a result of the initial victimisation.

One of the most common indicators for revictimisation for online fraud, is prior victimisation. Offenders will trade the details of victims to other offenders (on what are crudely termed “sucers lists”), who will be targeted in further approaches or will be subject to recovery schemes (those which attempt to impersonate law enforcement in order to gain further money from the victim). Intervention is required with victims in order to strengthen their resilience and awareness against future victimisation attempts.

There is also evidence to suggest that victims of online fraud may have experienced other types of victimisation which may make them more vulnerable to fraudulent approaches. An example of this is domestic violence. Abuse and violence in a previous relationship may be used by offenders to

successfully target a victim for romance fraud (those who are defrauded through what is perceived by the victim to be a genuine relationship). In these cases, the trauma experienced by victims is cumulative and often far more devastating.

Given the dynamics of online fraud and the above factors, it is difficult to understand how these individuals can be denied access to financial support to assist with their recovery. Potential types of support that would be beneficial to victim includes (but is not limited to) medical care, psychology and psychiatry services, relationship counselling, as well as financial counselling. While financial counselling can currently be accessed without cost, the other services can be expensive and inaccessible particularly given the dire financial circumstances that many victims find themselves in after realising they have been victims of online fraud. The financial loss exacerbates their ability to seek any of the other support services which they may need to recover.

Further, the inability of victims of online fraud to access financial assistance under the current legislation also impacts on the acknowledgement and legitimacy of their victimisation. Symbolically, through not being able to apply for assistance and qualify as a victim, the shame and stigma of online fraud is reinforced. Despite their circumstances and what they have experienced, they are not seen to be victims, and are not seen to be deserving of recognition or practical support to move forward.

The determination of a victim through the arbitrary nature of an offence type disadvantages a large number of victims who are currently excluded from the “violent” definition. It must be recognised that victims are not a homogenous group. Not all victims who experience violent crime will suffer to a level where they require financial assistance. In the same way, there are victims who experience non-violent offences (such as online fraud) and who will experience severe effects which require professional assistance. The type of offence seems irrelevant, rather it is the level of harm experienced that should form the basis for determining eligibility.

To be clear, I am not advocating that victims of online fraud should be entitled to receive any money lost through the victim assistance scheme. Rather, I propose that the eligibility requirement to access financial assistance for support services (such as medical, counselling etc) should be determined via the harm suffered rather than the offence type itself.

If these changes were to be implemented, it would have significant impacts for fraud victims. First, it is an acknowledgement and recognition of their legitimacy as victims through their ability to apply for financial support. This would aid in overcoming the myths and negative stereotypes that currently exist with regards to online fraud victimisation. For victims, one of their most important needs is simply to be heard. To be able to voice their experience to someone who will listen and acknowledge them. Inclusion in the victim assistance scheme would help to achieve this.

Second, it would vastly improve the personal situations for many victims, who are currently suffering in silence and isolation, without the appropriate care or support available. The ongoing effects of victimisation for many are life changing, and can greatly diminish the quality of life and the health of victims. Individuals who were previously healthy and financially independent are likely to pose a greater reliance to the public health system and welfare system as an outcome of their fraud victimisation.

Third, it would likely reduce the levels of revictimisation for this particular offence type. Giving victims the appropriate level of recognition and support would enable more constructive conversations to take place which make victims aware of the ways in which they are targeted and perhaps give them the confidence to question and thereby avoid further attempts. Offenders rely on secrecy and the vulnerability of victims to comply with their requests. Being more open and up front about this, takes away some of the power from the offenders.

However, if the eligibility was to change from the offence type, to level of harm experienced, there are other issues which arise. Currently, there is a requirement to report to police in order to be eligible, or demonstrate why timely reporting was not possible. This would need to be considered in light of the documented negativity currently associated with reporting to police and other agencies. There would need to be recognition across law enforcement about the legitimacy of online fraud victimisation and a response that is commensurate with that. The establishment of the Australian Cybercrime Online Reporting Network (ACORN) may work well in this situation. ACORN is the central reporting mechanism for reporting cybercrime (including online fraud) in Australia. Many police jurisdictions are directing victims away from local police stations to report through this online portal. If ACORN were to be accepted as a police report, that would overcome many of the issues associated with reporting online fraud for this specific purpose. However, given the medical issues experienced by fraud victims (both their physical and psychological wellbeing) it may be appropriate to consider reporting to a general practitioner as a viable alternative to police. There is precedent for this in other jurisdictions with other crime types and categories of victim.

Second, the role of the victim would need to be carefully considered. Current legislation takes into account the actions of the victim in their victimisation and if they contributed to the outcome. As mentioned, fraud is unique whereby victims are active participants, through the sending of money or personal information. However, this is done as a result of lies and coercion, not out of their free will and under genuine circumstances. Using the participation of the victim as a means of denying access to financial assistance in the case of fraud victims would be to ignore the dynamics of the victim-offender relationship and power and control exerted by offenders. It would also seek to further punish the victim for their actions, rather than acknowledge the fraud victimisation for what it is, and seek to assist with their recovery.

Overall, this submission has used the case study of online fraud to argue for changes to the existing approach to victim assistance in Victoria. As a result, it puts forward the following recommendations:

1. The definition of victim is expanded to include all victims of crime, not simply victims of violent crime.
2. Eligibility for financial assistance is based on the level and type of harm experienced by victims rather than the offence type itself
3. The requirement to report to police includes the Australian Cybercrime Online Reporting Network (ACORN) as an acceptable means.
4. The requirement to report is also extended to include general practitioners as an acceptable alternative to police.

5. The consideration given to victim involvement in their offence is reworked to reflect the dynamics of power and control that exist with fraud as well as the deception, and does not unfairly discriminate against this group of victims.

References

All of my publications that form the basis for this submission are available online at the following:

https://eprints.qut.edu.au/view/person/Cross,_Cassandra.html