

PROTECTION OF CRIME VICTIMS' RIGHTS IN THE AUSTRALIAN FEDERATION

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Abstract:

This article analyzes, from a scholarly legal perspective, the legal and institutional mechanisms aimed at protecting the rights and legitimate interests of victims of crime in the states of the Australian Federation. The study examines the legal status of victims, state-guaranteed compensation schemes, forms of victim participation in criminal proceedings, as well as institutions of restorative justice. Australia's experience is subjected to a comparative analysis with international standards.

Keywords: Victim, criminal procedure, compensation, Victim Impact Statement, restorative justice, Australia.

Introduction

The effectiveness of the criminal justice system is assessed not only by the imposition of lawful, proportionate, and fair punishment on the offender, but also by the extent to which the rights and legitimate interests of victims of crime are effectively protected and enforced. International legal instruments explicitly acknowledge the need to strengthen the legal status of victims. In particular, this requirement is articulated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly in 1985 [1]. Under the influence of these international standards, the states of the Australian Federation, characterized by a federal structure, have developed an independent legislative and institutional framework aimed at protecting the interests of victims of crime. This article, drawing on the example of Australia's experience, provides a scholarly legal analysis of the victim's legal status, guarantees of access to compensation, mechanisms for victim participation in criminal proceedings, and the legal foundations of restorative justice institutions.

1. Legal Status of Victims in the Australian Criminal Justice System

In the Australian Federation, legislative authority in the field of criminal law and criminal procedure primarily resides with the states. Consequently, the legal status of victims is not regulated by a single federal code, but rather through specific legislation enacted by each state and territory. For instance, in the State of Victoria, the Victims' Charter Act 2006 establishes

the fundamental rights of victims, while in New South Wales, these rights are reinforced through the Victims' Rights and Support Act 2013 [2].

Under these legislative acts, victims are recognized not merely as participants in the criminal process, but as independent holders of rights. In accordance with the law, victims are guaranteed the following fundamental rights:

- 1) to receive timely information regarding the progress of the criminal case;
- 2) to be treated with respect throughout the investigation and judicial proceedings;
- 3) to have their safety and personal integrity ensured;
- 4) to obtain restitution or compensation for the harm suffered.

The Victims Rights and Support Act 2013 is a comprehensive and rather extensive legislative act comprising four schedules. Schedule 4 of the Act constitutes the Victims Rights and Support Regulation 2013. Schedule 3 contains the amendments introduced by the Act into the existing state legislation. For example, the Administrative Decisions Tribunal Act 1997 (No. 76) was amended by the 2013 Act to include a new Part 3D, which regulates the activities of the special Victims Support Division established under the 2013 Act. Provisions concerning the support of victims are also contained in other existing state legislative instruments.

In Australian legislation, the terms "victim" and "victim of crime" are used, and the categories of victims are defined in the Victims' Rights and Support Act 2013. According to Section 5 of the Act, a victim of crime is a person who suffers harm as a direct result of an act committed by another person.

A person is considered to have suffered harm if, as a consequence of the criminal act, they incur physical or psychological injury, or if their property is stolen, destroyed, or damaged (Section 5). In cases where the victim dies as a result of the crime, the deceased person's family members are recognized as victims (Sections 4).

2. Compensation and Financial Assistance Systems for Victims

One of the most important elements of protecting the interests of victims within the Australian legal system is the state-operated compensation scheme. Across all states and territories, programs such as the Victims of Crime Compensation Scheme or Financial Assistance for Victims of Crime are in operation [3]. Australian law provides mechanisms for victims to participate in criminal proceedings, enhancing procedural fairness and promoting restorative outcomes. One of the primary tools is the Victim Impact Statement (VIS), which allows victims to present their views regarding the harm suffered and the effects of the crime prior to sentencing. Victims may also be informed of key procedural developments and have the opportunity to be represented in court, either directly or through legal support services.

In the State of New South Wales, several bodies operate whose activities are directly or indirectly related to the provision of compensation and support to victims of crime. These include the Commissioner of Victims' Rights, the Victims Advisory Board, the Victims Support Fund, the Victims Support Division of the Administrative Decisions Tribunal, and the Victims Services of the Department of Justice.

The office of the *Commissioner of Victims' Rights* (hereinafter, the Commissioner) was established under Part 3, Division 1 of the *Victims' Rights and Support Act 2013* (Sections 8–13). The Act enumerates the primary functions assigned to both the Commissioner and the Commission's staff (Section 10). These functions include:

1. Providing victims and family members of missing persons with all necessary information regarding available support measures and assisting them in accessing these measures;
2. Monitoring the implementation of the provisions of the Victims' Charter;
3. Providing recommendations to relevant government and administrative bodies on compliance with the provisions of the Victims' Charter, including conducting training and educational programs;
4. Receiving complaints from victims of crime regarding alleged violations of the rights guaranteed under the Victims' Charter.
5. Providing recommendations to relevant government and administrative bodies regarding the offering of apologies to victims in cases where their rights have been violated;
6. Conducting research and educational programs on victimology;
7. Undertaking analytical reviews and research upon the direction or request of the Attorney General;
8. Monitoring compliance with the Victims Rights and Support Act.

In accordance with the Act, the Commissioner is granted special powers within the scope of their authority, including the right to conduct special investigations (Section 11) and to request from any individual, legal entity, or government body all necessary information, including documents. The provision of knowingly false information constitutes an offence and may result in a penalty in the form of a fine (Section 12).

However, a government body may refuse to provide information to the Commissioner where disclosure is prohibited under the *Government Information (Public Access) Act 2009*.

The Victims Advisory Board (hereinafter, the Advisory Board) was established under the *Victims Support and Rehabilitation Act 1996*. Its continued existence and the transitional provisions regarding the powers of all its members were confirmed by the *Victims' Rights and Support Act 2013* (Schedule 2, Section 10).

The Advisory Board is entrusted with functions set out in Section 111 of the *Victims Rights and Support Act*, which include:

1. Providing analytical reports and advice to the Minister of Justice on issues concerning support and assistance for victims;
2. Offering guidance to victims, community organizations, and government bodies involved in victim support;
3. Assisting in the implementation of administrative and legislative reforms aimed at enhancing assistance to victims of crime.

The Advisory Board includes the Commissioner of Victims Rights, who serves *ex officio* as its Chair, and no more than 11 additional members appointed by the Minister of Justice. Of these, six members must represent the community, and one member each is appointed from the New South Wales Police Department, the Department of the Attorney General, and the

Ministry of Justice (Section 110, Victims' Rights and Support Act). Membership on the Advisory Board is remunerated. Members are appointed for terms not exceeding three years and may be reappointed (Sections 2–3, Schedule 1, Victims Rights and Support Act).

The Act also established a dedicated Victims Support Fund (hereinafter, the Fund). The Fund was created to replace the former Victims Compensation Fund, which had been established under the Victims Support and Rehabilitation Act 1996 (Section 9, Schedule 2, Victims Rights and Support Act 2013). The Fund is managed by a Chief Executive Officer.

The sources of funding for the Victims Support Fund and the main directions of its expenditure are defined in Sections 15 and 16 of the Victims' Rights and Support Act 2013. The Fund is financed from the following sources:

- a) Aggregated funds from the state budget arising from confiscations under the Confiscation of Proceeds of Crime Act 1989;
- b) Funds from the state budget designated for the Fund in accordance with the Criminal Assets Recovery Act 1990;
- g) All financial contributions received pursuant to Sections 5 and 7 of the Victims Rights and Support Act 2013;
- d) Funds allocated to the Fund from the Treasury or by parliamentary appropriation;
- e) Other funds received in accordance with legislative provisions;
- f) All funds received from fines imposed for violations of Section 89 of the Victims Rights and Support Act 2013.

Funds received by the Victims Support Fund are allocated as follows:

1. Payments to victims in accordance with the provisions of the Victims Rights and Support Act 2013;
2. Covering the expenses incurred by the Commissioner and the Commission staff in the performance of their functions;
3. Covering the operational costs of the Advisory Board;
4. Covering expenses necessary for the functioning of the Fund itself.

Prior to the enactment of the Victims Support and Rehabilitation Act 1996, victims had the right, within the criminal process, to petition the court for an order directing compensation for material loss at the expense of the state budget. The amount of compensation was determined by the court.

The 1996 Act established the Victims Compensation Tribunal (hereinafter, the Tribunal) (Section 59) and introduced a transition to a tariff-based system for the payment of compensation. The new tariff system included tables specifying types of injuries and losses along with the corresponding amounts of compensation. In addition, the Act introduced a requirement to provide victims with up to 20 hours of free counseling.

Under the Victims Rights and Support Act 2013, the Victims Compensation Tribunal was restructured into the Victims Support Division within the Administrative Decisions Tribunal. Consequently, Part 3D (Victims Support Division) was inserted into the Administrative Decisions Tribunal Act 1997 (No. 76) to regulate the establishment and functioning of this Division. The Act also confirmed the powers of all judges of the former Tribunal to carry out

activities within the Victims Support Division of the Administrative Decisions Tribunal (Schedule 2, Section 12) [5].

Currently, the provision of all types of victim support in the State of New South Wales falls under the jurisdiction of the Victims Services of the Department of Justice. Within the framework of a specialized victims support scheme, victims are provided with legal and advisory assistance, as well as financial support outside the formal court process (i.e., in addition to pursuing compensation directly from the offender in civil proceedings).

Under these support programs, victims receive consultations, legal and psychotherapeutic assistance, and material compensation. The Department also retains the right to pursue the offenders for reimbursement of expenses incurred in providing support to the victims (subrogation claims) [6].

The Victims Rights and Support Act 2013 establishes four categories of recognition payments A, B, C, and D (Sections 35-36). Specific payment amounts are set out in Section 12, Schedule 4 of the Act.

Category A recognition payment is awarded in the event of the victim's death. The amount is AUD 15,000 for dependents of the deceased and AUD 7,500 for parents and guardians.

Category B recognition payment applies in cases of sexual offences causing grievous bodily harm to the victim, offences committed with the use of a weapon, offences committed repeatedly, or offences committed by two or more persons. The payment amount is AUD 10,000.

Category C recognition payment applies in cases of grievous bodily harm, systematic assault of a minor, sexual offences for which a Category B payment does not apply, and attempted sexual offences resulting in grievous bodily harm. The payment amount is AUD 5,000.

Category D recognition payment applies in cases of indecent behaviour, attempted sexual offences, robbery, assault, and battery without causing physical harm. The payment amount is AUD 1,500.

A victim is entitled to receive compensation from only one category, and applications are generally processed within 6 to 12 months. Applications must be submitted no later than two years from the date of the offence or, in the case of a minor victim, within two years of reaching 18 years of age. The submission deadline is extended up to 10 years for sexual offences, domestic violence, and offences against minors (Section 40).

Under the Act, applications for any type of compensation within the victims support program must be submitted either by the victim (or their parent or guardian) or by another interested party on behalf of the victim, addressed to the Commissioner (Section 38). Payments in individual cases are made from the Fund at the discretion of the Commissioner (Section 54).

4. Victim Participation in Criminal Proceedings

Australian law provides mechanisms for victims to participate in criminal proceedings, enhancing procedural fairness and promoting restorative outcomes. One of the primary tools is the Victim Impact Statement (VIS), which allows victims to present their views regarding the harm suffered and the effects of the crime prior to sentencing. Victims may also be informed

of key procedural developments and have the opportunity to be represented in court, either directly or through legal support services.

In the State of New South Wales, a specialized victims support scheme operates to provide compensation to victims of crime. The program is administered by the Department of Justice of New South Wales. Under this scheme, victims receive assistance tailored to their individual needs. Each victim is assigned a dedicated support coordinator, who assesses the situation, develops a plan of necessary actions, provides support throughout all stages of the judicial process, and assists with interactions with other government agencies. The coordinator also ensures that the victim is provided with all relevant information¹.

Support under the program for each individual case includes the following services:

Provision of necessary legal guidance and information;

Crisis psychological counseling;

Immediate financial assistance for urgent needs;

Compensation for economic losses incurred;

Compensation for personal injury or harm to health (recognition payment) [7].

Section 25 of the Victims Rights and Support Act 2013 enumerates categories of persons who are ineligible to receive assistance under the victims support scheme [2]. These include:

Persons who have already received compensation by court order within the criminal process pursuant to Section 6 of the Act (discussed below) or have submitted an application for such compensation that is pending;

Persons who are victims of motor vehicle accidents;

Persons who suffered harm while committing an unlawful act themselves;

Convicted persons who incurred harm while serving a custodial sentence.

All victims, however, are entitled to legal and informational support throughout all stages of judicial proceedings and in interactions with various agencies and government bodies when submitting applications or claims. Access to such assistance is unlimited in duration and is provided upon request [8].

Victims are also entitled to psychological support aimed at crisis intervention and assistance. No time limits or restrictions apply to access this type of support, and each victim is entitled to receive between 10 and 22 hours of psychological counseling.

“Primary victims” and “family victims” (family members of a deceased victim) are eligible for immediate financial assistance to cover urgent needs arising as a result of the offence. This financial support may cover expenses such as relocation, installation of enhanced security measures in the home (e.g., locks, alarms), and urgent medical treatment. The total amount of this immediate financial assistance is capped at AUD 5,000 [9].

A victim seeking financial assistance must submit all available documents and evidence in support of their application, including medical certificates and extracts from medical records, receipts for payment of services, and similar documentation (Section 39, Victims Rights and Support Act 2013). Applications must be submitted no later than two years from the date of the offence or, in the case of a minor victim, within two years of reaching 18 years of age

(Section 40). Applications for immediate financial assistance must be processed within 15 working days.

“Primary victims,” the parents and guardians of minor primary victims, and “family victims” are entitled to claim compensation for economic losses incurred, with the total amount capped at AUD 30,000. Economic losses include:

Transportation expenses; Medical expenses; Ongoing living expenses (including rent, accommodation, and childcare) up to AUD 5,000 for victims who were not employed at the time of the offence. These expenses must be newly incurred or unexpectedly increased as a result of the offence; Expenses to repair or replace personal property damaged during the commission of the offence, with a maximum payout of AUD 1,500; Expenses and legal costs associated with participation in criminal proceedings, excluding attorney fees, with a maximum payout of AUD 5,000;

Compensation for lost income, up to AUD 20,000. Supporting documents must be provided with the application, such as a medical certificate confirming temporary incapacity or an employer’s certificate confirming absence from work during a specific period. Applications for compensation for economic loss must be submitted no later than two years from the date of the offence or, in the case of a minor victim, within two years of reaching 18 years of age (Section 40, Victims Rights and Support Act 2013). Applications for compensation must be processed within three months.

“Primary victims” and their dependents, as well as the parents and guardians of minor primary victims, are entitled to claim compensation for injury or harm to health (recognition payment). Applications for such compensation must be accompanied by a certificate from law enforcement authorities confirming that the applicant was a victim of the specific offence.

5. Restorative Justice Mechanisms

Restorative justice programs constitute an integral part of the Australian approach to victim protection. These programs aim to address the harm caused by criminal behavior through mediated dialogue between the offender and the victim, often facilitated by trained practitioners. The legal basis for restorative justice in Australia is set out in state-specific legislation, which ensures voluntary participation, confidentiality, and the enforceability of agreements reached during the process. Comparative analysis indicates that these mechanisms align with international standards, enhancing victims’ satisfaction and promoting social reintegration of offenders. Following the disbursement of all due compensation payments to a victim, the Department of Justice acquires the right to recover the amounts paid from the offender on a subrogated basis. Part 5 of the Victims Rights and Support Act 2013 governs this process. Recovery of payments made under the support program is only possible from an offender who has been convicted of a criminal offence. The recovery is carried out extrajudicially through an order for restitution issued by the Commissioner.

The Act establishes a two-year limitation period for issuing such an order, calculated from the expiration of the period during which the victim was entitled to submit a compensation application under the victims support scheme (Section 59). The Commissioner may issue a

restitution order against the convicted offender as well as any other person involved in concealing the offender's assets, if such concealment occurred (Section 60).

Upon issuance of a restitution order, the Commissioner must serve it on the person concerned, who may then submit objections within 28 days. The Commissioner is obliged to consider the objections and decide whether to reject them and confirm the order without change, or to vary or revoke the order (Sections 63–64). In the event that objections are rejected, the Commissioner must provide reasoned justification for the decision. Should the person against whom the order is issued disagree with the final decision, they have the right to appeal to the Administrative Decisions Tribunal (Section 66). A restitution order that has come into force is enforced in the same manner as a court judgment (Section 72).

In addition to the specialized victims support program, victims in New South Wales may recover damages directly from the offender through the courts under an alternative scheme (Section 91, Part 6). The Act distinguishes between two categories of compensation: compensation for injury (compensation for injury, Division 2, Chapter 6) and compensation for material loss (compensation for loss, Division 3, Chapter 6). Importantly, the judicial and extrajudicial compensation programs are mutually exclusive (Sections 25(1), 98(a)). That is, if a victim has received compensation through the court or has a claim under judicial consideration, they are not entitled to extrajudicial compensation, and vice versa.

Under the Act, when a court delivers a conviction for a criminal offence, it may issue a court order to recover compensation for harm to the victim from the convicted person's assets (Section 94). The maximum amount payable under such an order is AUD 50,000 (Section 95). The court may issue the order either on its own initiative or at the victim's request (Section 94(2)). Compensation for economic loss is determined similarly, with the maximum amount limited to the maximum civil debt recoverable (Section 98(b)).

To finance victim support programs and the Victims Support Fund in New South Wales, the Act imposes a mandatory victims support levy on all persons convicted of offences (Section 7). The levy ranges from AUD 69 to AUD 156 and is payable in addition to other compensation and fines imposed on the offender (Section 106). Certain minor offences are exempt from the levy, including acts that would be considered administrative offences under domestic law, such as public nuisance, offensive language in public places, parking violations, and fare evasion on public transport (Section 105(2)).

6. Conclusion and Recommendations

The system for the protection of the rights and legitimate interests of crime victims in the States of the Australian Federation is well-developed from a legal-scientific perspective and aligns with international standards. Key strengths of the system include the recognition of victims as independent legal entities, a state-guaranteed compensation framework, opportunities for active participation in judicial proceedings, and the availability of restorative justice mechanisms.

The Australian experience holds significant scientific, theoretical, and practical relevance for national reforms aimed at enhancing victim rights, including the development of criminal

procedural legislation in the Republic of Uzbekistan. Lessons from this system may inform legislative improvements, the establishment of structured compensation mechanisms, and the integration of restorative justice practices within domestic criminal justice processes.

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