



Submission to the NSW Sentencing Council

Fraud

Prepared by

Kerrie Thompson: Chief Executive Officer

Damien Sloan: Community Member

November 2022



1/432 Hunter Street
(PO Box 1310) Newcastle NSW 2300

E admin@vocal.org.au
P 02 4926 2711

VOCAL Inc Y1170743
ABN 99 422 394 085

www.vocal.org.au

About the Victims Of Crime Assistance League

Victims of Crime Assistance League (VOCAL) is an incorporated charity organisation that supports men, women and children who are victim-survivors of any crime type throughout NSW. For the past 30 years we have been providing information, guidance and support to individuals and families who have been impacted by crime. We act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from the NSW Department of Communities and Justice (Victims Services) to provide a free service to victims of crime in NSW's Hunter Region. Support is individualised to the specific needs of each survivor and includes physical, psychological and socioeconomic support and assistance.

An overview of fraud matters

As highlighted in the Discussion Paper¹ there are many different types of fraud-related offences. VOCAL has provided advocacy and support for people who have been victims of:

- Card not present (CNP) fraud;
- Card present (CP) fraud;
- Phishing;
- Romance fraud, and
- Identify fraud.

Acknowledging that fraud is difficult to identify and investigate, there is a significant disconnect between agencies who respond to fraud allegations, including banks, government agencies, such as Centrelink, police and lawyers. Most victim-survivors report feeling frustrated at the inconsistent, and at times contradictory, advice given by key bodies tasked with investigating fraud.

Our experience is predominately with romance fraud and identify fraud, both of which present with unique challenges for investigators. In our experience, the majority of victim-survivors disclose that fraud-related crimes are viewed by some police as a 'lesser crime', and is quite often minimised or dismissed without a formal report being taken. This is particularly true with romance fraud and some identify fraud matters. VOCAL has had minimal experience with fraud related crimes that reach sentencing in a criminal court, as many of the matters do no progress past the initial police report.

Aside from the financial impact, primary victims of fraud-related crimes often experience a range of emotions, including shame, embarrassment and anger. System responses to people reporting fraud often compound trauma, with victim-survivors saying they would not report fraud if it happened again.

¹ <https://www.sentencingcouncil.justice.nsw.gov.au/Documents/Current-projects/Fraud/CP%20Fraud.pdf>

Romance Fraud

The key element of romance fraud is deception through the mechanism of a relationship to facilitate financial reward for the offender.² Romance fraud can occur very early in a new relationship or friendship, and often utilises calculated grooming techniques to gain the trust of the victim. While romance fraud most often occurs online, through dating apps, it also occurs in intimate relationships offline. For example, one victim was in an intimate relationship with a man who, over the course of their short relationship, groomed her regarding his allegedly sick daughter. He often told her fabricated stories about the urgent medical treatment his daughter needed, and the victim subsequently transferred a total of \$100,000 to him for medical bills for his daughter. The victim then found out he did not have a daughter and ended the relationship. A lawyer advised her to report the fraud to police, however no action was taken because police said she ‘willingly’ transferred the money to him.

Identity Fraud

Identity fraud is unfortunately common. Victims we have assisted have had their renewed driver licence and other documents stolen from letterboxes. In one case, a victim found the mail from her unit complex was scattered over the driveway. She was waiting for her re-issued driver licence at the time. Shortly after, she received notification from multiple banks that several accounts had been opened in her name. She reported to police, however they said they could not prove her licence had been ‘stolen’. It was not until there was a fraudulent Centrelink claim that the Centrelink fraud unit began to investigate the matter and found the offender had targeted 11 people. Centrelink gave the victim the offenders name and suburb to take to police, however police said that Centrelink will “deal with her”.

Identify fraud also occurs in the context of domestic and family violence, with victim-survivors reporting that perpetrators have forged victim’s signatures on loan documents and bank accounts. The seriousness of this in the context of financial abuse cannot be under-estimated. One victim-survivor only became aware that her ex-partner had taken out \$40,000 worth of loans in her name, to purchase a boat and a FWD motor vehicle, after she received the loan instalment paperwork from the financial institution. Police did not take her report, but referred her to a Family Law solicitor.

Question 3.1 and 3.2: Should victim impact statements be extended to victims of fraud and fraud-related offences? Under what circumstances and conditions should they be available?

VOCAL recommends that victim impact statements (VIS) under the Crime (Sentencing Procedure) Act 1999 (NSW) be extended to victims of fraud and fraud-related offences, but only for indictable offences. We acknowledge that fraud related offences can have devastating impact on victim-survivors. Despite fraud usually being a non-violent crime, the violation of trust and disruption to personal safety (both physically and psychologically) can create long-lasting complexities for victim-survivors. Having the opportunity to provide a VIS can contribute to a greater sense of justice.

It is our experience in the Hunter Region that VIS for violent crimes are typically allowed in higher courts only. Very rarely are they used in local court, except in matters of dangerous/negligent driving occasioning death. While we acknowledge that allowing a VIS in fraud-related matters in the local court would improve the victim-survivors experience within the legal system, given the volume of matters moving through the Local Court the practicality of this would be an issue. It is our experience that when police prosecutor’s summaries the impact a crime has had on the victim-survivor, most people are happy with this type of submission.

² <https://research.qut.edu.au/centre-for-justice/wp-content/uploads/sites/304/2022/02/Briefing-Paper-Series-Feb2022-Issue22-17022022.pdf>

VOCAL does not believe that business impact statements are required, and implementing this may add additional strain on courts.

Question 3.3: Reparation Orders

VOCAL acknowledges that reparation orders can be difficult to enforce when the offender has no money or assets. However, it remains strongly felt by victim-survivors that compensation is important, and we recommend it becomes mandatory for prosecutors to discuss the issue of compensation/restitution with victims. These orders can also help enforce, in victim/survivors, a sense of “justice being done”.^[DS1] Most people impacted by fraud believe that because fraud is a “crime” then they are eligible for “compensation” via the NSW Victim Support Scheme. This is not the case, and conversations around this with fraud victim-survivors create additional feelings on injustice.

Our experience shows that most victim-survivors are unaware of legal processes and would not be aware that court ordered compensation is a possibility. Therefore, we encourage procedures to be improved so that victims are informed during the legal process of court ordered restitution/compensation options.

It is also worth considering issues around the current limits that the Local Court and District Court can award with regards to court compensation. Where the amount of loss exceeds the current limits, this further disadvantages victim-survivors. VOCAL recommends that court awarded compensation equates the actual sustained loss.

Conclusion

Fraud and fraud related crimes are increasing, and the impact on individuals and the community can be devastating. We appreciate the opportunity to have input on this issue, and hope that outcomes contribute to a more improved system response that provide acknowledgement, validation and justice to people impacted by fraud and fraud related crimes.