

Financial Assistance to Victims of Sexual Offences

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This paper presents findings from our project on financial assistance to victims and survivors of sexual offences. Our research partner is Victim Assist Queensland (VAQ).

The FAVE project (for Financial Assistance and Victims' Experiences) addresses a significant problem in Australia and other countries. We do not know who is applying for state-based schemes, for what types of crimes, what the outcomes are, and why. Yes, there are government annual reports, but they give a thin account of what is occurring.

To address this problem, we created a dataset of nearly 300 sexual offence cases, using VAQ data and documents. We analysed the profile of victims and what they received. We sought to determine how assessor discretion operated in deciding a key outcome: the recognition payment.

Context

Queensland is one of four Australian jurisdictions that use a financial assistance model. The others are the ACT, New South Wales, and Victoria. The remaining jurisdictions use a criminal injuries compensation (CIC) model.

Financial assistance began in Queensland in December 2009, with the *Victims of Crime Assistance Act*. Amendments to the *Act* took effect on 1 July this year. Shortly, one change is noted that is relevant to our research.

In the briefest of terms, here is how the process works for primary victims.¹

To apply, a person must have been a victim of an act of violence in Queensland, and have reported it to the police.² This requirement is waived, if it is a sexual offence or has a child or vulnerable victim, when a report to a counsellor or doctor suffices.

The financial assistance payment has two parts. One is expenses, including interim or emergency expenses, related to the crime. The expense categories include counselling, medical and dental, damage to clothing, loss of earnings, legal assistance in completing the application, and what is called 'exceptional circumstances'.³ Not all victims apply for or are awarded expenses.

¹ A primary victim is the person who dies or is injured as a direct result of the violence committed against them.

² Acts of violence include sexual offences, robbery, burglary with violence, assault, kidnapping, torture, and related offences.

³ Exceptional circumstances for a victim are if the violent act had an unusual, special, or out of the ordinary effect on them due either to personal circumstances or the nature of the act of violence. Examples from the our dataset include security or relocation expenses, bedroom furniture and linen if sexually abused in a bedroom; or living room furniture if that was where the assault occurred. An assessor first must decide if there were exceptional circumstances for the victim, and then assess if payment of the requested expense would 'help the victim recover from the act of violence' (s 39(g)).

The second is a payment that *all primary victims* receive. In legislation it is called *special assistance*, but we adopt VAQ terminology and call it the *recognition payment*.⁴

The amount of the recognition payment is based on four categories of seriousness: A, B, C, and D. Sexual offences are in the two top categories A and B. At the time of our research, the recognition payment for category A was \$5,000 to \$10,000 and for category B, \$1,301 to \$3,500. When deciding the recognition payment, an assessor first determines if a sexual offence is in category A or B; and then, determines the amount within the band.

Here comes the legislative change. As of 1 July 2017, there is no assessor discretion within the band. Rather, applicants are awarded a set amount for each band: category A (\$10,000) and category B (\$3,500).⁵

For eligible primary victims, the combination of expenses and the recognition payment can reach a maximum of \$75,000, plus \$500 for legal expenses.⁶

Methods

The FAVE project has three studies. All focus on sexual offences. Study 1 is a dataset of 291 cases—the focus of this presentation. Study 2 is an on-line survey and Study 3, interviews of those receiving financial assistance (Holder and Daly 2017).

The dataset is of applications, which were lodged from 1 July 2012 to 31 December 2013 by primary victims of a sexual offence, and for whom a payment was made during that period. It has variables drawn from two sources: VAQ's administrative data and the Statement of Reasons (SoR). The SoR outlines an assessor's reasons for payments to each victim. All the VAQ data and SoRs were de-identified.

Creating and finalising the FAVE-SoR dataset has taken some time.⁷ This paper reports the findings for the first time.

⁴ Related victims of a primary homicide victim may also receive a payment; it is called the 'distress assistance' payment (\$10,000).

⁵ For Categories C and D, it is \$2,000 and \$1,000, respectively. In a phone meeting with Dean Corless, October 2016 (he was then a staff member of VAQ; today he is Director), he said that assessors 'grant the maximum for special assistance unless there is a specific reason to not do so. ... That was happening across the board since 2015' (personal communication 31 October 2016). This occurred some years after the period of our research (2012-13).

⁶ VAQ public data for FY11 to 16 shows that, excluding homicide-related offences, 11% of all victim applications are determined to be ineligible. The range is 9% (assault and robbery) to 13% (domestic violence). For sexual offences, it is 11% (VAQ public data accessed 21 October 2016).

⁷ When moving between the VAQ data and the SoRs, we discovered discrepancies; and in analysing the data, we created new variables and addressed anomalies in some outcomes.

Profile of sexual offence cases

- 87% of victims were female
- 12% were Aboriginal or Torres Strait Islander⁸
- 98% reported the offence to the police; the remainder, to counsellors or doctors
- all offenders were male (in 68% of cases that could be determined)

Of offenders:

- 47% were family members or relatives
- 44% were well-known or known to the victim
- 9% were strangers

Unexpected finding #1: the victim's age.

At the time of the offence or when it began, on average:

- 46% of victims were under 12
- 78% under 18

All the males were under 18.⁹ The mean age for males was just over 10 years (10.2), and for the females, 16 ½.¹⁰

We had not expected to see such a young profile of sexual offence victims. Annual reports do not disaggregate age profiles by type of offence. National victimisation surveys and interview research are of those 18 and over. The personal safety survey reports some information, but it is spotty.

Please note: For those cases having a period of victimisation, we calculated age from the *start of the victimisation*. In contrast, VAQ calculates age, using the end date in all cases, including those having a period of victimisation. If we use VAQ's method, 34% of victims were under 12, and 76% were under 18.

The finding for age must be understood in light of the second unexpected finding.

⁸ 78% were non-ATSI, and for 10%, the racial-cultural group was not known.

⁹ 75% of females were under 18.

¹⁰ Using the median, the ages are more similar: 11 and 12.7, respectively, for males and females.

Unexpected finding #2: the high share of applicants who had experienced on-going victimisation.

- 48% had experienced on-going victimisation, ranging from one week to over 5 years.
- the average (using the median) was 1.4 years.¹¹

There was nothing in the literature (annual reports, victimisation surveys, interviews of crime victims seeking state-based funds) to have prepared us for this finding.

To provide more detail, Table 1 shows the percentage of each offence that had on-going victimisation and the average (median) length of time.

Table 1. On-going victimisation: average time by type of offence

offence	% of cases had on-going	average time (median)
rape (N=118)	32	1 yr
maintaining sexual relationship with a child (N=73)	100	2.3 yrs
sexual assault (N=34)	12	2.5 wks
indecent treatment of a child (N=66)	36	4 mos

Relating the two unexpected findings

When analysing age of victimisation, this varies by whether the victimisation is on-going or not.

Of victims who had experienced on-going victimisation, the age at which it began was as follows:

- 68% were under 12
- 96% under 18

By comparison, of those who had experienced one incident, the age at which it occurred was as follows:

- 26% were under 12
- 61% under 18

Like other findings, an ‘average age of victimisation’ is likely to mask significant sub-group differences. Specifically, we need to distinguish cases that have on-going victimisation from those that do not. And in addition, certain offences (such as MSR in Queensland) involve on-going victimisation by definition.

¹¹ Of the under 12 age group, on-going victimisation was more likely (71%) compared to older age groups (under 18, 59% on-going; 18 and above, 9% on-going). Males were more likely to have experienced on-going victimisation than females (68% and 45%, respectively; but among those with on-going victimisation, the median length of time was shorter in male (1 year) than female (1.8 years) cases.

Payments

What did victims receive?

In Table 2, the top line (all cases) shows an average recognition payment (RP) of about \$7,250, and the total (including expenses), of about \$9,800. About 7 in 10 victims received expense payments, and a similar share received the maximum RP. But these averages are misleading when the analysis is disaggregated by type of sexual offence.

Table 2. Financial assistance outcomes for sexual offences (2012-2013)

		RP \$ average	total \$ average	% exp	% max RP
		(1)	(2)	(3)	(4)
all cases (N=291)		7,257	9,815	69	71
	N=291				
category A (\$5,000 to 10,000 RP)					
rape	40%	9,428	12,784	80	80
maintaining sexual relationship with a child (MSR) (<16)*	25	9,493	11,798	60	80
category B (\$1,301 to 3,500 RP)					
sexual assault	12	3,057	5,052	62	53
indecent treatment of a child (<16)	23	3,067	4,766	66	56
	100				

*Note: MSR is on-going child sexual abuse. The offence is maintaining a relationship with a child which includes varied types of sexual offences.

Turning to each column in Table 2:

1. Col. (1). The average RP for the two offences in category A is similar. Likewise it is similar for the two category B offences.
2. Col. (2) shows the average total payment, which includes the RP and expenses. This figure is somewhat misleading because it includes cases that did not receive expense payments.¹²

¹² The total payment includes awards for interim assistance, general assessment, and any amendments. Victims can request additional payments (amendments) for up to 6 years from the date of the original application. This table is a snapshot of case outcomes as of 31 December 2013. For average expense payments, an average, using the mean, can be misleading because a few high payments can skew the result upwards. In general, in reporting victims' ages or money outcomes, it is important to inspect the mean and median. For example, for the N=202 applicants who received an expense payment, it ranged from \$14 to \$33,357. The mean was \$3,684, but the median was \$2,500.

3. Col (3) shows the percent of victims who received an expense payment. This varies by the type of offence. Specifically:

- In category A, 80% of rape cases, but 60% of MSR cases received an expense payment.
- For category B, 62 to 66% of cases received expense payments.

Why does this occur? A detailed analysis (Daly 2017) concludes that offence-based variation in receiving expenses can be explained, in part, by variation in *application rates*. These, in turn, are related to victim groups (that is, child at victimisation and application (under 18 years); child at victimisation (under 18), adult at application (18 and over); and adult at victimisation and application (18 and over). Across all four offences, child/adult victim cases had lower application rates, on the order of 15 to 20 percentage points lower.

Variation in receiving expenses is also explained, in large part, by *success rates* for those who do apply. These vary by offence (rape highest, sexual assault lowest, MSR and indecent treatment in between). Success rates also vary by victim group (child/adult lower, except for rape cases when it is the same).

Overall, the analysis reveals a dual impact of the application rate (of some importance) and the success rate (of greater importance) in victims receiving any expense payment. Each of these can vary by type of offence and victim group. Of all offences, sexual assault stands out as having the lowest success rate and the largest gap in the application and success rates.

The analysis of application and success rates is at a high level of aggregation. Measures were created of the percentage who applied for *any* expense and the percentage who received *any* expense payment of those who applied. Other analyses will consider specific expenses applied for and received by offence and victim groups.

4. Col. (4). The percent of cases receiving the maximum RP varies by category A or B.

- For category A cases, 80% of victims received the maximum RP.
- For category B, 53 to 56% received the maximum RP.

Thus, not only does category A have a higher maximum (\$10,000) compared to category B (\$3,500), but the percentage receiving the maximum is greater for category A cases. What explains this outcome? Currently, we do not know.

Assessor discretion in awarding the recognition payment

- Do societal ideas of ‘real rape’ and ‘credible victims’ – drawn from research in criminal justice – affect amounts awarded for the recognition payment?

Researchers have long analysed criminal justice responses to female victims of rape and sexual assault.¹³ One argument is that the more an offence conforms to what is termed ‘real rape’, the more likely it will move through the system and result in conviction.

The elements associated with ‘real rape’ are stranger relations, a public setting, evidence of serious physical injury, weapon use, and multiple assailants.¹⁴ (As we know, the more typical adult victim rape has a lone assailant whom the victim knows, may leave little trace of serious physical injuries, and has no weapon use.)

Another approach analyses the impact of ‘credible victims’. Such victims do not engage in risk-taking behaviour before the offence (e.g., going home with a suspect); they resist by screaming or hitting an assailant, and report the offence right away.¹⁵

Method and analysis

The SoRs were coded for elements associated with ‘real rape’ and ‘credible victims’. They were also coded for ‘seriousness’. The ‘seriousness’ elements include whether the offender was in a position of power or trust over the victim, whether the victim was younger (under 18) or had an impaired capacity, or whether there was a series of crimes. They were drawn from the *Act*, and were mentioned in the SoRs. We should emphasise that there was no legislative clarity on how assessors were to award funds for the recognition payment within the band (Queensland Department of Justice and Attorney-General 2014: 16).

¹³ The term ‘real rape’ was coined by Estrich (1987) and continues to be a focus of research (Krahé 2016). The elements associated with ‘real rape’ are hypothesised to have a stronger influence (to the detriment of victims) when an offence is ‘simple’ (not real or aggravated rape) (Beichner and Spohn 2012; Horney and Spohn 1996), although evidence is mixed. See Daly and Bouhours (2010) for an analysis of factors associated with rape case attrition in the legal process, and the impact of the real rape construct and measures of victim character and credibility on police and prosecution/court decisions. The analysis compares outcomes at an earlier and later time period.

¹⁴ Together, in the absence of witnesses, these elements suggest strong evidence of non-consent.

¹⁵ It is immediately obvious that ‘real rape’ and ‘credible victims’ relate to adult female victims, not child victims (see Daly and Bouhours 2010; Spears and Spohn 1996). We may also wonder if research on the exercise of *criminal justice* discretion applies to *administrative* discretion in awarding money to victims. For example, prosecutors focus on weeding out ‘weak cases’ to achieve convictions. By comparison, VAQ assessors are to apply legislated criteria according to ‘natural justice’. In Queensland, natural justice (defined as procedural fairness in a Queensland Ombudsman [2007: 7]) guide for government decision makers), has ‘three aspects’: ‘the notice requirement, the fair hearing rule, and the lack of bias rule’.

We created over 20 variables. With one exception (VO relations), we coded only when an item was mentioned in the SoR. Here we faced a problem. We had a terrific coding scheme, but the SoRs were not written for research. They were not as detailed as we had hoped.¹⁶ For that reason, the results should be viewed as suggestive.

We analysed all rape and sexual assault cases with female victims 12 and older. We expected to see some ‘seriousness’ elements associated with a higher likelihood of victims receiving the maximum RP. By contrast, ‘real rape’ and ‘credible victim’ elements should not feature – at least not ideally.¹⁷

Findings

For the rape cases

- Stranger relationship, evidence of physical force or violence, any real rape element, or stranger relationship and another element was each associated with a higher likelihood of victims receiving the maximum RP.
 - To illustrate: 92% of the stranger cases received the maximum, but 73% of the non-stranger cases did; 89% of cases having any real rape element received the maximum, but 65% of those without any element did.
- Two negative victim credibility elements or having any negative credibility item were associated with a lower likelihood of receiving the maximum. The two negative credibility elements were using alcohol or drugs before an offence, and accepting company from the offender.
- One seriousness element – mention of a series of crimes – was associated with a higher likelihood of receiving the maximum.

For the sexual assault cases

- When offences were reported within 3 days or 7 days, there was a higher likelihood of victims receiving the maximum.
- For seriousness, mention of the victim as being younger (under 18) or of any seriousness item was associated with a higher likelihood of receiving the maximum.

Summary and implications

It is important to reiterate the limits of the discretion analysis: we were coding for what assessors mentioned in the SoRs. With this caveat, we found that assessor discretion was affected by societal notions of ‘real rape’ and ‘credible victims’ during the time of our research (2012-2013).

¹⁶ There are several reasons why. One is that VAQ assessors began to say less about offence factors over time, out of concern that this may re-victimise victims. Another is the SoR template has set text for the required legal or administrative elements. Text space is more often devoted to these elements than others related to the victim and the offence; in addition, relatively more space is given to detailing expenses awarded than to explaining the sum decided for the recognition payment.

¹⁷ The analysis was carried out separately for rape and sexual assault, using 2 x 2 tables for each element (element by % receiving the maximum). Tests of statistical significance used Fisher’s Exact Test, one-sided. In light of the low number of cases (N=75 for rape; N=29 for sexual assault) and in some instances, the low number of times an element is mentioned, significance levels were relaxed. Three error levels were used $p < .10$, $p < .15$, and $p < .20$. The reported results are preliminary and subject to change.

As of 1 July 2017, such discretion no longer exists in Queensland, once a category of violence is determined. Likewise, New South Wales has set amounts for the recognition payment.

In contrast, the ACT and Victoria (two other financial assistance jurisdictions) may wish to heed the findings of our research by considering set amounts for each major category of violence.

The four other criminal injuries jurisdictions (the Northern Territory, South Australia, Tasmania, and Western Australia) should examine with *great care* how and why decisions are made. Their award structure provides even greater room for varied outcomes based on societal notions of ‘deserving’ or ‘credible’ victims.

In addition to assessor discretion, it is important to keep in mind two other key findings:

1. Victims were young at the time of the offence. Of cases in which victimisation was on-going, 68% of victims were under 12 years of age when it began. For cases with one incident, 26% were under 12. Nearly half of victims experienced on-going victimisation. This challenges the image of victims seeking financial assistance for sexual offences. Certainly, it did for us.

2. ‘Average’ outcomes are likely to mislead. To understand what is really ‘going on’ requires careful attention to sub-groups and types of offences.¹⁸

One implication is that Australian states and territories should do more with the information they have on financial assistance or criminal injuries schemes. They must analyse their data in depth to understand how and why decisions are made, what the outcomes are, and what may explain variation in outcomes. By *not doing so*, an evidence-based approach to policy and practice is ignored. But *in doing so*, states and territories can identify ways to improve their schemes and decision-making practices.

It is essential that all of us – governments, victims and survivors, victim advocacy groups, and the broader population – are better informed.

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¹⁸ There are major male/female differences in profiles and outcomes; each requires separate analysis. A key difference in the Indigenous and non-Indigenous cases is that the former were significantly less likely to receive expenses (46% and 74%, respectively). For Indigenous victims, of the 80% who applied, 57% received expenses; but for non-Indigenous victims, of the 91% who applied, 82% received expenses. See Daly (2017) for analysis.

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