

Romance scams: A critical review of the current Australian laws and initiatives, and their effectiveness in protecting vulnerable individuals

Abstract

This paper presents a critical review of the current Australian laws and their effectiveness in protecting vulnerable individuals from romance scams including migrants, individuals with disabilities, socio-economically disadvantaged groups, and the older population. The study begins by providing an overview of what online dating is, and what romance scams are. It then delves into the inner workings of how scammers lure and exploit their victims and examines the history of online scams and their link to online dating. The paper then examines each group and its weaknesses that make them vulnerable to scammer antics and concludes by critically reviewing key legislation and initiatives that aim to assist victims against romance scammers and provides recommendations to increase their effectiveness.

The purpose of this paper is to provide valuable insights for policymakers, legal professionals, and advocacy groups seeking to strengthen the protections for vulnerable individuals from romance scams within Australia, and highlights a call to action for increased resources and collaborative efforts to ensure the well-being of vulnerable individuals are effectively protected.

Introduction

Online dating refers to the way individuals initiate romantic relationships using the internet by sharing information about themselves in the hope of matching with a potential partner.¹ While no official statistics are recorded on the number of Australians using online dating platform, it is estimated that around 4.5 million Australians are using dating platforms each year.² All with differing purposes – some to find a romantic partner or others to satisfy a temporary need. All with a common denominator – to connect with someone. This is often where scams begin, feeding off human fragility.

The Australian Competition and Consumer Commission (**ACCC**) defines a scam as “*a way of tricking people into handing over money or personal details*”.³ Romance scams in particular occur when a scammer forms a relationship with an individual online to extract money or gifts, or to manipulate them into participating in criminal activity without their knowledge.⁴ Scammers will create fake profiles on dating platforms with fictional names or use the identifies of real people without their consent or knowledge, even going as far as using trusted individuals such as military personnel, aid workers or professionals working abroad.⁵

¹ Catalina L Toma, 'Online dating' (2015) *The international encyclopedia of interpersonal communication* 1-5.

² Relationships Australia, 'Online dating' (Web Page, 13 December 2017) <<https://relationships.org.au/document/november-2017-online-dating/>>.

³ Australian Competition & Consumer Commission. (n.d). *Scams*. <https://www.accc.gov.au/business/business-operations-and-costs/scams>.

⁴ Monica T Whitty, 'The scammers persuasive techniques model: Development of a stage model to explain the online dating romance scam' (2013) 53(4) *British Journal of Criminology*, 665, 884.

⁵ Scamwatch, 'Dating & Romance', *Types of scams*, (Web Page, n.d) <https://www.scamwatch.gov.au/types-of-scams/dating-romance>.

To gain a person's attention and trust, scammers will often shower individuals with compliments, share personal information about themselves, send gifts or pretend to book flights or trips to visit.⁶ Once trust is gained, this behaviour then escalates to scammers convincing someone to send them money to help cover costs associated with a supposed illness, injury, family crisis (See Appendix A)⁷, travel costs or to pursue a business or investment opportunity.⁸ Through building a connection with their victim on legitimate dating apps, websites and social media over a series of weeks or even months, they can then move to encrypted channels where it is easier for them to manipulate their victims more secretly without easily being traced, this is also known as romance baiting.⁹ In the most extreme cases, scammers can pose a substantial risk to an individual's safety where they may attempt to lure their victims overseas, as a part of an international criminal network.¹⁰ Sometimes scammers ask their victims to forward valuable items such as laptops or mobile phones somewhere with a fake reason why, however this is just a ploy for them to cover up their criminal activity.¹¹ Alternatively, victims can be asked accept money into their bank account and then transfer it to someone else.¹²

With an increase in popularity using online dating platforms, there is no doubt that romance scams are becoming more common.¹³ Scammer's tactics have evolved and can infiltrate people's lives in more daring ways, making it more difficult for people to identify fake accounts. Not only this, but as the online space allows scammers to operate anonymously from any location in the world. This then becomes a multifaced problem with respect to how the legal system deals with perpetrators and implementing preventative measures to protect those who may be more vulnerable.

The history and rise of online scams and online dating

Surprisingly, online deviance isn't a new phenomenon and dates back to the 1990s when the internet first became widespread.¹⁴ People have been evolving alongside technology for many years, and scammers are no different, adapting their techniques to follow the trends in technology and society.

One of the earliest scams to emerge was fraudulent money transfers via mobile phones in the 1980s and occurred when someone transferred money from your account without your permission, more commonly known now as 'hacking'.¹⁵ Since then, a multitude of different online scams have emerged such as Ponzi schemes (also known as investment scams or

⁶ Ibid.

⁷ Australian Federal Police, 'Love actually isn't all around' *News & Media*, (Web Page, 14 December 2022) <[⁸ NSW Police Force. \(n.d\). *Dating and romance scams - don't let them break your heart or wallet*. \[https://www.police.nsw.gov.au/crime/frauds_and_scams/fraud_categories/dating_and_romance_scams#:~:text=Unfortunately%2C%20he%20scammers%20have%20a,relationships%20with%20friends%20and%20family\]\(https://www.police.nsw.gov.au/crime/frauds_and_scams/fraud_categories/dating_and_romance_scams#:~:text=Unfortunately%2C%20he%20scammers%20have%20a,relationships%20with%20friends%20and%20family\).](https://www.afp.gov.au/news-media/media-releases/love-actually-isn%E2%80%99t-all-around#:~:text=Those%20charged%20in%20Australia%20are,of%20up%20to%2025%20years.>.</p>
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⁹ Ibid.

¹⁰ Scamwatch, 'Dating & Romance', *Types of scams*, (Web Page, n.d) <https://www.scamwatch.gov.au/types-of-scams/dating-romance>.

¹¹ Ibid.

¹² Ibid.

¹³ Cassandra Cross, 'Romance fraud' In T. Holt & A. Bossler (Eds.) *Palgrave Handbook of International Cybercrime and Cyberdeviance* 1, 22.

¹⁴ History Channel, 'World Wide Web (WWW) launches in the public domain' *HISTORY*, (Web Page, 30 March 2020) <<https://www.history.com/this-day-in-history/world-wide-web-launches-in-public-domain>>.

¹⁵ Moneysmart, 'Unauthorised and mistaken transactions' (Web Page, n.d) <<https://moneysmart.gov.au/banking/unauthorised-and-mistaken-transactions>>.

money flipping), pyramid schemes, telemarketing scams, technician spoofing, work at home schemes, fake 'verification' requests which trick people into paying a subscription to a different site, puppy scams, and the most current scam, the "hi mum, please send me money" text message which cost Australian \$24 million last year (See Appendix B).¹⁶ One of the most notorious online scams is the Nigerian prince scam, also known as the 419 scam or advance fee. This scam involves scammers emailing their targets claiming to be a Nigerian prince or a member of and urgently needs financial help to flee the country or be released from their unlawful imprisonment with the promise of a monetary reward afterwards for their assistance.¹⁷

Scammers infiltrated their way into the online dating world as it gained popularity in the late 1990s and early 2000s with the emergence of websites like Match.com and eHarmony. These platforms provided a new and exciting way for people to connect and potentially find romantic partners quickly, 'safely' and from the comfort of their own home. As online dating grew in popularity, scammers recognised this trend as a new opportunity to target individuals. As discussed above, scammers create fake profiles and pose as potential love interests to deceive unsuspecting users. The evolution of fake profiles then continued to become more sophisticated as scammers started using stolen photos from people's accounts on social media or stock images to create attractive profiles and if tracked, would seem like they were a genuine person.

Fast forward to 2019, and the effect of COVID-19 on online dating saw Australians lose over \$851 million to romance scams in 2020, which was a record amount, as scammers took full advantage of the pandemic.¹⁸ As society practiced social distancing and were restricted from in person interactions, online dating platforms saw a significant increase in usage. According to a report by Tinder, on 29 March 2020, the company broke its record for the most activity in a single day, with more than 3 billion swipes and conversations were 32% longer, indicating that users wanted more significant connections.¹⁹ Scammers quickly adapted their tactics to capitalise on the COVID-19 situation and the heightened loneliness and desire for connection, as well as the economic impacts of the pandemic such as job loss and financial instability by using pandemic-related storylines. For example, pretending to need financial assistance for medical treatments or to cover travel costs once restrictions were lifted. Appendix C²⁰ shows dating and romance scams by most common website/apps in 2019, with online dating sites being the most common ways people lose money to dating an romance scams.

Scammers are meticulous, calculated, and organised, and so they have and continue to evolve as society evolves and constantly learn new techniques, skills and storylines in order to manipulate their victims.

¹⁶ John McCarthy, 'How the "hi mum, please send money" text became our number one scam', *InQueensland* (online, 17 April 2023) <<https://inql.com.au/business/2023/04/17/how-the-hi-mum-please-send-money-text-became-the-number-one-scam/>>.

¹⁷ Australian Competition & Consumer Commission. (2020, June). *Targeting scam 2019. A review of scam activity since 2009*, viii <<https://www.accc.gov.au/system/files/Targeting%20scams%202022.pdf>>.

¹⁸ Australian Competition & Consumer Commission, 'Scammers capitalise on pandemic as Australians lose record \$851 million to scams', *Media Releases* (Web Page, 7 June 2021) <https://www.accc.gov.au/media-release/scammers-capitalise-on-pandemic-as-australians-lose-record-851-million-to-scams>.

¹⁹ Tinder, 'The Future of Dating is Fluid' (Web Page, 2020) <https://filecache.mediaroom.com/mr5mr_tinder/178656/Tinder_Future%20of%20Dating_3.24_FINAL.pdf>.

²⁰ Australian Competition & Consumer Commission, 'Romance scammers move to new apps, costing Aussies more than 28.6 million' (2020) <https://www.accc.gov.au/media-release/romance-scammers-move-to-new-apps-costing-aussies-more-than-286-million>

The effect of scams on vulnerable demographics

According to the ACCC, Australians reported a combined loss of \$210.2 million to romance and dating scams in 2022.²¹ This is an incredible increase of \$68.2 million since 2021.²² However, it should be noted that with many people too ashamed to tell authorities or even their closest friends and family, the actual loss is expected to be much higher. This reflects an increase in the exposure rate for relationship and romance scams between 2020-21 and 2021-22 from 4.4% to 5.3%.²³

Not only is there the financial impact, but these types of scams also cause a significant negative impact on an individual's emotional wellbeing, with many people reporting a break down in relationships with friends and family²⁴ as well as shame, embarrassment, shock, anger, anxiety, stress, fear, depression or even suicidal.²⁵ Furthermore, victims might experience major depressive disorder or post-traumatic disorder.²⁶

So, what makes scammers so believable and dangerous? They are masterminds at manipulating a person's psychological and emotional stability and know how to target emotions such as fear, loneliness, desire, and compassion to gain a person's trust and trick them into making decisions that they wouldn't usually make.²⁷ Scammers can also threaten individuals with a fine, disconnection of services, arrest or even deportation.²⁸ Scammers meticulously identify and target those who are most vulnerable and take advantage of their circumstances such as migrants, asylum seekers and refugees, people with disabilities, low socioeconomic groups and the older population. The impact and specific tactics that scammers use to target each of these groups is discussed below.

Migrants, asylum seekers and refugees

Newly arrived migrants, asylum seekers or refugees are at a greater risk of being targeted by scammers due to their limited language and cultural proficiency which makes it difficult to understand the nuances of online communication.²⁹ Their limited social networks make them more isolated and dependant on online relationships for companionship and scammers often take advantage of this through emotional manipulation and deception to create a false sense of security. For asylum seekers and refugees, because they often flee their country because of war or other harm, a proposition of love, safety and security can be the new start they crave. Further, this group are often less familiar with the laws and regulations in Australia,

²¹ Australian Competition & Consumer Commission. (2023, April 17). *Targeting scams, Report of the ACCC on scams activity 2022* <<https://www.accc.gov.au/system/files/Targeting%20scams%202022.pdf>>.

²² Australian Competition & Consumer Commission. (2022, July 4). *Targeting scams, Report of the ACCC on scams activity 2021* <<https://www.accc.gov.au/system/files/Targeting%20scams%20-%20report%20of%20the%20ACCC%20on%20scams%20activity%202021.pdf>>.

²³ Australian Bureau of Statistics, *Personal Fraud, Australia, 2021-2022* (Catalogue No. 4528.1, 22 February 2023).

²⁴ NSW Police Force. (n.d). *Dating and romance scams - don't let them break your heart or wallet.*

https://www.police.nsw.gov.au/crime/frauds_and_scams/fraud_categories/dating_and_romance_scams#:~:text=Unfortunately%2C%20he%20scammers%20have%20a,relationships%20with%20friends%20and%20family.

²⁵ Monica Whitty and Tom Buchanan, 'The online dating romance scam: The psychological impact on victims—both financial and non-financial' (2016) 16.2 *Criminology & Criminal Justice* 176-194.

²⁶ Ibid.

²⁷ Australian Banking Association. (2019, November). *Safe & Savvy, A guide to help older people avoid abuse, scams and fraud.*

<https://www.ausbanking.org.au/wp-content/uploads/2019/11/Safe-and-Savvy-web.pdf>.

²⁸ Ibid.

²⁹ Mojca Pajnik and Floya Anthias, 'Work and the Challenges of Belonging: Migrants in Globalizing Economies' (2014), Cambridge Scholars Publishing.

which makes it more challenging to identify and report fraudulent activity if they don't know that it is happening, or where to report it to.³⁰ As a consequence of this, scammers can also pretend to be Immigration Department officials and threaten victims with deportation unless fees are paid.³¹ Without the knowledge or support networks needed to transition into a new society and help with cultural barriers, migrants, asylum seekers and refugees are at a high risk of being vulnerable to romance scams.

People with disabilities

Individuals with disabilities may face challenges in forming and maintaining relationships in the conventional sense due to their disability whether that be physical, mental, intellectual, or otherwise, and this impact can result in social, economic, and civic disadvantage.³² They often have fewer opportunities to meet people, particularly romantically, as they are more isolated from society and have fewer opportunities to meet people in person, making them more reliant on online relationships.³³ Scammers can exploit this vulnerability by providing emotional support and creating an insincere sense of intimacy before ultimately asking for money or personal information. Individuals with disabilities consequently tend to overshare sensitive information, and the more comfortable they feel, the more personal and sensitive information they share.³⁴

Scamwatch received over 7,800 reports from people with disabilities or chronic illnesses with over \$8.7 million in losses.³⁵ They also reported higher losses per report to dating and romance scams when compared with those that did not identify as having a disability or chronic illness.³⁶ The internet offers a richer, more connected life for people with disabilities and has broken down many barriers, enabling people with disabilities to live independently and participate fully in life.³⁷ However, family members, carers, NDIS providers and individuals themselves need to be aware of the risks and indications of online manipulation and abuse by scammers.

Socioeconomically disadvantaged

Socioeconomically disadvantaged populations such as Aboriginal and Torres Strait Islander Peoples statistically have lower levels of education, lower rates of income and compared to non-indigenous Australians.³⁸

³⁰ Australian Competition and Consumer Commission, 'Little Black Book of Scams' (PDF, December 2021) <<https://www.accc.gov.au/system/files/Little%20Black%20Book%20of%20Scams%202021.pdf>>.

³¹ Ibid.

³² Peter Blanck, 'The struggle for web eQuality by persons with cognitive disabilities' (2014) *Behavioral Sciences & the Law* 32.1, 4-32.

³³ Sarah Glencross et al, 'Internet Use by People with Intellectual Disability: Exploring Digital Inequality—A Systematic Review (2021) *Cyberpsychology, Behavior, and Social Networking*.

³⁴ eSafety Commission, "How bad should it be before I tell someone?" Online abuse experiences of adult Australians with intellectual disability – implications for resource development' (PDF, 2022) <https://www.esafety.gov.au/sites/default/files/2022-08/Adult%20Australians%20with%20Intellectual%20Disability%20-%20Online%20abuse%20report.pdf>.

³⁵ Australian Competition and Consumer Commission, 'Vulnerable consumers lose record amount to scammers', *Media Releases*, (Web Page, 3 May 2019) <https://www.accc.gov.au/media-release/vulnerable-consumers-lose-record-amount-to-scammers>.

³⁶ Australian Competition and Consumer Commission, 'Little Black Book of Scams' (PDF, December 2021) <<https://www.accc.gov.au/system/files/Little%20Black%20Book%20of%20Scams%202021.pdf>>.

³⁷ *United Nations Convention on the Rights of Persons with Disabilities* (Article 9). Treaty Series 2515, 3, (2006).

www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-9-accessibility.html.

³⁸ Australian Institute of Health and Welfare, 'The size and causes of the Indigenous health gap' *Australia's Health 2014* (2014)

https://www.aihw.gov.au/getmedia/785f924a-85f4-4ca0-9dad-1abe0152c14c/7_8-indigenous-health-gap.pdf.aspx#:~:text=How%20large%20is%20the%20gap%3F&text=years%20for%20non%2Dindigenous%20females%2C%20a%20gap%20of%209.5%20years.&text=years%20compared%20with%2079.7%20years,a%20gap%20of%2010.6%20years.

This inequality reduces the options and services available to them to help make educated and informed decisions in their life. Due to isolation and lack of access to resources when based in rural and remote areas coupled with financial insecurity, Aboriginal and Torres Strait Islander Peoples struggle to identify, avoid, and report scams. Scammers exploit this weakness by offering financial assistance or gifts and emotionally manipulate their victims by exploiting cultural values and traditions in order to gain their trust. This is reflected in Indigenous Australians reporting record losses in 2018 where Scamwatch received 2,434 scam reports from Indigenous people with losses exceeding \$3 million – a 79 per cent increase compared to 2017.³⁹

Younger Indigenous Australians recorded more losses than older Indigenous Australians, which is opposite to the overall trend of financial losses to scams increasing with age.⁴⁰ Aboriginal and Torres Strait Islander Peoples and other members of the socioeconomically disadvantaged group such as people who identify as culturally and linguistically diverse (CALD), can also be difficult to reach through traditional channels, meaning scammers target these groups of people because of their customary practices, as this means their language, internet and exposes vulnerability, and are more likely to fall for scammer's ruses.⁴¹

Older Persons

The older population, who are usually classified as over the age of 65 are often described as one of, if not the most vulnerable age groups who fall victims to scams (See Appendix D).⁴² Australians over the age of 55 made up half of the \$200 million loss reported to Scamwatch in 2021⁴³ and in 2018, Australians aged over 65 submitted over 26,400 reports to Scamwatch and lost over \$21.4 million.⁴⁴ This corresponds to an increase of five per cent in reports but 22 per cent in losses.⁴⁵ With respect to dating and romance scams in particular, older Australians reported a loss of \$5.8 million.⁴⁶

This is largely due to older Australians' accumulated wealth over other age groups, making them an attractive target for a scammer. Scammers will also purposely look for older Australians on dating sites and social media who have experienced significant losses in their lives, such as the death of a spouse or divorce, and take advantage of these individuals who seek companionship, social connection, and emotional support. Scammers very cleverly prey on these vulnerabilities via emotional manipulation and deception to gain a victim's trust to eventually extract money or sensitive information.

³⁹ Australian Competition and Consumer Commission, 'Vulnerable consumers lose record amount to scammers', *Media Releases*, (Web Page, 3 May 2019) <https://www.accc.gov.au/media-release/vulnerable-consumers-lose-record-amount-to-scammers>.

⁴⁰ Australian Competition and Consumer Commission, 'Scam losses to culturally diverse communities, people with disability and Indigenous Australians almost doubled in 2021' (Web Page, 2022) <https://www.accc.gov.au/media-release/scam-losses-to-culturally-diverse-communities-people-with-disability-and-indigenous-australians-almost-doubled-in-2021>.

⁴¹ Australian Competition and Consumer Commission, 'Culturally and linguistically diverse community lose \$22 million to scams in 2020, reports from Indigenous Australians up by 25 per cent' (2021) <https://www.accc.gov.au/media-release/culturally-and-linguistically-diverse-community-lose-22-million-to-scams-in-2020-reports-from-indigenous-australians-up-by-25-per-cent>.

⁴² Australian Competition & Consumer Commission. (2022, July 4). *Targeting scams, Report of the ACCC on scams activity 2021*, 55 <<https://www.accc.gov.au/system/files/Targeting%20scams%20-%20report%20of%20the%20ACCC%20on%20scams%20activity%202021.pdf>>.

⁴³ Ibid.

⁴⁴ Australian Competition and Consumer Commission, 'Vulnerable consumers lose record amount to scammers', *Media Releases*, (Web Page, 3 May 2019) <https://www.accc.gov.au/media-release/vulnerable-consumers-lose-record-amount-to-scammers>.

⁴⁵ Ibid.

⁴⁶ Ibid.

Scammers can also convince older persons to transfer assets into their name, ask to become a beneficiary of their will or request money to fix health, travel, or family problems,⁴⁷ and an older person's inexperience with dating sites and social media or low internet and computer skills contributes to their willingness to trust people over the internet.

The COVID-19 pandemic also made it easier for scammers to make excuses as to why they could not meet in person, and why many older Australians looked to online relationships as they could not see their families and often live alone, contributing to their need to feel a connection, as mimicked by Australian Competition and Consumer Commission deputy chair, Delia Rickard, as she stated that *"people have been lonelier, with all of the lockdowns and clubs and other places where you normally meet people closing down, people have been turning more and more to online to find companionship."*⁴⁸

Seniors and their family members need to be made aware of these risks and take steps to protect themselves from scams and romance scams in particular if they are lonely, such as learning to identify suspicious activity, establishing a support network of trusted family, friends and professionals, understand the rights, responsibilities and support services for carers and where older persons should turn to for assistance in order to protect their wellbeing and assets.⁴⁹

Critical review of the current laws and initiatives

Legislation – NSW

In NSW, individuals who are caught scamming can face criminal charges under section 192E of the *Crimes Act 1900 (NSW) (The Act)*. They can be charged with fraud which has a maximum penalty of 10 years imprisonment or 2 years if the matter is finalised in the Local Court. The Court can also make an order for compensation. The Act does not specifically mention offences in relation to romance scams, or scams at all.

Section 192E of the *Crimes Act 1900* is set out below:

- (1) "A person who, by any deception, dishonestly—
- (a) obtains property belonging to another, or
 - (b) obtains any financial advantage or causes any financial disadvantage,

is guilty of the offence of fraud.

: Maximum penalty—Imprisonment for 10 years.

- (2) A person's obtaining of property belonging to another may be dishonest even if the person is willing to pay for the property.

⁴⁷ Australian Banking Association, 'Safe & Savvy: A guide to help older people avoid abuse, scams and fraud' (PDF, 2019) <https://www.ausbanking.org.au/wp-content/uploads/2019/11/Safe-and-Savvy-web.pdf>.

⁴⁸ Caitlin Fitzsimmons, 'Lonely Australians lose \$200m to romance scams amid pandemic', *Sydney Morning Herald*, (online, 13 February 2022) < <https://www.smh.com.au/national/lonely-australians-lose-200m-to-romance-scams-amid-pandemic-20220208-p59up8.html> >

⁴⁹ Australian Banking Association, 'Safe & Savvy: A guide to help older people avoid abuse, scams and fraud' (PDF, 2019) <https://www.ausbanking.org.au/wp-content/uploads/2019/11/Safe-and-Savvy-web.pdf>

- (3) A *person* may be convicted of the offence of fraud involving all or any *part* of a general deficiency in *money* or other *property* even though the deficiency is made up of any number of *particular* sums of *money* or items of other *property* that were *obtained* over a period of time.
- (4) A conviction for the offence of fraud is an alternative verdict to a charge for the offence of larceny, or any offence that includes larceny, and a conviction for the offence of larceny, or any offence that includes larceny, is an alternative verdict to a charge for the offence of fraud.⁵⁰

The keywords in this section are deception, dishonesty, and illegal obtaining. Section 192B of The Act defines deception as something that a person says or something does and can be about facts or law and, a person conceives and executes these acts to mislead a person (victim) intentionally. Actions of "dishonesty" are ruled by the Jury who employ usual standards to determine whether the offence included a dishonest act – whereby scams are almost always seen as dishonest.

However, legal issues with this section frequently arise with respect to scams. Firstly, it is hard to identify who the defendant may be as scammers (especially those who operate overseas) are often unidentifiable and more often than not, it is unlikely that victims will recover lost funds if scammers are unidentifiable and untraceable. Even if a scammer is identified, if they are located overseas, it then becomes a challenge apprehending them for trial in Australia as the process is rather complex.⁵¹ This is because extradition is a matter of international law and requires the cooperation of two (or more) countries and therefore is fundamentally political.⁵² It also relies on principles that have been agreed to through international customary and treaty law.⁵³ In cases where Australia is the requesting country, the process and approval will depend on the law of the extraditing state.⁵⁴ This is problematic as each country has different laws and processes, and not all are cooperative, willing or timely.

In her article *'Sentencing scammers: Law and practice'* Lorana Bartels agrees with this sentiment as she states that there is little comprehensive data available in Australia on prosecuting and sentencing practices in relation to those convicted of carrying out a scam.⁵⁵ This makes it difficult to analyse the effectiveness of s192e of the Act as it gives little insight into the pros and cons as to how scammers are currently sentenced. Again, this is due to the difficulty in identifying, apprehending or extraditing, and charging alleged scammers.

Cases

Due to the above difficulties, there are very few reported cases with respect to prosecuting scammers. However, there are some noteworthy cases. One of which was against Sydney woman Siriluck Fatima Chimmalee, who was sentenced to four years and two months for two counts of dishonestly obtain financial advantage by deception.⁵⁶ Ms Chimmalee convinced her

⁵⁰ s192E *Crimes Act 1900* (NSW)

⁵¹ Amy Maguire, 'What is extradition and how does it work?' University of Newcastle (Web Page, 2021) <https://www.newcastle.edu.au/hippocampus/story/2021/what-is-extradition>

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Lorana Bartels, *'Sentencing scammers: Law and practice'* *Trends and Issues in Crime and Criminal Justice*, (443), 1-7.

⁵⁶ Clare Sibthorpe, Siriluck Fatima Chimmalee: 'Sugar daddy' victim of convicted fraudster shares fake receipts, texts' *News.com* (Web Page, 17 December 2022) <https://www.news.com.au/national/nsw-act/courts-law/siriluck-fatima-chimmalee-sugar-daddy-victim-of-convicted-fraudster-shares-fake-receipts-texts/news-story/c9f165fa60dd491729332c056dfeaa6>.

victims to invest \$437,000 in a fake investment opportunity trading luxury handbags, with the promise that she could make enough money for them to become stay-at-home dads, and in one occasion, after eight months of a “relationship” a 47 year old Sydney man transferred her \$13,000 to buy an engagement ring which he never saw.⁵⁷

In an unusual case prosecuted by the CDP in Western Australia, a 54-year-old Australian woman who found herself intertwined in a third-party Nigerian romance scam and who was initially a victim herself, was sentenced on 14 June 2019 to 12 months’ imprisonment and a reparation order to the value of \$12,709.32 was made to the victim.⁵⁸ The third party surprisingly, was a Nigerian man who had originally tried to romantically scam Ms Taylor. After Ms Taylor confronted the scammer, he convinced her to take part in the scam and so she played a key role in tricking a German man into transferring more than \$12,700 as part of the romance scam.⁵⁹ Ms Taylor ended up admitting to the German man he had been scammed and offered to pay the money back that she had received. However, she instead used the money for her own purposes, consequently resulting in the German man reporting her to WA ScamNet.⁶⁰

Another case whereby an initial victim was charged, was 59-year-old Kaye Ferguson.⁶¹ After being subjected to verbal, emotional, and physical abuse from her husband and separating in January 2020, she was lonely and depressed, and sought happiness from a dating site.⁶² There she met who she thought was ‘William David Rodavan’, a genuine man she had formed a romantic connection with.⁶³ ‘William’ had convinced her to assist him in getting back to Australia so they could be together. Ms Ferguson was Chief Financial Officer of a club and was the sole signatory of the club accounts and after exhausting all her finances in thinking she was assisting ‘William’ to get back to Australia, she used over a million dollars of the club’s money to assist the scammer.⁶⁴ Unfortunately, due to her loneliness and vulnerability she was scammed and became a victim, and as a result, the club became a victim of Ms Ferguson’s actions.

The two cases above show the complexity in determining who the real victim and perpetrator is. In one sense, Ms Taylor and Ms Ferguson have disobeyed the law and should be reprimanded appropriately, but in another sense, they too are victims of master manipulation and were essentially the mules of a bigger crime network of romance scammers. So where does the justice lie in prosecuting those who unknowingly fall victim to aiding scammers in their endeavours? It is a complex and an unresolved matter, and the real answer lies in the prevention initiatives discussed below.

In relation to our vulnerable groups, this approach makes it even more difficult to achieve justice, as many victims either do not know, or cannot understand they are being scammed,

⁵⁷ Ibid.

⁵⁸ The Commonwealth Director of Public Prosecutions, ‘Australian jailed for her role in international romance scam’ *Case Reports* (Web Page, 2018-2019) <https://www.cdpp.gov.au/case-reports/australian-jailed-her-role-international-romance-scam>.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ *R v Ferguson* [2022] NSWDC 356.

⁶² Ibid, 1.

⁶³ Ibid, 15.

⁶⁴ Ibid, 3.

or being manipulated into assisting scammers in criminal activity. In prosecuting vulnerable victims, it is not punishing the right person – who ultimately is the scammer.

Initiatives

Australian Government – National Anti-Scam Centre (NASC)

On 1 July 2023, The National Anti-Scam Centre will be established and in its the first year of operation, will work closely with ASIC in delivering its 'scam website takedown service' and support Australian Communications and Media Authority in combatting telecommunications scams.⁶⁵ While this initiative has not begun and therefore its effectiveness unknown, it is important that the Australian government continue to allocate funds towards the prevention, protection and education about scams.

Australian Competition and Consumer Commission – Scamwatch

Scamwatch is one of the most notable organisations established to help people identify and report scams. They collect important information to generate scam reports to identify the scams that are causing the most harm to Australians, understand how scammers work, who they harm and how to disrupt or stop them. The most productive initiative is the collaboration with the Australian Communications and Media Authority whereby the Reducing Scam Calls Code led to a reduction in phone scam reports to the ACCC of more than 50% in 2022.⁶⁶ This initiative is a proactive and attacking method in protecting vulnerable persons from romance scams and more resources need to be allocated as there was 357 million scam calls blocked from this initiative.⁶⁷

Banks

Bank also have a responsibility to protect their customers from scams. One initiative implemented is the use of PayID. This is where customers use the mobile number or email address of the person or business they wish to pay.⁶⁸ This helps stop scammers receiving money under bogus names as the payer can see a confirmation screen which has the intended PayID name before they can confirm the payment.⁶⁹ This is helpful as scammers often use fake alias, so when victims go to transfer funds, they can see the name listed on the account.

Whilst the above initiatives are extraordinarily important, they do not provide individual scam investigations. This can be very frustrating and upsetting for victims who feel helpless and already have lost trust in online procedures. The only way victims can prosecute scammers is through the Police, who often have limited resources, and again, need details about the

⁶⁵ Australian Competition and Consumer Commission, 'ACCC welcomes funding to establish National Anti-Scam Centre' (Web Page, 2023) <https://www.accc.gov.au/media-release/accc-welcomes-funding-to-establish-national-anti-scam-centre>

⁶⁶ Australian Competition and Consumer Commission & Australian Energy Regulator, 'Annual Report 2021-22 (PDF, October 2022), 8 <https://www.accc.gov.au/system/files/ACCC%20and%20AER%20annual%20report%202021-22.pdf>.

⁶⁷ Ibid.

⁶⁸ Australian Banking Association, 'Australian banks: working to protect you' (Web page, n.d) <https://www.ausbanking.org.au/for-customers/scams/>

⁶⁹ Ibid.

scammer to firstly investigate and more importantly prosecute. In a study by Cross, Richards and Smith⁷⁰ they found that victims “felt a strong sense of injustice at the lack of action or assistance from the ACCC in investigating the fraud and obtaining an outcome or resolution.”⁷¹ They go on to say victims presented detailed information to ACCC but were often unsatisfied with ACCC inability to act and the capacity of other criminal justice agencies to take action in such cases.⁷²

Recommendations

It is difficult to provide recommendations on legislation when there is little data available on the prosecution and sentencing of scammers, as discussed by Lorana Bartels. However, there could be a suggestion to implement harsher penalties for reoffending or scammer activity as it stands, which would be a welcome acknowledgement of the destruction and heartache that scammers’ actions cause to victims. A valuable part of the Act that should be noted is the aggravating factors of The Act, such as if the victim is over the age of 60. However, there is no provision if the victim is a migrant, person with a disability or part of a socioeconomically disadvantaged group such as Aboriginal or Torres Strait Islander. This would serve in further protecting the vulnerable groups who scammers often target.

This is where the ACCC can also have a key role in distributing information and preventing against scams, such as introductory scam protection programs for migrants, education and involvement in aged care facilities for aged care persons and NDIS specific education courses for people with disabilities as well as in communicates where Aboriginal and Torres strait islander people reside. Alongside legal measures, prevention and public awareness is the most important role in combating against romance scams. Educating individuals about the risks, warning signs and safe online practices can help vulnerable people recognise and avoid being a victim of a romance scam. Dating sites also need to be accountable for keeping their users educated and aware. The ACCC has recommended online dating platforms implement algorithms to detect and remove fake profiles, establish a vetting and checking system to verify users and provide safety tips and warnings to educate users about the signs of fake profiles.⁷³ This was supported in Cassandra Cross’ article where she argues that current techniques need to be reconsidered with the rise of AI, as conducting reverse image searches may become redundant.⁷⁴ However, it should be noted that this can only do so much as once the relationship is taken off-platform, there’s very little a dating site can do to assist users who suffer financial damage as a result, but can still be very beneficial as people can often get swept up in the excitement of dating apps.

Conclusion

⁷⁰ Cassandra Cross et al, ‘The reporting experiences and support needs of victims of online fraud’ (2016) Trends & issues in crime and criminal justice no. 518. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi518>.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Australian Competition and Consumer Commission, *Best practice guidelines for dating sites: Protecting consumers from dating scams*, January 2016.

⁷⁴ Cassandra Cross, ‘Using artificial intelligence (AI) and deepfakes to deceive victims: the need to rethink current romance fraud prevention messaging’ (2022) *Crime Prevention and Community Safety* volume 24, 30–41.

It is no doubt romance scams disrupt and have the potential to destroy the lives of so many. Therefore, it is important that laws are continually reviewed, initiatives keep being funded, and education and awareness spearheads anti-scam campaigns.

This paper discussed how scammers have evolved throughout history to lure and exploit their victims, where migrants, individuals with disabilities, socio-economically disadvantaged groups, and the older population were identified as being the most vulnerable. Whilst little data is available to critically review current laws, the purpose of this paper is to provide valuable insights for policymakers, legal professionals, and advocacy groups in understanding how vulnerable groups within Australia are currently protected. Overall, there needs to be an increase in resources for marginalised groups, better support for victims and continued collaborative efforts to ensure the well-being of vulnerable individuals are effectively protected from romance scams. It is important to remember if something (or someone) seems too good to be true, it probably is.

Appendices

Appendix A – Example of a romance scam conversation

I just don't know what I'm going to do. My brother is trapped in the war and my bank won't let me transfer money overseas. He has nothing and all I want to do is help him.

That's horrible. Why won't they let you?

They say it's too dangerous to transfer money to that country. I've tried everything. I feel so hopeless. I just want to help.

I'm so sorry baby. I wish I could do something to help you.

Appendix B - Dating and romance scams by most common website/apps in 2019

Website/app	Reports	Losses
Other	849	\$6,215,601
Online dating site	665	\$7,832,089
Instagram	347	\$975,925
Facebook	325	\$2,077,224
Tinder	176	\$814,415
Skype	90	\$757,580
Viber	23	\$909,359
LinkedIn	21	\$130,000
Twitter	16	\$5,820
eBay	2	\$1,082

Dating and romance scams by most common websites/apps in 2019

Top 12 social networking/websites/apps mentioned under 'other' in 2019

Website/Platform	Reports	Losses
Plenty of Fish	230	\$714 439
Google Hangouts	142	\$640 973
Zoosk	70	\$555 319
Match.com	50	\$856 650
Words with Friends	38	\$598 075
Kik	33	\$87 375
eHarmony	24	\$663 245
Badoo	22	\$587 974
Bumble	19	\$38 000
Facebook/Messenger	18	\$393 000
Snapchat	10	\$1678
Instagram	8	\$800

Top social networking/websites/apps mentioned under 'other' in 2019

Appendix C – Example of a romance scam conversation

I'm so stressed out. I've tried everything but the hospital can't receive my money. If I don't pay by tomorrow mum won't get the surgery and she could die.

I'm so sorry my love. You know I love you and would do anything to help you.

I love you too. Can you just help me transfer \$10,000 to the hospital? I'll transfer you the money now and I'll even give you an extra \$1,000 because you're so good to me.

Of course. Just give me the details and I'll do it.

Appendix D – Infographic of demographics affected by scams from 2021 ACCC Report on Scams

