

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Report by Renata Ringin – 2002/2 Churchill Fellow

To undertake a study of Retail Civil Recovery Programs and Legislation.

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Introduction

This report details the findings from a 2003 Churchill Fellowship visit to New Zealand, the United Kingdom, Canada, and the United States of America to undertake a study of Retail Civil Recovery Programs and Legislation.

Specific areas of study included :

- The quantification of retail crime, its causes and costs
- Civil recovery as a crime prevention and cost recovery strategy
- Implementation of the civil recovery process from a retailers and agency perspective
- Content and scope of specific retail crime legislation relating to civil recovery

Acknowledgments

I wish to thank the Winston Churchill Memorial Trust for providing me the opportunity to be a recipient of a Churchill Fellowship, for seeing merit in my project and for trusting me to conduct research in this area on behalf of Australian Retailers and industry stakeholders.

The Victorian Chapter of the Winston Churchill Trust, for encouragement and support.

The organizations and individuals who assisted in the fellowship research by providing their time, opinions, and insights into their experience.

The team at Pro Active Strategies, who's collective excellence allowed me the scope to research, to confidently leave the country for 7 weeks, and to pursue the cause on my return.

Executive Summary

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Project :

To study Retail Civil Recovery Programs and Retail Crime Legislation.

Civil Recovery is a crime prevention and cost recovery strategy traditionally used internationally in the area of 'Retail Theft'.

Retail civil recovery is therefore a process that allows retailers to directly recover the costs they encounter when dealing with crimes committed against them, from the person responsible for the theft.

This can apply to thefts committed externally (shop stealing) and internally (staff theft).

Civil Recovery differs from 'restitution', in that it provides for the claim for costs additional to the actual cost of the merchandise involved in the theft.

This action is based on the concept that; conversion is a form of trespass to goods, and the current civil law of tort, allows for a wronged party to make claim against another who in legal terms 'takes a chattel out of the others possession with the intent to exercise dominion over it.'

Damages to the full value of the chattel in addition to special damages that are not too remote, can be claimed by the victim, from the offender.

The costs claimed therefore, can include not only the property (which in the case of shop stealing is in most cases recovered at the time of the arrest), but also any loss of profit, cost of damage, capital and running costs for measures installed to prevent crime in terms of both technology and personnel, and additionally the costs of any investigation and the actual civil recovery process.

The process would involve making a formal written demand to the thief for the reimbursement of costs.

Retailers spend on average .5% of turnover on security and loss prevention expenses, which translates to \$870 million.

The cost of both physical security measures typically costs Australian retailers from \$30,000 to \$100,00 per site, in addition to similar amounts for operating and personnel costs per year, specifically for prevention and detection of retail theft.

A civil demand can be brought against an offender independent of any criminal action, and in terms of the standard of proof required, the civil process does not require a criminal standard of proof, but only that the facts demonstrate that the elements of conversion were present.

Civil process can be initiated by the retailer to recover these costs in the case of the offender not meeting the initial or subsequent demands.

Civil Recovery, whilst a new and mostly untried practice in Australia, is used in New Zealand, the United Kingdom, Canada, and the United States of America, to varying degrees and both with and without the support of specific retail crime legislation.

Civil recovery serves as a potentially significant crime prevention strategy, by adding an additional economic sanction to the offence of retail theft to ideally act as a deterrent to offenders, and to additionally provide a means for victims to recover the costs associated with the offence from the offender.

Potential benefits of the implementation of retail civil recovery in Australia include:

- Reduction the net losses suffered by retailers as a result of theft
- Reduction the flow on costs of theft to consumers
- Increase of the costs of crime for the thief
- Provision of a deterrent to shop stealing & theft by employees
- Provision of a victim controlled formal sanction

In terms of its success as a crime prevention strategy, reductions in shrinkage by retailers participating in the process in trials has been in the vicinity of 25%, in addition to the recouping of some of the costs of technology and manpower specifically to deter and detect offenders.

The process, particularly in parts of the UK and Canada, also resulted in an increased flow of intelligence and information sharing between retailers, and between retailers and law enforcement, with such communication seen as crucial to success of the process.

The need for governing legislation was strongly supported with the majority opinion being that the benefits of the introduction of specific 'civil recovery legislation' outweighed any disadvantages foreseen.

In the USA, possibly the most litigious country in the world, the concept of pursuing civil recovery without the support of legislation was not a consideration.

The acceptance of the civil recovery process in the USA, by retailers, the public and the courts, has been assisted by comprehensive legislation in most States, and by the education and acceptance of the 'costs' of retail crime, resulting from a history of accepted retail crime research quantifying the contributors and the costs.

That this process is operating in countries without this legislation demonstrates that its implementation is not reliant on legislation, however it is felt that a legal clarification of inclusions, exclusions, and the quantification of 'costs' can only result in a better accepted, fairer and more consistent process.

A significant under usage of this process in the case of theft by employees was observed in all countries visited, with this area potentially providing a significant opportunity for crime prevention by deterrence and recovery of the considerably higher costs associated with an internal theft situation compared to an external theft situation.

One observation regarding the 'industry' of civil recovery that has developed, particularly in the United States, is that the deterrence benefit can be downplayed or ignored when the driving force is recovery of costs for both the retailer and any agency administering the process.

This income benefits from a stable or increasing offence and detection rate, rather than a reduction that deterrence strategies would ideally bring.

Dissemination and implementation of findings

An accurate and Nationally consistent definition and measurement of reported retail theft crime incidents coupled with Australian based research, is required to define and quantify the actual costs of retail crime, and to identify both the primary and subsequent victims.

This data is required in order to put a case to the Government for consideration regarding the drafting of specific retail crime legislation that provides for the sanction of civil recovery.

Education of retailers, police, Government, the judiciary, and the public is needed to provide an acceptance of the scope of the costs borne by retailers from retail crime, the flow on economic impact on all consumers, and the benefits gained from worldwide use of civil recovery as a crime prevention strategy and sanction.

Additionally, a collaborative approach to the significant issue of retail crime in Australia, incorporating representation from, retail, law enforcement, Industry Associations, Government, and Loss Prevention experts, will provide the vehicle for implementation of available strategies for the prevention and minimisation of economic impact of retail crime.

Programme

2.5.03 – 9.5.03

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Peter Berlin	Executive Director Shoplifters Alternative

3.6.03 – 6.6.03

National Retail Federation Loss Prevention Conference San Antonio, Texas	Attendance as delegate
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25.11.02 – 29.11.02

A separate and earlier trip was conducted to New Zealand in November 2002.

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Background

Civil Recovery is a process that allows retailers to directly recover the costs they encounter when dealing with crimes committed against them, from the person responsible for the theft.

Generally such crimes would be thefts of merchandise, company assets, or cash, in regard to situations involving the thief being either an external person or an employee.

For the purposes of this report, the term 'retail theft' includes theft by both customers and employees, with the term 'shop stealing' or 'shoplifting' referring specifically to theft by customers.

Civil Recovery differs from 'restitution', in that it provides for the claim for costs additional to the actual cost of the merchandise involved in the theft.

This action is based on the concept that ; conversion is a form of trespass to goods, and the current civil laws allow for a wronged party to make claim against another who in legal terms 'takes a chattel out of the others possession with the intent to exercise dominion over it.'

Civil Recovery is based on the principle that a theft is both a crime and a civil wrong (a tort).

Under the Civil law of Tort, a retailer can bring an action against an offender for the tort of conversion.

Conversion is a form of trespass to goods, which can be brought where someone, without lawful justification, takes a chattel out of another's possession with the intent to exercise dominion over it.

Damages to the full value of the chattel in addition to special damages that are not too remote, can be claimed by the victim, from the offender.

Those special damages can include (but are not restricted to):

- The cost of the stolen property (including loss of profit)
- The cost of damage to property
- The costs of staff and management time in dealing with thefts
- The costs of investigation
- A proportion of the capital and operating costs of prevention and detection technology
- The costs of the civil recovery process (and legal costs if the matter proceeds to court)

The costs claimed therefore, can include not only the property (which in the case of shop stealing is in most cases recovered at the time of the arrest), but also the capital and maintenance costs for measures installed to prevent crime in general and costs of dealing with that offender.

The process involves making a formal written demand to the thief for the reimbursement of costs, or a 'settlement offer'.

Civil process can be initiated by the retailer to recover the costs, in the case of the offender not meeting the initial or subsequent demands, however the objective is to achieve a payment or settlement by the offender as opposed to proceeding to legal action.

A civil demand can be brought against an offender independent of any criminal action. In terms of the standard of proof required, the civil process does not require a criminal standard of proof, but only that the facts demonstrate that the elements of conversion were present, based on the balance of probabilities.

The process allows for retailers to pursue people who have stolen goods from them, for the cost of the crime, using civil remedies separately from and / or in addition to, any action and penalty, which may be imposed by a criminal court.

Outcomes can include :

- Reduction the net losses suffered by retailers as a result of theft
- Reduction the flow on costs of theft to consumers
- Increase of the costs of crime for the thief
- Provision of a deterrent to shop stealing & theft by employees
- Provision of a victim controlled formal sanction

Typically, costs borne by retailers purely to deal with the proportion of 'customers' who steal from them can involve a significant proportion of the .5% of turnover (\$870 million) expended in relation to security and loss prevention strategies.

In the UK, Canada & New Zealand, civil recovery programs operate without the benefits of specific legislation for debt enforcement, and therefore on the basis of the civil law of tort.

In a pilot study in the UK, the net shrinkage benefit of the pilot stores (over the control group) was 25.4%.

The US experience indicates approximately 25% reduction in retail theft in businesses participating in Civil Recovery programs, as well as the recovery of some of the costs associated with the thefts.

In the USA, the presence of legislation is attributed to the greater majority of offenders paying the costs claim without further legal actions being required for recovery, allowing retailers to offset some of the associated costs.

The Scope of Retail Theft

Shoplifting could be the biggest property crime in Australia, in terms of both the number of offences and the total cost and that we all pay or – ‘Basically if you shop you pay’.

However there has been very little systematic research regarding the actual incidence and cost of shoplifting or broader retail theft, in Australia.

To determine the scope, we are reliant on two sources of information regarding the incidence and cost of retail theft, police reported crime figures, and the retail sectors estimation of the scope of retail theft as a contributor to overall losses.

While there is a considerable body of research internationally regarding shrinkage and retail theft, the lack of local research of this type results in reliance by Australian retailers on interpreting overseas data.

Where ‘shrinkage’ is taken as the total of unaccounted for product, research in this area utilises varying data indicators, along with the opinion of loss prevention practitioners, to attribute the contributors.

Retail shrinkage is estimated to cost Australian retailers 2.6 billion dollars per annum, which represents 1.5% of total retail turnover (based on July 2002/2003 ABS total retail turnover figure of \$174b).

The following table represents the findings of 3 international studies, from which we can derive an average in the absence of Australian based research.

Cause	Employee	Customer	Other	Total shrinkage	Avg.
Country					
USA	48%	32%	20%	1.7%	
Europe	48%	26%	26%	1.45%	
Canada	33%	38%	29%	1.8%	
NZ	26%	56%	18%	1.5%	
Total averages	39%	38%	23%	1.61%	

Sources – (National Retail Security Survey 2002, Bamfield 2002, Guthrie 1999, Retail Security Report 2001)

Using the averaged shrinkage rates, we can estimate a shrinkage rate of 1.61%.

Using the averaged contributor percentages, of total shrinkage, theft by customers & employees represent 38% and 39% (\$988 million) of total shrinkage each, with a combined total of an estimated 77%, or 2 billion dollars per annum.

These costs are not only borne by retailers, but also in terms of economic effect, it's a community issue, with flow on effects to consumers, the employment market and shareholders.

'Shoplifting', alone – thought to comprise 38% of shrinkage or approximately \$1b per annum, could be seen as the largest and fastest growing property crime with significant economic cost to the community.

Of course not only customers steal, using these averages, another 39% of the shrinkage pie is estimated to come from theft by staff.

Reported Retail Crime – The Tip of the Iceberg

As a crime category, retail theft is potentially not only the fastest growing proportion of property crime, but also the most under reported.

The Australian Institute of Criminology Facts & Figures 2002 report on Australian Crime (Australian Institute of Criminology 2002) indicates that 28% of all crime (both crimes against persons & property) occurs in retail locations.

Shoplifting (reported in the 'other theft' category) was reported to account for 55% of property crime, with an increase of 32% since 1995.

Police figures in four states on the number of recent shop thefts were extrapolated to give an Australian total of 73,000 reported offences (Mayhew 2003).

The disparity with which each of the Australian police forces records retail theft contributes to the difficulty in accurately differentiating it as a specific category of theft and therefore trending the incidence and impact of the crime.

Using the Victoria Police Provisional crime statistics 2002/03 (Provisional crime statistics 2002/03), as an example, there is even more evidence to support inaccuracy between actual incidence and reported incidence in regard to shop stealing.

In 2002/2003, theft (shop steal) represents 6% of reported crimes against property, with a 21% increase on the previous year, and a clearance rate of 86%.

This clear up rate supports studies that indicate that only a proportion of detected shoplifting incidents where a suspect has been apprehended are actually reported to the police, let alone the multitude of incidents where there is no identifiable or apprehended suspect.

Comparatively, theft of motor vehicles represents 8.7% of reported crimes against property, with a decrease of 23.9% on the previous year, and a clearance rate of 16.5%.

It is assumed that an absolute majority of victims of theft of motor vehicles report the crime, therefore the reported incidence is an accurate reflection of the actual incidence.

Victoria Police acknowledge that a significant proportion of shoplifting incidents reported have been incorrectly recorded under the 'theft – other' category, which represents 20% of all reported property crime.

If we assume that half of the theft-other category is actually shoplifting incorrectly reported, then shoplifting would represent a total of 26% of all property crime – making it the single biggest component.

Reported 'retail crime' could then be said to be 'the tip of the iceberg' in regards to the whole picture of the actual incidents of crimes of theft against the retail sector.

Incidence of Retail Theft – Under the water line

To determine the scope of these crimes and therefore the overall cost we need to explore what is 'under the water line'.

Reported crime is only an indicator of the actual incidence of crime, with retail theft arguably the most under reported of crimes.

Shoplifting and employee theft were cited as two of the four least reported crimes in a study by the Australian Institute of Criminology on the Reporting of crime against small business (Taylor 2002).

The report found that police records do not accurately reflect the extent of some types of crime perpetrated against businesses.

In quantifying the discrepancy between types of crime which retail businesses experience (nature and extent of the problem) and what is actually reported to police, the report detailed the rates of crimes experienced compared to the rates of crimes reported.

Shoplifting whilst accounting for 70 per cent of all incidents of crime experienced by respondents, only accounted for 42 per cent of all incidents reported to police.

Employee theft accounted for 7 per cent of crime experienced and only 2 per cent of crimes reported to police.

The report concluded that as many incidents of shoplifting and employee theft go unreported to police the prevalence of these types of crime remains hidden, yet such crimes clearly impact on a large number of businesses and result in heavy financial losses.

The crime statistics therefore cannot be seen as a true reflection of the incidence and cost of the crime.

Under reporting of crime to police means not only that police crime records may underestimate the extent of particular crimes but that valuable resources and crime prevention strategies may be aimed at certain crimes because they are reported more frequently, to the neglect of other prevalent but less reported crimes.

A 1999 study by Dr John Guthrie of the New Zealand Centre for Retail Research and Studies, Department of Marketing, University of Otago, Dunedin (Guthrie 1999), found that, only 16.17 per cent of customers detained for theft were reported to the police, with only 3.3 per cent of all detected staff theft incidents being reported.

A study (Mayhew 2003) calculated the estimated actual incidents and assessed some of the major costs of a range of offences.

The term 'shop theft' was used to describe thefts from businesses perpetrated mostly by customers and employees.

If the fairly well aired multiplier which proposes that one in 100 thefts ends up recorded by the police (Farrington 1999) is applied to the total of 73,000 reported offences Australia wide, the actual total number of offences could be estimated at 7.3million.

This multiplier is supported by figures from studies on detection rates that indicate that on average a shop stealer will engage in 95 offences prior to apprehension (Williams, Forst & Hamilton 1987).

In terms of cost, the survey estimated the average unit loss in the region of \$100, to which a 'loss output' of \$10 per incident was added, for a total of \$110 per incident (Mayhew 2003).

Using this formula, the report estimated a total cost of shop theft, at \$810 million, or an annual loss of an average of \$4,800 per retailer.

If utilising the average theft values cited by International studies, which indicate a higher value of \$198 (AUD), the total would be \$1.5 billion, which is closer to the proportion attributed by retailers from shoplifting.

Reasons for under reporting

Understanding why some crimes are reported to police and others are not is essential for obtaining an accurate picture of crime and for developing effective crime prevention and management strategies.

Proprietors claim the main reasons for not reporting include reporting the crime would not achieve anything (42%): the police could not do anything (42%): the incident was not serious enough to report (38%): and the chance of success was slight (37%) (Taylor 2003).

Studies on under reporting (Walker 1994) 40% of occasions where a customer is detected stealing, the incident was reported to the police.

The 1999 Survey of Retail Theft and Security, University of Otago NZ, reported that only 16% of detained suspects were reported to the police (Guthrie 1999).

Detection, can also include occasions where the retailer detects a theft, however does not have an identifiable suspect to report to the police, or the retailer detects

an indication of a theft (product missing), however does not have any further information to support a report of theft.

This theory of under reporting is supported by the 'clearance' rate for shop stealing, which at 86.1 % (Provisional crime statistics 2002/03) indicates that the majority of shop stealing offences reported involves a detained or identifiable suspect.

Possibly the starkest comparison regarding motivation for reporting by victims, and therefore accuracy of reported crime reflecting actual incidence of crime, is the reporting of theft of motor car compared to that of shop stealing.

Both of these offences fall into the 'theft' category, of crime against property, however that's where the similarities in reporting and therefore accuracy in recorded crime rates ends.

There are very strong motivators for a victim to report the theft of their vehicle. In fact it is hard to imagine reasons why this crime would not be reported.

The same motivators cannot be found regarding victims of shop stealing.

There is rarely a requirement or benefit to reporting in regards to insurance, and detection can come in many forms.

In the case of a retailer detecting a suspect 'in the act', the retailer may be more motivated to report the offence to the police.

However not all detections of this type result in report, due to several factors including the varying ability of the retailers resources to detain the suspect until the arrival of the police, the reluctance of retailers in some cases to detain, and the lack of priority given to response by police.

Another factor deterring victims from apprehending and reporting, is the eroding of the 'powers of arrest' available to victims arising from the introduction of a minimum value under which the offence is not seen as an indictable offence, effectively resulting in a lack of or confusion over the power to arrest.

In New Zealand and in Queensland, these amendments to legislation are causing concern to retailers, with the broader concern being that similar situations may evolve in other States and countries, further reducing the response options available to retailers.

When has a crime been committed?

Perhaps the most profound questions that requires clarification in regards to the reporting of shop stealing, is when has a crime been committed, and therefore in what circumstances is it appropriate to report a theft.

An example of a situation that may cause a retailer to not report, may be an instance where it is discovered that product is missing in a specific period of time, with the only logical reason for the loss seen to be theft by a customer.

Some retailers and in fact some police would consider this not to be a reportable theft as it does not involve an identifiable suspect, whilst others would consider it a theft that warrants report.

Clarification of what specifically is 'reportable' and education of retailers, and police, could result in a greater inclination by victims to report and therefore more accurate crime figures.

Probably the most significant measure of any increase in the report of incidents not involving an identifiable or apprehended suspect would be in the 'clearance rate', which at 86%, (Provisional crime statistics 2002/03) clearly demonstrates that this category of theft is either not being reported or is not being recorded as a crime.

Making reporting easier

Any strategy that makes the reporting of shop stealing offences easier, should contribute to a more accurate reflection of reported incidents and actual incidents.

The phone reporting systems currently in use by several Australian police forces are no doubt facilitating reporting by victims and better use of police resources.

Typically the offences seen as suitable for phone reporting are property crimes such as theft of motor vehicles, where there is little to gain from an investigative perspective in police attending the scene of the theft.

In Vancouver Canada, police have extended this method of reporting to shop stealing offences, including those involving the apprehension of a suspect by the victim.

In the absence of circumstances involving difficulty establishing identify, the suspect being violent or affected by substances, or persons residing outside of the province, the arresting person (in most cases being a loss prevention officer) obtains the required information, completes the documentation and reports the offence and the suspect to the police via the phone.

The victim receives an incident number and the suspect is released pending a summons which will be issued by the police after consideration of the information supplied by the victim.

This strategy effectively removes some of the barriers to reporting, real or perceived by victims, ideally resulting in a more accurate reporting rate.

The cost

International studies indicate the average dollar loss per shop stealing incident at \$304 AU (US \$207 University of Florida 2002 National Retail Security Survey), \$272 AU (UK \$111 pound, British Retail Consortium Retail Crime Survey 2001), and \$52 AU (\$59 NZ Survey of Retail Theft and Security 1999 – University of Ontago NZ), and \$167 AU (\$152 CAD, Canadian – 2001 Canadian Retail Security Report)

When the average of the four international figures (\$198.75) is applied to the perceived actual incidence of shop stealing (7.3million offences) the total cost could be said to be \$1.5billion.

But of course the actual value of the product is not the only cost consideration regarding both shoplifting and employee theft.

Retailers spend varying amounts on both technology and personnel to prevent and detect retail crime.

This investment can be substantial, for example, the cost of both physical security measures typically costs Australian retailers from \$30,000 to \$100,00 per site, in addition to similar amounts for operating and personnel costs per year, specifically for prevention and detection of retail theft.

For a multiple site retail business, these costs can be multiplied over 20, 100, or 500 sites, representing a significant cost factor.

Who Pays?

The Victims

Whilst shoplifting represents the most common indictable crime (Taylor 2002) and is a major problem for retailers, it is rarely regarded as a serious crime.

The perception of shop stealing as a minor crime or even a 'victimless crime' with costs borne by major retailers who 'can afford to pay' is both naïve and inaccurate.

In terms of victimization, the flow on effect is borne by consumers, employees of retail and retail related industries, and shareholders in public retail companies.

The retailer is adversely affected via not only the cost of the property, but also the additional costs that they incur in preventing and detecting theft, including the cost of physical security measures, loss prevention strategies, and investigation.

In terms of retail margins, the cost of shrinkage at 1.5 per cent of total sales, can equate to a 25% loss in profit, and can result in a business being unviable.

The customer is adversely affected financially, as total retail prices must reflect losses from theft and costs associated prevention and detection of theft, including loss prevention efforts and physical security strategies.

Additionally, reduced margins, with less scope for absorption of losses and resulting reduction in competition, are detrimental to consumers.

Basically, if you shop – you pay.

The employee is adversely affected through lack of or reduction in employment opportunities and **the shareholder** is adversely affected by lower profits impacting on reduced market returns.

Overall, the financial burden is upon society in the form of funding of the retailers increased costs and the resulting law enforcement costs resulting from this crime.

Shifting the balance- the case for ‘Civil Recovery’

The premise of civil recovery as both a crime prevention strategy and a means to redistribute the costs of the crime of shop stealing from retailers, customers, and employees, towards offenders, effectively positions it as a ‘user pays system’.

Thus shifting the balance of cost from –

‘if you shop you pay’ to ‘if you steal you pay’

Logically, most consumers, in the realisation that they are subsidising the habits of shoplifters will agree that a more even distribution of costs suffered by retailers to the individuals responsible for those costs, is a fair process.

In addition to providing a mechanism for redistribution of these costs, Civil Recovery provides retailers with a process they can control, from initiation of the civil debt to pursuit of non payers, which is separate to and not reliant on any criminal action.

The criminal justice system is not the avenue for recovery of costs associated with a property crime, and there is no specific compensation process for property crime victims.

Restitution can be awarded for recovery of costs of un-recovered or un-saleable property, although a claim for restitution is at the discretion of prosecuting police, with magistrates also exercising discretion in awarding of restitution orders.

By comparison, victims of crimes against the person have avenues for recovery of costs of the crime via the criminal justice system and specific victims of crime legislation.

There is no legitimized framework or guideline within criminal legislation for both victims and for the courts regarding the acceptance of the right for retailers to claim costs associated with the offence (apart from actual property cost) and the quantification of what is seen as acceptable costs.

Legislation regarding specific 'civil recovery' rights, including clarification of the costs claimable, and a quantification of those costs, will assist in providing a structured process that ideally can be accessible by all retailers.

In terms of the value of this strategy in crime prevention, a legislated process will contribute to it being seen as an additional sanction by offenders, thus making the cost of the crime on detection higher.

Logically, this will have a positive effect in terms of the reduction in the incidence of offences and contribute to shop stealing being regarded as a 'harder crime', more accurately reflecting its real cost to the community and significance as the potentially the largest single property crime category.

Civil Recovery in Australia

There is a **consensus of support** for the introduction of a civil recovery process from stakeholders, including the Australian Retailers Association, retailers, and loss prevention practitioners.

However, there has been no significant progress towards implementation to date.

Perhaps the greatest use of the process to date, has been in regards to staff dishonesty incidents investigated by Pro Active Strategies Pty Ltd, where monies recovered include not only the amount stolen (product and cash) but also the cost of investigation and other costs of the victim directly related to the incident.

Recoveries in this area over many years indicate that the process provide an avenue for victims to recover the often significant costs associated with internal dishonesty, from offenders.

The Use of Civil Recovery – Commonwealth Countries

In the UK, Canada & New Zealand, civil recovery programs operate without the benefits of specific legislation for debt enforcement, and therefore on the basis of the civil law of tort.

United Kingdom

In a pilot study in the UK, the net shrinkage benefit of the pilot stores (over the control group) was 25.4%, with the process now operating across many retailers via both a central provider and in house programs operated by retailers. (Bamfield, 1997).

Despite the lack of specific civil recovery legislation, the civil law of tort and the concept of seeking damages from the suspect who 'converted' the property of the victim, is used widely with growing acceptance by the public and the courts.

Professor Joshua Bamfield of the University of Nottingham initially piloted the process in cooperation with UK retailers and the British Retail Consortium, and now operates the program as a private provider – Retail Loss Prevention Ltd.

The pilot in the West Midlands ran from October 1998 to March 1999.

The net total stock loss reduction by the pilot stores was £206,000, compared with a fall of only £33,000 in the control stores.

For those stores reporting shrinkage as a percentage of sales (38 of 44 stores) civil recovery stores cut their shrinkage figures by almost 15%, compared to a rise in the average shrinkage rate of 9.5% in the control stores.

Thus, the net shrinkage benefit of the pilot stores over the controls was 25.4%.

Importantly, civil recovery stores in the pilot area experienced a greater fall in shrinkage and the number of incidents than a sample of non-civil recovery stores in the same area.

There was no evidence of significant displacement, particularly as the net performance gains of the pilot stores greatly exceeded the losses of the control stores.

The findings from this pilot supported the premise that civil recovery has a measurable effect in reducing loss prevention indices for the number of theft incidents and the percentage shrinkage rate.

On this basis, civil recovery is now used by many retailers in England and Wales, with pilot programs underway in Scotland and Ireland.

Several test cases have provided important precedents in regards to both thefts by customers and by employees.

Civil recovery has been tested in the civil courts in the UK in regards to both thefts by customers and employees.

In the case of *Tesco V Kular*, Tesco (a supermarket chain) won £344.53 compensation in Nottingham County court from Kular, who had stolen goods valued at £110.95 from its Superstore. He had been fined £100 in the Magistrates Court as a result of a finding of guilt for theft, however had not made payment for the civil demand made by Tesco.

Tesco's civil recovery claim was granted in full, and included staff time take up with the case, unsaleable merchandise and a contribution to CCTV costs. Additionally an award of £82.60 for interest and legal fees was also made.

In the case of *HMV V Plummer*, HMV was awarded £1,464.27 by Nottingham County Court in 2000 in a case against a professional shop thief, Lloyd George Plummer.

Plummer had been arrested in the HMV Merry Hill store in November for the theft of 51 CDs, and was fined £100 for the offence in the Magistrates court, plus £50 costs.

In the civil case, HMV was awarded £343.61 in damages and £1,080 to cover its legal costs.

The damages were made up of £100 in lost profits, £220.22 for the costs of security staff and the civil recovery process, and £21.29 for a proportion of CCTV, radio link, and the electronic tagging system (EAS).

The judges decision in this case gave full legal backing to the retail civil recovery process, and to the methods used to calculate the victims losses, which he described as being 'a proper basis' for the claim.

Legal precedent has also been achieved in relation to theft by an employee.

In Littlewoods V Ishfaq, Littlewoods won £6,480 in costs, losses, and expenses in a successful civil recovery case.

Wajid Ishfaq, who had been found guilty of one incident of staff theft in the Burton Trent Littlewoods store was sued by the company in Nottingham County Court for costs and damages for a series of thefts.

Littlewoods were awarded, £3,034.87 for 29 counts of theft over 6 months, £343 for the internal costs of investigating, detaining and evidence preparation, £2,090 for the costs of a covert CCTV camera installed specifically to detect his offences, £742.53 as interest at 8% from the date of the offence, and £2,000 in legal costs.

In total therefore, Littlewoods was awarded £6,480 in costs, losses and expenses plus a further £2000 in legal costs relating to the civil recovery claim.

In the UK, a typical claim against a shoplifter may involve a sum of £60 - £150 (\$145 – \$363 AUD), with approximately 45% of all detected offenders receiving a civil recovery claim, and approximately 45% of those making payment without the requirement for pursuit via the civil court.

The bulk of civil recovery cases relate to shoplifting (90%), with the remaining 10% relating to theft by employees.

New Zealand

By comparison, New Zealand retailers and civil recovery agencies acting on their behalf appear reluctant to pursue test cases.

In New Zealand retailers who use civil recovery do so either by administering their own program in house, or through the provider Thefttec, which is a division of the Tyco Corporation.

The program operated by Thefttec has been in place since 2000, and is based on the UK model instigated by Professor Joshua Bamfield of Retail Loss Prevention.

As a provider of security personnel to retailers, there could be seen to be a conflict of interests by Theftec in also providing civil recovery services, as well as a motivator for detection in preference to prevention.

Take-up of this process has been greatest amongst supermarket chains, with external theft being the focus.

There is little use of deterrence signage displayed in stores of participating retailers, with recovery rates believed to be approximately 30% on initial demand and a subsequent additional 10% on further demands, with a high proportion of non payers being un-locatable.

Statistics arising out of data collected on offenders is shared amongst participating retailers, for example the ratio of male to female offenders and age groups.

Although deterrence signage supplied to participating retailers outlines that a claim could include costs associated with the merchandise, staff time, a proportion of security costs, and the costs of the civil recovery process, in effect only the actual cost of staff time at a pre determined rate is applied in the claims.

In New Zealand, a typical claim against a shoplifter may involve a sum of \$250 (NZ) (\$220 AUD), with a similar average payment rate to the UK reported.

As in the UK model, the bulk of civil recovery cases relate to shoplifting, with a small proportion of employee thefts being pursued for civil recovery.

Canada

An interesting contrast was found in Canada, where retailers follow a model more like the UK one, than that of their US neighbors approach.

The similarity of the legal framework in Canada to the other Commonwealth countries using the process in the absence of legislation is seen as the preference for this model as opposed to the US approach.

Canadian retailers who use civil recovery in Canada do so either by administering their own program in house, or through the various providers.

Particularly interesting was the difference in approach by US retailers who also operate in Canada, who demonstrated a reluctance to implement civil recovery in their Canadian stores whilst aggressively pursuing the process in the US.

The major reason cited for the disparity being the lack of civil recovery legislation in Canada and the feeling that the process would not be pursued in the absence of such legislation.

The retailers who do use the process in Canada however, report that despite some bad press early in its inception, they are receiving a reasonable ratio of payments from suspects to whom claims are issued.

The practice in Canada has been pioneered by two major retailers who commenced programs in 1993 using an external agency, with all offences being pursued for civil recovery also being reported to the police as a matter of practice.

Typically, the retailer will 'ban' the offender at the time of issuing a civil recovery notice in an attempt to mitigate future risk.

Typically, external providers in Canada apply a standard average amount of \$350 (Canadian) (\$383 AUD), in regards to customer theft and \$700 (Canadian) (\$766 AUD), in regards to staff theft incidents, with similar compliance rates to other countries reported.

The Use of Civil Recovery – United States of America

The US experience with civil recovery spans 30 years, with the majority of retailers participating in either in house programs or those administered by an 'industry' of provider companies.

Civil Recovery programs have been in operation overseas in the USA since approximately 1972, with the majority of States now having passed civil recovery legislation.

The first civil recovery law arose from a Nevada statute dealing with the theft of library materials.

Since then the majority of States have passed legislation dealing with retail theft and civil recovery, however because each state has autonomy, the laws are not consistent.

The complexity and lack of consistency regarding legislation by State, is seen as a contributor for the preference to use civil recovery agencies to administer the process as opposed to the 'in house' option.

Typically, these providers have used legal personnel to administer and interpret the varying laws, with this complexity also cited by some retailers as the reason they do not participate in the practice.

In the USA however, the presence of legislation is attributed to a greater majority of offenders paying the costs claim without further legal actions being required, than in comparison to countries without such legislation.

US retailers generally report civil recovery to be a successful component in their broader loss prevention program, with most arguing that there is a deterrence effect, in particular with the amateur and occasional thief, as well as the juvenile thief.

Of course another outcome seen as beneficial is the revenue derived that goes some way to paying for security related costs.

In terms of the crime prevention outcome, the US experience indicates approximately 25% reduction in retail theft in businesses participating in Civil Recovery programs.

Like the other models, the process involves the retailer notifying the thief at the time of apprehension of the intent to make a civil recovery demand, allowing for recourse in all incidents of theft, not only those that meet the criteria of police attendance, and allowing the retailer to recover costs prior to or in the absence of a criminal prosecution.

The legislation provides varying formulas to guide retailers as to the amount claimed, and controls the amount that can be claimed by a retailer as well as dealing with special circumstances, for example, claims against juveniles.

The laws in general, allow for reimbursement of the victim for the costs associated with the protection and recovery of its merchandise.

Costs including, those associated with both the personnel involved in the detection and processing of the offender, and the physical security measures used, i.e.; cameras and security tag systems are included in the those able to be claimed.

The evolution of the civil recovery laws in the USA over on a State by State basis has resulted in a diverse variety of formats in regards to inclusions, exclusions, formulas and maximum amounts able to be claimed.

Some models provide for a claim in the amount of a multiple of the retail price of the merchandise involved (and in most cases recovered), for example, 2-3 x the retail price.

Under this model, in the case of the stolen merchandise being one CD, which is recovered undamaged, and has a retail price of \$30, a claim of \$90 from the thief (representing a proportion of the costs of the incident) could result.

Other models provide for an 'average' amount which is considered representative of the average value of merchandise stolen by external thieves, plus an 'average' of the costs of retailers per incident, apportioned from total investment in both personnel and physical security measures.

The evolution of the civil recovery process in the USA, has however not included the inclusion of intangible products and services, such as mobile phone and equipment rental costs, with monies also not being included in the definition of 'property', thus precluding many employee theft cases.

In regards to offences by juveniles, legislation varies by State, with some versions providing for parents being held responsible for the civil debt of minors, including 'emancipated minors'.

The initial demand notice is basically a settlement offer, which outlines the process that the retailer may choose to pursue on non payment.

Civil Recovery providers indicate that approximately 90% of the civil demands relate to external theft or shop stealing, with only 10% relating to demands against staff thieves.

The demand letter process typically incorporates an initial letter followed by 2 subsequent demands.

Where a standard average claim amount is used, typically the claim amount is \$250 (US) for shop stealing and \$500 for staff theft situations.

Approximately 40-50% of recipients pay via this demand letter process.

Between 18 – 30% of the claimed amount is typically retained by the recovery agency, with the remainder passed on to the retailer.

Administration of the Civil Recovery process

The administrative process associated with the issuing demand notices and pursuit of offenders for recovery can be either directly administered by individual retailers as an in house function, or alternatively administered by an agency on behalf of multiple retailers.

Where there is a private provider, they typically retain a percentage of the recovered monies as payment for services.

Retailers issue a notice indicating intention to pursue civil recovery to the offender at the time of detection and subsequently submit a copy in addition to more a detailed incident report and statement to the provider.

The provider (or in some cases the retailer) determines on a case by case basis, if civil recovery is to be applied and the demand process commences.

Subsequently, further pursuit of non paying offenders is determined on a case by case basis, often by consultation between the provider and the retailer.

The speed of the process impacts greatly on the ratio of payments received on first and subsequent demands, with the highest ratio of payments made where the initial demand is received within a week of the detection date.

Additionally, offenders can be excluded from entering the retailer's premises, at the time of the detection.

Legislation

The study of the US evolution of civil recovery legislation is valuable in terms of learning about the most successful and inclusive model, as well as those that are lacking and in practice restrict the process perhaps more than was intended by the legislators.

The major finding from the US legislative models, is that inconsistent law by State contributes to retailers finding the practice too complex or costly to implement.

This outcome would affect small to medium retailers who trade across more than one State the most, as they would be less likely to have access to or be in a position to afford legal advice to interpret varying laws.

Ideally any legislation and Code of Practice regarding the process of civil recovery, will provide a clear, practical and economic methodology accessible to all retail sectors, providing the choice of perusal via an in house program or via an agency.

Ideally legislation will include reference to these specific areas, so that in fact there is an allowance for anything that has value to the victim, tangible or intangible, that has a relationship to the offence and relates to a monetary loss or cost to the victim.

In regards to the ideal framework and inclusions of civil recovery legislation, the following areas should ideally be considered :

- theft of monies or other non product assets of the victim;
- the responsibility of parents or guardians for actions by juveniles;
- theft of 'not for sale' items such as testers;
- the unlawful use or theft of shopping trolleys;
- theft (use or loss as a result of use) of intangible items such as phone costs;

The ideal formula will involve a presumed damages amount up to a maximum amount, i.e: \$300 per shop stealing incident, and at minimum double this amount for staff theft incidents without proof of specific costs incurred.

This claim amount would be accepted by the courts as an acceptable average of the damages caused by the offender to the victim.

In the event of the victim making claim for a higher amount than this 'average', the victim would be required to substantiate the quantification of losses or costs claimed in the event of the victim choosing to pursue a non paying offender in the civil court.

Retail Crime Research

American retailers have contributed to studies of retail theft for many years, providing a substantial body of research on the status of losses by retailers, contributors to losses, and strategies used in Asset Protection or Loss Prevention programs.

The National Retail Security Survey has been conducted for the last decade by Dr Richard Hollinger of the University of Florida Department of Sociology and Centre for Studies in Criminology and Law (National Retail Security Survey 2002).

The principal objectives of the NRSS is to ascertain the level of inventory shrinkage experienced by various types of retail businesses in the US market, and the perceived sources of shrinkage as assessed by loss prevention executives.

The 2002 survey report reflects responses by 118 retail companies representing 22 different retail segments.

Findings included that on average US retailers suffered a shrinkage rate of 1.70% (at retail) of total annual sales.

Participants reported a perception that customer theft accounted for 32% of all shrinkage, with 48% attributed to employee theft.

In regards to customer theft, the average value of goods stolen was reported as being \$207 (AUD \$304).

In regards to staff theft, the average value of goods stolen was reported as being \$1,341 (AUD \$1,972).

The 2001, 9th Retail Crime Survey by the British Retail Consortium findings included, a perception by respondents that customer theft accounted for 47% of all shrinkage, with 35% attributed to employee theft.

In regards to customer theft, participants reported the average value of goods stolen being £111 (Aud \$272), with the average value of staff theft incidents being £591. (Aud \$ 1,430).

The ratio of customer theft suspects detained passed to the police was 55%, with 53% of staff theft suspects reported to police.

A 1999 study by Dr John Guthrie of the New Zealand Centre for Retail Research and Studies, Department of Marketing, University of Otago, Dunedin, followed an initial 1996 study (Guthrie 1999).

In the 1999 study, 84 New Zealand retailers representing 458 retail premises, responded by completing a questionnaire.

Findings included, a perception by respondents that customer theft accounted for 56.6% of all shrinkage, with 25.9% attributed to employee theft.

In regards to customer theft, participants reported the average value of goods stolen being \$59, (Aud \$52) with 74% of incidents involving merchandise valued at less than \$50.

Victims reported offenders in customer theft incidents to the police in 16.17% of occasions, with 65% of customer thefts being detected by sales staff, with 13.6% detected by security staff.

In regards to staff theft, participants reported the average value of theft being \$280 (AUD \$246).

Victims terminated the employment of offending staff in 30.5% of staff theft incidents, however reported only 3.3% of all detected staff theft incidents to the police.

In regards to civil recovery, 84.6% of respondents supported the implementation of civil recovery laws, with 15.5% stating they did not know or have an opinion.

The New Zealand Retailers Association continues to be instrumental in promoting research regarding retail crime and in lobbying government on behalf of its membership and the New Zealand retail sector.

In Canada, the Retail Council of Canada has been conducting surveys to measure losses attributed to shrinkage in the Canadian retail sector since 1985 (Retail Security Report 2001).

The 2001 Canadian Retail Sector Report reported total annual inventory shrinkage of 1.8% of their sales, or 3.1 billion.

Retailers attributed customer theft as contributing to 38% of losses, staff theft as 33%, administration error at 21%, and vendor fraud at 8%.

The total loss of \$3.1 (CAD) billion per year representing approximately 6.7% of the annual cost of all crime.

The average loss per shop stealing incident was cited at \$67 AUD (\$152 CAD), with the average staff theft incident at \$667 AUD (\$609 CAD).

Additional Crime Prevention Strategies

Education & Rehabilitation

A significant proportion of shop stealing is seen by loss prevention practitioners to demonstrate that it is typically a 'normal person passive property crime' committed by a wide demographic of the community, most of who are not influenced to steal by economic need, and many of which can be deemed as habitual thieves.

Based on this premise, not only is the concept of civil recovery appropriate and ideally successful in terms of compliance; there may also be room for consideration of additional non criminal sanctions.

An education program for shop stealers, 'Shoplifters Alternative' is operated in the USA by a private organisation who work with some civil recovery agencies and individual retailers to provide a resource ideally for the re education of habitual shop stealers.

Much the same as addiction programs for substance abuse or violent behaviour, the courts can also direct offenders at sentencing to attend an education program as part of the courts sanctions.

Some retailers incorporate the promotion of these education programs into their own in house run civil recovery programs by enclosing a voucher for a free education program with the civil recovery demand letter, even offering a discounted civil demand total if the education program is attended.

Another scenario involves the offender being advised at the time of apprehension that the civil demand will be waived on successful completion of the education program, as well as consideration being given to reinstatement of 'shopping privileges' where generally the retailer would exclude or ban offenders from their premises.

Where this offer is taken up, effectively, these retailers are paying for the education program costs as an investment in the rehabilitation of habitual offenders.

Results can include a higher than average payment of civil demands, put down to the recipient appreciating the retailers offer, with part of these recovered funds being used to fund the education program costs.

Police, the courts, and the retailer can also refer offenders to education programs, with the offender paying for the program.

In the case of referral by the police, when offered an alternative of completing an education program or being prosecuted, 70% of offenders are reported to take and complete the program (Shoplifters Survey 2003).

This combination of strategies provides an interesting approach to the issue of the incidence and cost of retail theft, and the acceptance of the victim of not only control over the process, but also some long term responsibility for crime prevention.

In regards to the benefits of incorporating an education program in the civil recovery process, it can be seen as a means of 'softening' the sometimes negative connotations around civil recovery, by offering a self help option to offenders, as well as providing some transparency regarding the use of a proportion of the recovered funds, where a retailer subsidises the education program costs.

Additional broader benefits could be seen to be realised through community relations, and generation or retention of customer loyalty amongst the family and friends of offenders whose shopping habits can be influenced by actions against the offender.

Based on studies by Shoplifters Alternative parent company 'Shoplifters Anonymous Inc. great benefits in theft reduction can be gained from targeting the 'habitual offender' considered to be the 27% of offenders responsible for 85% of all shop stealing offences (Shoplifters Survey 2003).

Shoplifters Alternative claim that the recidivism rate (participants who are arrested again) at less than 3%, compared to 25% for those who do not participate in the programs.

In Canada, the Elizabeth Fry Society of Peel-Halton in Brampton, Ontario developed a diversion project called 'An Alternative Justice Response.' (Gushue 2003)

Participants of the program are referred at the time of apprehension if they fit the program criteria (non-professional offenders), and are referred to a counseling service and additional therapy services.

The outcome is the development of a tailored plan which can incorporate the delivery of a verbal or written apology to the victim, providing a charitable contribution, performing community service, and providing restitution or compensation.

Failure to comply with the imposed sanctions results in the processing of the original criminal charge through the justice system.

In total, 4% of the Brampton Provincial Courts total caseload is diverted through the program. (Gushue 2003)

Proponents of the education sanction believe that shop stealing in some cases is an addictive behaviour, not unlike substance abuse, with education which is both punitive and supportive, being one method of influencing offender behaviour, most suited to the habitual non-professional offender.

In addition it is seen as a practical and cost-effective method of reducing the numbers and therefore the costs of processing of shop stealing offences in the courts system.

The perspective of retailers regarding education programs for shop stealers was found to vary dramatically, with some considering the concept of investing in time and money with an individual who stole from their business as abhorrent.

Others see this strategy as one option for consideration as part of their overall asset protection plan, in some cases directly diverting civil recovery income to the funding of education programs.

The success of education programs although difficult to quantify, could provide a means to change behaviour that is not currently provided by criminal or proposed civil sanctions.

In terms of community costs, the long term benefit of reduction in recidivism could also be realized in a reduction of costs associated with sanctions such as probation and incarceration.

In the Shoplifters Alternative 2003 shoplifter's survey, habitual shoplifters rated in participation in an education program as equal to the deterrent of prosecution, followed by the imposing of a civil recovery fine.

Perhaps the greatest opportunity for the education option, is in regards to juvenile offenders, with parents being provided with a tool to assist them in dealing with the outcome of their child's actions, as well as recognition by retailers, police and the courts that there is potential for rehabilitation.

Another area where education could be used effectively, is in cases where police issue a shopstealing warning notice in lieu of prosecuting.

This sanction for example in Victoria, is applicable in circumstances where the offender has not been previously convicted or issued with a warning notice, where the value of the merchandise involved is less than a prescribed value and where the offence is not in a series of offences.

In Victoria, 38% of all reported shop stealing offences (under the shopsteal category) result in the issuing of a caution (including shop stealing warning notices).

Although this sanction is effective in terms of diversion of shop stealing offenders away from the court system (thus reducing associated costs) and provision of an alternative to criminal prosecution, it is often seen by victims as a 'soft option', that provides little deterrent and a free pass response to the first detection.

Of course this 'free pass first time' sanction could be seen to be naïve, in terms of the unlikeliness that the first detection is actually the first incident of retail theft committed by an individual.

Considering the purported average of one detection resulting in apprehension per 95 – 100 offences, additional imposition of a requirement for the offender to complete an education program, recognizes this incidence to detection ratio, as well as providing for an increased onus on the offender for responsibility for their actions, and greater satisfaction by victims with this sanction.

The imposing of an educational sanction is already used in regards to offences of drink driving and some violence related crimes, providing a model and perhaps success indication of this option.

Conclusion and Recommendations

Quantifying the cost of Retail Crime

From applying the findings of overseas studies to Australia, it would be reasonable to estimate that 77% of all losses retailers suffer can be attributed to theft (both internal and external), with this representing 2 billion dollars per annum.

In terms of the significance of 'retail crime' as a proportion of all reported crime.

Theft from retailers represents 13% of all reported crimes, and it is one of the most unreported crimes.

Whilst it could be said that there are overwhelming motives for report of theft of vehicles or burglaries, the same cannot be said for the report of retail crime.

Where the retailer perceives little if any benefit from reporting detected theft, in many cases, even when the offender has been apprehended, the theft is not reported.

There is a low level of confidence amongst retailers regarding the response of law enforcement and of the criminal justice system to deal with what is essentially a property crime, but that represents in terms of incidence and cost, a major crime component.

Civil Recovery as a response to Retail Crime

Civil recovery is a sanction that is in the control of the retailer; it can be initiated immediately by the victim and pursued at the discretion of the victim, without the input or restrictions of law enforcement agencies and without any impact or reliance on the progress of criminal action.

In terms of the victims, the customer is ultimately adversely affected in terms of convenience, with wanted products not being available due to theft and potentially financially, as retailers may not be able to operate as competitively as liked due to the impact of the cost of theft on retail margins.

The retailer is adversely affected via not only the cost of the property, but also the additional costs that they incur in preventing and detecting theft, including the cost of physical security measures, loss prevention strategies, and investigation.

In terms of retail margins, the costs associated with theft can effectively result in the business being unviable, with flow on effects to the community.

Civil Recovery is a process that allows retailers to directly recover the costs they encounter when dealing with crimes committed against them, from the person responsible for the theft.

It is a basic 'user pays' concept.

The crimes could be thefts of merchandise, company assets, or cash, by an external thief (a shoplifter) or internal thief (a staff member).

The practice of civil recovery ideally fills a gap, where the retailer detects a theft (whether external or internal) and deals with the outcomes of – the employment relationship (staff), and criminal action (where appropriate); to provide an additional outcome of pursuit of recovery of associated costs.

Retailers perceive a lack of control over the process, and outcomes in the case of a theft being reported to the police for criminal prosecution, the victim has little control over the process, the investigation process, the timing and scope, the eventuality of the investigation leading to a criminal charge, and the outcome of that charge.

The criminal justice system is not an avenue for recovery of costs borne by the retailer regarding the specific offence or for a proportion of costs associated with the offence and the risk and incidence of retail theft in general.

The civil recovery process should be administered ethically, in that the driving factors behind a program is crime prevention through deterrence.

The addition of education programs for non-professional offenders, ideally linked to a sanction such as the shopstealing warning notice system, or as an alternative to a court imposed sanction in appropriate cases, should be further explored potentially as both a long term preventative measure and as a community responsibility to rehabilitation.

Civil recovery programs that provide a deterrent to shop stealing, as well as allowing retailers to recover some of the costs associated with security expenditure, are operating successfully overseas, with specific civil recovery legislation in place in the USA.

Ideally any process developed for use in Australia, will be practical enough for retailers to make a choice of how they administer it within their business.

In terms of complexity, there should not be any barriers to smaller retailers with less administrative resources in using the process.

In New Zealand, the United Kingdom, Canada, and the USA, the major benefits observed from private companies acting as agencies, has been in the centralization of offender data and crime behavioural statistics.

Retailer participants would ideally have access to their own current and historical data regarding offenders and incidents and would be able to share relevant information with other retailers and with law enforcement, for the purpose of identification of habitual offenders.

Ideally the current Privacy requirements will allow for a level of data sharing, within guidelines so that this additional crime prevention benefit can be realized.

Further inquiries and clarification of the provisions for the recording and sharing of data under the law enforcement exemption in the Privacy Act are recommended.

Application of the Civil Recovery process by Retailers

As civil recovery is not an alternative to the criminal justice system, it is recommended that the decision by retailers to report a theft to the police, not be influenced by whether it is intended to make a civil demand.

The best outcomes in terms of deterrence and therefore crime prevention can be achieved through both the reporting of the offence to the police with a view to criminal prosecution, and in addition the application of civil recovery.

Consistency in this regard would ensure fairness in approach, would remove any claim of criminal prosecution not being pursued, in lieu of payment of a civil demand, and would increase the accuracy of the 'reported crime' figures, to provide a better picture of the relationship between actual incidence and reported incidence.

However, the application of civil recovery should not be mandatory for all offenders, as special consideration may be required, with the demand process waived, for example if the offender is suffering from mental incapacitation.

Additionally, guidelines that define those suitable, or not suitable for pursuit of civil recovery with consideration of possible discrimination issues, will assist in fairness of application and in public acceptance.

Special consideration should be given to offences by juveniles, to provide for responsibility by a parent or guardian.

Additionally, the taking or using of supermarket type trolleys could warrant specific reference, to provide for inclusion of these assets which represent significant losses to retailers who use and 'lose' them.

Education

It is considered that there is a need and a resulting benefit from the education of retailers, law enforcement, the judiciary, and the public in regard to the scale and cost of retail theft in addition to education regarding the civil recovery process.

Additionally, educational and training material would ideally be developed for distribution to retailers, the police, the judiciary, and for use in crime prevention initiatives, including seminars to juveniles via the Education system, in an effort to shape community perceptions and promote the 'anti-theft' message.

The use of education of offenders as a rehabilitation option warrants further research.

Specific Recommendations

Development of a Code of Practice

As civil recovery can and is currently used to a small degree in Australia, it is recommended that a Code of Practice be drafted in lieu of legislation being available, to specify agreed terms in that it -

- Requires that retailers who intend to use the process display deterrence signage to ensure the full benefit as a crime prevention strategy is realized
- Specify particular inclusions or exclusions regarding application
- Specifies the formula for quantifying the amount of the demand
- Specifies the timing and wording of the initial and subsequent demand letters and methods of debt recovery
- Specifies access and dissemination of information held by retailers about offenders shop thieves
- Requires that offenders be reported to the police where a civil demand is anticipated

Research

Conduct of research into the costs of retail crime and to the contributors

Retail Theft Crime Recording and response

A more significant focus by law enforcement Nationally, incorporating:

- Development of a Nationally consistent method of reporting 'Retail Theft'
- A protocol for provision of feedback to victims of retail theft regarding progress and outcomes, to encourage reporting
- A greater proportion of law enforcement resources being directed to response to retail crime and analysis of retail crime trends
- Targeting of professional retail theft operations and receivers of stolen retail product

Pilot Program

It is recommended that a pilot civil recovery program be conducted.

The pilot would ideally test the procedures and their application, with the results being used to demonstrate the effectiveness of the program in terms of –

- reduction in shrinkage (loses) of retailers
- rate of recovery by retailers of costs associated with offences
- compliance of offenders with the demand process
- reduction of the incidence of retail theft
- provision of an ongoing deterrent to habitual offenders
- success of claims taken to the civil courts

Education

Development of education programs to achieve;

- Greater awareness by the community of the impact of retail theft
- A more consistent response by police in response and recording of retail theft offences
- An increase in the awareness of retailers for the need for reporting of retail theft
- A deterrent to juveniles in the committing of retail theft
- Greater consistency in sentencing practices by the judiciary
- Provision of a education based rehabilitation sanction for offenders

Legislation

A Civil Recovery law that provides a framework for the process would ensure the process is fair to all parties and provide retailers with the right to demand costs from offenders within specific criteria.

Drafting of legislation that defines retail crime, and quantifies when and how civil recovery can be used as a sanction by a retailer as well as determining the special damages included in a claim, should ideally include, define and quantify:

- the cost of the stolen property (where it is not recovered in merchantable condition)
- the inclusions and cost of intangible property where a retailer has suffered a loss
- the cost of damage to property
- the costs of staff and management time in dealing with thefts
- the costs of investigation
- the costs of purchase and operation of security equipment , and
- the costs of the civil recovery process, including the costs of any subsequent court process.

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