

PROVIDING FOR THE VICTIM OF CRIME: POLITICAL PLACEBOS OR PROGRESSIVE PROGRAMS?

"I do not think that people who, by pure mischance, find themselves caught up in a criminal activity and who are maimed for life, or have their lives ruined, should be left to bear the whole of the burden. It is not their fault at all, but purely an inadvertent mischance or, to put it simply, bad luck. This (crime victim compensation) bill seeks to avoid this type of situation"¹.

"The most that a court can do in considering a (crime victim's) application of this nature is to award the applicant something by way of compensation or solatium, not a full compensation but something by way of consolation for his injury, and in Mr. M.'s case I propose to exercise my discretion to the full amount of the sum of \$2,000 provided by section (437 of the Crimes Act (N.S.W.))"².

Increasing numbers of innocent people in contemporary Australian society are finding "themselves caught up in a criminal activity" which results in their suffering substantial injury³. The injury may be physical, but is more likely to be financial: offences against property represent the overwhelming proportion of all criminal offences⁴. In most instances, the direct burden of this injury falls on the crime victim. For the prudent, and affluent, certain crime losses may be ameliorated by insurance. But for the non-prudent, non-affluent victim the "inadvertent mischance" to be involved in criminal activity may produce ruin. Comparative experience suggests that those least able to afford becoming crime victims in fact stand the greatest risk of suffering criminal injury⁵.

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1. Mr. Bertram, M.L.A., speaking during the Second Reading Debate on the Criminal Injuries (Compensation) Bill in the Western Australia Legislative Assembly, 15th October, 1970. Parl. Deb. at 1307 (1970) (W.A.).
2. Per Isaacs, J., in *Tcherchian* (1969) 90 W.N. (N.S.W.) 85 at 90.
3. As many commentators have emphasized of late, we lack in Australia any comprehensive criminal statistics: see, for instance, the materials gathered in D. Chappell and P. R. Wilson *The Australian Criminal Justice System* (1972), 3-23. However, the criminal statistics we do possess, inadequate though they may be, indicate that, nationally, crime is increasing at a faster pace than the population. For the latest national crime statistics see Commonwealth Bureau of Census and Statistics *Year Book: Australia 1971*, ch.15, 429 *etseq.*
4. Of serious crimes, approximately 90 per cent are offences against property and only 10 per cent offences against the person. *Year Book: Australia 1971*, *supra* n.3, 440; Table II, *infra*.
5. The most extensive surveys of crime victimization have been carried out in the United States where evidence to support the contention that it is those least able to afford crime losses who are most frequently victimized can be found, in particular, in the studies conducted for the President's Commission on Law Enforcement and Administration of Justice. See *Task Force Report: Crime and Its Impact—An Assessment* (1967), ch.5, 77 *etseq.* It seems most likely that the general patterns of victimization described in the United States would also be applicable to Australia although, to date, no comprehensive victimization studies are available in this country. However, the present writer, with P. R. Wilson of the University of Queensland, is currently analyzing the results of a study of crime victims in

In the past five years begrudging recognition has been afforded in Australia to the injustice of this situation. Reflecting a world-wide trend towards providing some form of redress to victims of violent crime, compensation schemes have now been established in New South Wales, Queensland, South Australia and Western Australia⁶. The financial scope of these schemes, however, is limited, as the case of Mr. M. demonstrates. M sought to disarm a man with an Armalite rifle who was threatening his sister. In the successful struggle to remove the gun from the attacker M was shot in the hip. The gunman thereupon withdrew a long razor from his pocket and slashed M with it "over the face and head, and these wounds, besides permanently disfiguring him in a ghastly fashion in the face, required over a hundred stitches"⁷. M's attacker was subsequently convicted on several charges, including wounding M with intent to murder, and was sentenced to 15 years imprisonment. For the injuries he had inflicted upon M, the attacker was ordered by the trial judge to pay \$2,000, the maximum sum awardable as compensation under the provisions of the New South Wales victim compensation scheme. As the judge commented at the time of making this award, in many cases this maximum "could in no way do full justice to (crime victims): Mr. M's position is such a case. Were he to pursue a common law remedy and sue, he might get a verdict . . . very much in excess of \$2,000 and probably in excess of \$10,000"⁸.

M's common law remedy against his attacker, was, of course, worthless for, as in most cases of this type, the criminal lacked any assets to which a judgment might attach, and also had no effective earning capacity for the foreseeable future. The \$2,000 solace provided M was ultimately paid from funds of the State of New South Wales which reserved the right to recover this sum from the offender at any subsequent time⁹.

Two thousand dollars remains the maximum sum payable to victims of violent crimes under each of the compensation schemes established to date in Australia. These schemes represent, in substance, the only effort by governments in this country to make direct provisions for crime victims. In the balance of this paper it is intended to establish by reference to these existing compensation schemes and to developments taking place outside Australia, that current concern for the victim of crime has failed to move far beyond the stage of official rhetoric. Early recognition of this fact is deemed essential lest the divisionary solace of victim compensation schemes obscures far broader victim needs in our society.

several major Australian cities and the results of this survey should be published shortly.

6. For descriptions of the development and operation of crime victim compensation schemes in Australia in recent years see D. Chappell "Compensating Australian Victims of Violent Crime" (1967), 41 Aust. L. J. 3; D. Chappell, "The Criminal Injuries Compensation Act, 1967 (N.S.W.)" (1968) 2 Aust. B. Gaz. 7; D. Chappell, "The Emergence of Australian Schemes to Compensate Victims of Crime", 43 So. Cal. L. Rev. 69; and D. Chappell and P. R. Wilson, *supra* n.3, 761-797.
7. *Tcherchian, supra* n.2, 88.
8. *Id.*, at 90.
9. Crime Victim Compensation Act, 1967 (N.S.W.).

The present reach and impact of victim compensation

Quite apart from the low maximum payment which can be made to victims of violent crime under existing Australian compensation schemes, the present operational reach of these schemes is very limited. The New South Wales' scheme, which has formed the model for other States, has now had almost five years of operating experience¹⁰. In the first 3½ years of its existence, the New South Wales' scheme paid about \$55,000 to victims of violent crime¹¹. Under the provisions of the New South Wales' scheme, and the schemes in the other States, claims for compensation by victims may be considered by the criminal courts, where an offender is apprehended and processed through the criminal justice system, or be dealt with directly, on a completely *ex gratia* basis, by the executive arm of government when no offender is caught¹². Of the orders for compensation resulting from claims made initially in the criminal courts, five payments from Consolidated Revenue in New South Wales totalling \$4,865 were made in 1969; 33 payments totalling \$30,955 in 1970; and 11 payments \$10,400 in the first 6 months of 1971. Of 40 direct *ex gratia* claims for compensation made in the period under review, 10 resulted in payments totalling \$9,684. Eleven direct claims were refused and the remainder were still being considered at the time these data were compiled.

It is clear from these figures that the New South Wales scheme has not placed an undue financial burden on the state. The average payment made to the 59 crime victims who successfully applied for compensation was about \$950. While it is probably too early to assess the annual cost of the compensation scheme, present indications are that in New South Wales this expense, excluding administrative costs, may average between \$20,000 and \$30,000 per year. This represents a fraction of the annual state budget for maintaining law and order, which, in the last financial year for which figures are available, 1969-70, amounted to almost \$83 million¹³.

It is apparent that the current compensation scheme in New South Wales is reaching only a small minority of victims of violent crime. Table I below indicates the number of serious offences of violence against the person reported to the police in 1970 in all states, and in Australia at large. It will be noticed that in New South Wales in that year almost 800 serious assaults were known

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10. S.7. The New South Wales scheme came into effect on January 1, 1968. See s.2. The Queensland scheme commenced operations on January 1, 1969; Criminal Code Amendment Act 1968, (Qld.) s.2; the South Australian scheme on January 1, 1970. Criminal Injuries Compensation Act 1969, (S.A.) s.2; and the Western Australian scheme on January 1, 1971: Criminal Injuries (Compensation) Act 1970, s.2. It should be noted that Tasmania is currently considering the introduction of a victim compensation scheme based on the New South Wales model. Victoria has apparently opted for legislation limiting compensation to situations in which citizens are injured while assisting law enforcement officers. See Police Assistance Compensation Act 1968, (Vic.).
 11. Information relating to this initial operating experience of the New South Wales programme was very kindly supplied to the present writer by the State Attorney General the Hon. K. M. McCaw, in a letter of July 12, 1971. Portions of this letter will be found reproduced in D. Chappell and P. R. Wilson, *supra* n.3, 785-89.
 12. For a detailed description of these claim procedures see the articles referred to, *supra* n.6.
 13. *Year Book: Australia 1971*, *supra* n.3, 448.

to the police¹⁴. Even if only 10 per cent of the victims of these assaults fulfilled the eligibility criteria for compensation, 80 applications could have been anticipated for financial redress¹⁵. In fact, fewer applications were made for compensation in New South Wales in a 3½ year period than might have been anticipated from victims of this one offence category in one year.

The conclusion seems inescapable that many eligible victims are not availing themselves of the opportunity to apply for compensation. A number of explanations may be offered for this state of affairs. First, many victims of violent crimes are almost certainly unaware of the existence of compensation schemes. Although in New South Wales, and in the other States possessing such schemes, the mass media has devoted some attention to the compensation programmes, the programmes have not received the same publicity associated with offender and criminal justice agency activity. Officials responsible for administering the various schemes have also been somewhat reticent in reporting upon their operations. No annual report, for instance, akin to that produced by the United Kingdom Crime Victim Compensation Board has been made available to the public describing the activities of the New South Wales scheme, or the other State compensation programmes¹⁶.

Second, many members of criminal justice agencies seemingly remain as ignorant of the existence of victim compensation schemes as do the crime victims themselves¹⁷. If maximum coverage and impact is desired for such schemes, the natural concentration of publicity and allied resources should be at the point of initial contact between the victim and the criminal justice system. This contact occurs, of course, when the victim reports the commission of a crime to the police. Yet to the writer's knowledge, no attempt is currently made by police in states with compensation schemes to provide information to crime victims about these schemes on a regular and systematic basis. It is left, it seems, to individual police officers, prosecutors, attorneys or persons entirely outside the system to tell occasional victims about compensation opportunities. Comparative experience from the United States suggests that victims often hear about the existence of compensation schemes from neighbours, colleagues at work, or other crime victims, before they gain any official information about such.

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14. Informed observers view this New South Wales figure for serious assaults with considerable suspicion, the figure for Victoria in the same crime category being more than double that of New South Wales. It appears that despite supposedly uniform classification and recording procedures gathered for inclusion in the Year Book, the definitions of serious assaults adopted in practice in New South Wales and Victoria are far from uniform. See K. Wyman, "The Dilemma of Crime Statistics in Australia: A Trophy or Growth?" in D. Chappell and P. R. Wilson, *supra* n.3, 20-21.
 15. An estimated 10 per cent eligibility rate is almost certainly erring on the conservative side for this category of offence.
 16. The seventh, and most recent report of the Board to be presented to the Parliament of the United Kingdom, was published in November, 1971. Criminal Injuries Compensation Board *Seventh Report: Accounts for the Year Ended March 31, 1971*.
 17. This assertion is based on numerous discussions with police and other criminal justice agency personnel with whom the writer came in contact prior to January, 1971, and on a study of police training manuals in the States possessing victim compensation schemes.

Third, the cumbersome compensation delivery system provided for in each of the Australian schemes undoubtedly deters applications on the part of many eligible victims. This writer has commented critically upon this system elsewhere and it is not intended to repeat these remarks here¹⁹. Suffice it to say that the involvement of the criminal courts in compensation procedures is viewed as inappropriate and debilitating from the perspective of the victim. It already seems apparent from initial operating experience with compensation orders made by criminal courts under the provisions of the Crime Victim Compensation Act (N.S.W.), 1967, that virtually none of the orders have been complied with by offenders. Indeed, in most instances it appears likely no one expected the offender to comply, but that the order was made to permit the victim to satisfy statutory requirements for compensation eligibility before seeking *ex gratia* redress from the State²⁰.

Those persons who are victims of violent crimes in which offenders are apprehended and tried are placed at a distinct disadvantage in the compensation milieu. They must await the outcome of criminal proceedings against offenders, and obtain an order for compensation, before receiving assistance from the state. These proceedings may cover a considerable time period, during which the victim may have an urgent need for financial aid to meet liabilities such as medical and living expenses. On the other hand, victims with similar needs, but involved in violent crimes which remain unsolved, can obtain immediate relief through a direct application for compensation to the executive. Based on New South Wales experience, a direct application of this type seems to be processed rapidly and with the minimum of bureaucratic involve-

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18. Ongoing research conducted by the present writer in New York into the operation of that State's crime victim compensation programme supports this view. The lack of any systematic procedures to inform victims about compensation procedures has prompted the inclusion of the following section in a bill currently before the United States Senate to provide federal funds for victim compensation schemes. "Sec. 470 (a) Each Federal law enforcement agency investigating a crime to which this part applies shall inform victims of their eligibility to make an application for an order of compensation under this part. Such agency shall provide forms (as prescribed by the Board) to each person who is eligible to file a claim pursuant to this part . . ." S.2994, 92nd Cong. 1st Sess. Introduced by Senator McClellan, Dec 11, 1971.
19. See, in particular, the remarks in D. Chappell, "The Emergence of Australian Schemes to Compensate Victims of Crime", *supra* n.3.
20. In those cases in which an alleged offender is apprehended and processed through the criminal justice system no application for *ex gratia* payment of compensation by the executive can be considered under the provisions of the Crime Victim Compensation Act (N.S.W.), 1967, and analogous statutes in the other states, until an order awarding compensation has been made by a criminal court. It is only when this order is not complied with by an offender, or, in the case of offences in which an acquittal or dismissal is obtained, no specific offender can be identified, that the victim can seek redress elsewhere. Failure to understand this situation has, it seems, caused confusion in at least one state. As the Queensland Attorney General commented recently:
- "Payments in cases where the offender is convicted are made as *ex gratia* payments by the Governor in council but a condition precedent to an application to the Minister for submission to the Governor in Council is the making of the order by the trial judge. The procedure is laid down in s.663C [of the Criminal Code (Qld.)] in some detail but I have found that practitioners in some cases pay scant attention to these provisions and it is not unusual for me to receive merely a letter from a solicitor asking for a payment to be made to his client from Consolidated Revenue".
- D. Chappell, and P. R. Wilson, *supra* n.3, 794.

ment. Considerable reliance is placed upon police reports about a crime, in reaching a determination concerning eligibility for compensation. A medical examination may be asked for to verify injuries and similar conditions may have to be met, but in general the whole executive procedure appears to operate smoothly and expeditiously.

In the interests of providing speedy, pragmatic assistance to victims who have suffered injuries from violent crimes it seems desirable to keep formalities to a minimum. To link these formalities to the criminal court is to inject, in the writer's opinion, an unnecessary complication into the compensation procedure. This linkage also raises doubts and causes confusion about the ultimate purpose of compensation. From the standpoint of some criminal courts, a compensation order is apparently seen both as a form of redress for the victim, and as a punishment for the offender. As a judge in Queensland said recently, when ordering an offender to pay compensation to a victim: "There is practically no authority under section (663B: Criminal Code (Qld.)) under which I am acting at the moment, but I state that in my view an assessment of compensation in this matter is far different to a civil award one is considering awarding damages. *This award is a punishment in addition to other punishment which has been placed on the accused person*, and the Crown, in the event of an *ex gratia* payment, has the right to recover against the accused person whatever amount the Crown pays, without limitation as to time"²¹ (emphasis added).

It is not clear from this statement if the judge viewed the compensation order as an expression of a particular philosophy of punishment, such as retribution or deterrence²². It does appear from his remarks, however, that the punitive aspects of the compensation award were considered to be of major importance, and that any benefits of the award to the victim were of only secondary consideration. In adopting this attitude the court seems, in reality, to have been reflecting and perpetuating a stand exhibited for centuries by the criminal law, namely, an overriding of the victim's interests in favour of the supposed broader interests of society in ensuring offenders are punished for their criminal acts. It is just such a unilateral focus that reformers have been fighting for so long in their attempts to place fresh attention upon the

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21. Per Stable J., in *Daley* (1970) 33 Q.W.N. 83 at 85. It should be noted that Mr. Justice Stable's view of the purpose of a compensation order is not necessarily shared by his judicial colleagues in other states. For example, Mr. Justice Reynolds in *Bowen* (1969) 90 W.N. (N.S.W.) 82, expressed the opinion that a compensation order was a method, "of a very summary nature of doing some measure of justice to the victim of crime without the delay, expense and formality of a civil action, for example, assault, trespass, or conversion". *Id.*, 84. Mr. Justice Isaacs, in *Tcherchian*, *supra* n.2, appears to adopt much the same opinion as Reynolds J.
22. Recent discussion about the general concept of restitution in the criminal law has indicated that there are differing views concerning this concept's philosophic base. "The feeling that more should be done to require offenders to make reparation reflects a number of different approaches as to the purposes which reparation is intended to serve; . . . one view is that the primary purpose of reparation [is to make redress for the injuries] suffered by the victim, and that the other ends which reparation may serve are of secondary importance. Allied to this approach is the concept that reparation has an intrinsic moral value of its own. On another view, reparation finds its greatest justification in ensuring that the offender does not not enjoy the fruits of crime . . . Others again would emphasize the reformative value to be attributed to reparation . . ." Home Office (U.K.), *Report of the Advisory Council: Reparation By The Offender And The Penal System* (1970), 3.

plight of the crime victim²³. At a time when this reform movement appears to be gaining momentum in many overseas countries, it is disappointing, and disturbing, to see Australian attempts to provide for the crime victim becoming subverted once more by traditional criminal law dogma.

It is also worrying to see, not only in this country but in other parts of the common law world, the smallness of vision of many of those moving at the political level to improve the lot of crime victims. This vision, and its accompanying rhetoric, have tended to place prime emphasis upon the establishment of victim compensation schemes. The creation of these schemes is an important step, but only one step, along a long road to be travelled in search of new methods of providing redress to the victims of crime. The danger is that compensation schemes, no matter how inadequate, will become political placebos for what are, in social reality, more sweeping victim needs. It is to some of these other needs that this paper now turns.

The present reach and impact of direct crime victimization

The main thrust to date of attempts to alleviate the immediate burden cast upon the victim of crime has focussed on those who suffer direct physical injuries as a result of offences against the person. Yet, as was indicated earlier in this paper, crimes of violence such as homicide, rape, robbery and assault account for only a small proportion of the criminal activity in society. By far the most frequently committed offences are those involving attacks against property, such as theft, burglary and fraud. Some notion of the distribution among offense types of serious crimes in Australia can be obtained from Table II.

The national crime statistics, from which this table was compiled, do not include the most common form of property offence, larceny, among their recording categories²⁴. It is still apparent that breaking and entering, motor vehicle theft, fraud, and forgery account for the bulk of serious offences reported to the police. It is also apparent that the main injuries inflicted upon victims of crime are economic, resulting from property losses, rather than physical.

Given the annual volume of offences against property, and the enormous financial losses they produce, governments quite naturally have been most reluctant to contemplate any scheme which includes provisions for making

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23. For a review of this reform movement see S. Schafer *Restitution to Victims of Crime* (1960). Schafer, in later writings has tended to emphasize the rehabilitative aspects of compensation for the offender, as well as the benefits to be secured to the victim; S. Schafer *The Victim and His Criminal: A Study in Functional Responsibility* (1968); "Corrective Compensation" (1972) 8 *Trial* 25. In this writer's view the principal danger present in such emphasis is that the interests of the victim will once more become subservient to the offender, and the State. The provision of compensation to crime victims should, as far as possible, remain divorced from the realm of criminal adjudication and punishment to prevent the relegation of the victim back to his traditional inferior status.
24. This omission is presumably officially justified by the acknowledged inaccuracy and unreliability of reports of larceny to police. However, some measure of reporting accuracy and reliability could be achieved if a cut-off point of \$50, or even \$100, in property loss was required before an offence became a statistic in the major crime index. The F.B.I. adopts a \$50 minimum for recording of larcenies in the Uniform Crime Reports.

direct compensation to victims of property crimes²⁵. Instead, emphasis has been placed upon bolstering official crime prevention measures, such as police patrols, to minimize property losses, and upon encouraging a variety of community crime control measures, like added security to buildings, to deter attacks by criminals. When these measures fail to prevent the commission of a crime, victims have been expected to cope as best they can with any resulting property losses.

For the citizen who insures against property crime, a portion of the economic loss he suffers will be subvented by his insurers²⁶. It would appear that in Australia, approximately two thirds of the population probably have some form of insurance which protects their household belongings against theft or burglary. Table III below shows the response of a sample of householders in three major Australian cities, and one rural area in Queensland, to a recent survey question asking them about crime insurance²⁷. It will be noticed that significantly fewer Brisbane householders had insurance protection than their counterparts in Sydney and Melbourne, and that only one third of the rural residents possessed this form of insurance cover. These urban and rural variations in insurance coverage are no doubt largely accounted for by the differences in both perceived and actual risks of becoming a victim of a property crime. Rural crime rates are, in general, much lower than those in urban regions, while Brisbane has, in comparison with Sydney and Melbourne, a less serious crime problem.

Major differences were discovered in the survey results when insurance coverage was related to the socio-economic status of respondents. Those in professional or managerial occupations were much more likely to carry crime insurance of some type; 81 per cent. of this group had a general household content policy compared with 66 per cent. of other white collar workers and only 47 per cent of manual workers²⁸. Crime insurance, at present, remains a luxury beyond the means of many citizens who might benefit substantially from its protection. We know already from experience with voluntary medical insurance programmes in Australia that many medical services remain beyond the reach of low-income families, because they cannot afford medical insurance²⁹. Recognition of this fact has led to the recent introduction of

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25. While no accurate figure can be given for the annual economic losses resulting from property crime in Australia, claims made under burglary insurance policies alone amounted to over \$8 million in 1969-1970; *Year Book: Australia 1971*, 504. In the same period, claims of over \$21 million were made on householders' comprehensive policies which no doubt included a major proportion of losses from theft, etc.; *ibid.*
 26. This proportion will vary, of course, depending upon the nature of the policy, and the type of insurance obtained. A common feature of crime insurance policies is a provision basing the value of stolen property items at their current market price, rather than replacement cost, when assessing loss.
 27. The question asked about insurance coverage was one of a series of questions put to respondents in this survey dealing with the crime problem in Australia. The survey was conducted in 1970 by the present writer and P. R. Wilson. See also n.5.
 28. See P. R. Wilson "Crime and the Public" (1972) 4 *Aust. N.Z. J. Criminology*, 223 at 228.
 29. At June 30, 1970, the estimated number of persons covered by contributory medical schemes was 9,442,466 in a population of over 12 million. *Year Book:*

a subsidized medical services scheme by the Federal government³⁰. It is suggested that voluntary insurance programmes can no longer be viewed as a satisfactory mode of providing compensation for victims of property offences. Consideration should therefore be given by the Federal or State governments to the introduction of a subsidized crime insurance scheme designed to ensure to all citizens equal protection against crime losses.

Some experience with a scheme of this type has already been obtained in the United States³¹. Realizing that there was a critical shortage of crime insurance available in the large American cities, the Federal government set up a programme under the Department of Housing and Urban Development to make crime insurance available to businesses and individuals in high crime areas where comparable coverage from private companies either was not available or was extremely expensive³². Although the initial response to the scheme was disappointing, recent modifications to the programme appear likely to extend its protection to a wide range of American citizens who formerly had no effective method of protecting themselves against the losses from crime³³.

Before seeking to implement any similar kind of scheme in Australia it would obviously be necessary to undertake an extensive survey of the scope and reach of existing crime insurance coverage. But the possibility of government intervention in this sector of the private insurance market is not as likely to provoke the initial degree of negative reaction experienced by the sponsors of the United States crime insurance scheme. State governments in this country

Australia 1971, 411. Specific details about the balance of the population not covered by these schemes are not available. However, some indication of their socio-economic status can be obtained from the actions of the federal government which on January 1, 1970, made eligible for free medical benefits insurance, and hospital insurance up to public ward level, certain low income families; persons in receipt of unemployment, sickness and special benefits under social service legislation; and migrants during the first two months after their arrival in Australia. *Id.*, 412.

30. In addition to the changes effected in January, 1970, the federal government extended the subsidized medical services scheme in July of the same year to certain families with incomes in excess of the eligibility levels for free insurance. Such families were permitted to obtain health insurance at greatly reduced rates. *Year Book: Australia 1971*, 412.
31. For a description of the scheme, and the initial operating problems it has encountered, see National Council on Crime and Delinquency "Federal Crime Insurance Not Going Over" (1972) 51 *N.C.C.D. News* 19; "U.S. Insuring Crime-Area Stores" *N.Y. Times*, May 8, 1972; 36 *Federal Register* No. 127, July, 1971, 12517-32.
32. "The serious unavailability of crime insurance was first clearly demonstrated by the President's National Advisory Panel on Insurance in Riot Affected Areas. Its survey of 1500 ghetto businessmen in Boston, Cleveland, Detroit, Newark, Oakland and St. Louis disclosed that nearly 50 per cent of the businessmen in these inner city areas had no insurance against loss from burglary and theft. In Boston 74 per cent lacked this important protection. Nearly 30 per cent of those without burglary and theft insurance wanted it but said it cost too much. Nearly 25 per cent said that they could not buy it at any price". U.S. Senate Select Committee on Small Business. *Crime Against Small Business*, Doc. No. 91-44, 91st Cong., 1st. Sess., 257 (1969).
33. The United States crime insurance program, although supported by federal funds, is still sold through private brokers. It has been alleged that these brokers have not been pushing this subsidized insurance as vigorously as private industry policies, resulting in a poor initial response to the new programme. The federal government has since warned brokers that unless the sale of policies increases, the government will by pass private industry and will itself sell the insurance. See n.31,

are already well established in fields of insurance and provide such things as third party accident coverage, and stock and crop damage policies. An extension of government involvement to the less profitable segments of the crime insurance market might well be welcomed by profit conscious private companies. If political support for a government subsidized crime insurance scheme could be obtained, it would seem preferable to opt for a national programme, financed and operated by the Federal government, rather than for separate programmes run by individual State governments.

An investigation of the feasibility of implementing a national crime insurance scheme might provide the rationale for a thorough review of methods of providing for the Australian victim of crime. The general and continuing advance of the Federal government's responsibilities in the social service field in Australia has been commented upon elsewhere³⁴. This advance has already had an impact upon the existing State victim compensation schemes, limiting the scale of benefits payable under them, and prompting extreme caution on the part of State Attorneys General when developing any new programme lest it conflict with Federal social service guidelines³⁵. Given this caution, and the presence of these guidelines, a strong case might be argued for the take-over by the Federal government of the entire crime victim compensation and insurance field. Extensive Federal machinery already exists to assess and dispense welfare payments to the victims of a wide range of social ills. The provision of compensation to victims of crime might be regarded as just one more facet of this Federal social service function.

The assumption of this compensation rôle by the Federal government would likely lead ultimately to the creation of a unified insurance programme to cover both physical and economic losses on the part of crime victims. Maintenance of the dichotomy between these types of loss would appear to be illogical once it is recognized that the needs of crime victims go well beyond the matters covered by existing compensation programmes. A comprehensive crime insurance policy could be developed, providing certain basic coverage for all types of loss. It might well be necessary to mandate this basic coverage for all citizens, spreading crime losses across a broad front. More extensive coverage might still be purchased through private insurance companies.

Whatever the eventual insurance format adopted, the reality of the crime situation already demands action on the part of government to meet the financial needs of far more victims than are currently cared for under Australian crime compensation schemes.

The victim of crime and the criminal justice system

It is not only the financial needs of crime victims which require official remedial attention. The treatment crime victims presently receive at the hands of the criminal justice system also merits close examination. In the past, the

34. See L. Tierney "Social Policy" in A. F. Davies and S. Encel (eds.) *Australian Society* (2nd ed., 1970), 200 *et seq.*

35. For statements regarding the influence of social service guidelines on the development of state victim compensation schemes see in particular D. Chappell, "The Emergence of Australian Schemes to Compensate Victims of Crime" *supra* n.6, 69 at 80-81.

whole process of investigation, trial, sentencing and correction has been directed towards the individuals who commit crimes, rather than towards those who are the victims of crimes. The victim has been obliged to participate in this process, sometimes under considerable duress, and frequently at considerable personal inconvenience. Take, for instance, the victim's involvement at the trial stage of criminal proceedings. It is not uncommon for the victim to be required to appear at court on a number of occasions to give evidence. Adjournments may take place at the request of the prosecution or defence without reference to the victim. The victim, during the trial, may be subjected to sustained cross examination by counsel, and to the overall scrutiny of the court. In the event of a mistrial the whole experience may be repeated.

It has been suggested by one veteran American prosecutor that what victims of crime want most is not money but "equal standing in the criminal courts to the standing of the defendant in a criminal case, and by that I mean something very simple, and that is the right of the complainant, when it comes to such things as adjournments, appearances in court, to be entitled to some consideration. I have seen complainants scolded and harassed by judges, and I will say by prosecutors, including myself, when they have said to us, "I will not come down again, I have been here 12 times and every time I am here there is some reason for an adjournment, and I cannot miss any more days of work. I just will not come again". And I as a prosecutor have had—and I might say it is the most hateful thing I have done in my years of prosecution—I have had the problem of telling these complainants we have no alternative but to hold you in contempt if you don't come again"³⁶.

There is little doubt that Australian crime victims, when it comes to such things as adjournments and appearances in court, also expect "to be entitled to some consideration". While our courts probably grant adjournments less regularly and frequently than their American counterparts, crime complainants in this country tend on occasions to be treated with rudeness and indifference by judges, prosecutors, defense counsel and others officially involved in the administration of justice. This type of treatment may also be experienced by victims at the stage of reporting a crime to the police. A lack of tact and concern for the plight of the victim exhibited by law enforcement personnel at this point may reduce or destroy the willingness of the victim to participate in the further investigation of an offence. It is known, for example, that many victims of rape refuse to proceed beyond the stage of making an initial report of an offence to the authorities because of the rude and cynical handling they receive from police officers³⁷.

In essence, what is currently lacking in our overall treatment of crime victims in the criminal justice system, is an attitude which views the victim as an important consumer of the system. As a consumer the victim should be entitled to efficient and effective service from the individual components of the system, as well as the system as a whole. The victimization experience

36. Richard Kuh, former Assistant District Attorney in Manhattan testifying before the New York Governor's Committee on the compensation of victims of violent crime, January 3, 1966.

37. Comment, "Police discretion and the judgement that a crime has been committed—Rape in Philadelphia" (1968) 117 U. of Pa. L.R. 277.

should provide the opportunity for agencies like the police and prosecution to establish that they are as concerned, and involved, with the victim's present and future status as they are with that of the offender. Having failed to prevent the commission of a crime, the criminal justice system should seek to provide services for the victim which go well beyond those of appeasing any punitive or allied feelings generated by the offence. For instance, in offences like burglary where the chances of apprehending any offender are remote, the police should at least make an attempt to explain this fact to the victim, and inform the victim of the measures which might be taken to prevent the commission of a similar offence in the future.

With a continuing deterioration in the state of crime, and the spread of the impact of crime victimization to ever broadening proportions of the community, the social pressures to do far more for the crime victim are likely to become intense. Hopefully, we are at the threshold of an era when these pressures will result in progressive programmes, rather than political placebos, to provide for the victim of crime.

TABLE I:

SERIOUS OFFENCES OF VIOLENCE KNOWN TO POLICE (1970)*

	N.S.W.	Vic.	Qld.	S.A.	W.A.	Tas.	N.T.	A.C.T.	Aust.
Homicide	125	107	36	34	15	10	9	3	339
Serious Assault	799	2,014	177	87	95	32	46	32	3,282
Robbery	867	744	124	140	69	33	11	11	1,999
Rape	136	160	42	21	6	17	29	5	416

* Based on data presented in the *Year Book: Australia 1971*, p.440.

TABLE II:

MAJOR INDEX CRIMES KNOWN TO POLICE IN AUSTRALIA (1966-1970)*

	1966	1967	1968	1969	1970
Homicide	321	300	300	280	339
Serious Assault	2,227	2,158	2,508	2,483	3,282
Robbery	992	960	1,280	1,599	1,999
Breaking and Entering**	56,841	19,072	23,562	25,597	30,591
Motor Vehicle Theft	26,937	26,791	29,298	32,492	38,926
Fraud-Forgery	15,509	15,820	18,955	20,415	22,865

* Based on data presented in the *Year Book: Australia 1971*, p.440.

** After 1966 breaking and entering offences involving property loss of less than \$100 are excluded from the uniform crime reporting programme.

TABLE III:

SURVEY RESULTS INDICATING LEVEL OF CRIME INSURANCE
COVERAGE

Question: "Do you now have an insurance policy that protects your household belongings against theft or burglary?"

Response	Brisbane %	Sydney %	Melbourne %	Rural %
Yes. General Household Cover	51	69	68	32
Yes. Some Items Covered	5	4	6	3
No Insurance	38	24	21	63
Don't now	6	3	5	2
Total Number	313	313	310	71
Per cent	100	100	100	100