



## Australian Domestic & Family Violence Clearinghouse

### **AUSTRALIAN INSTITUTE OF FAMILY STUDIES CONFERENCE 2010: SUSTAINING FAMILIES IN CHALLENGING TIMES**

**THURSDAY, 8 JULY 2010**

#### **BREAKOUT SESSION 26: FAMILY VIOLENCE**

*Title: Victim compensation and domestic violence – a national overview*

*Presenter: Isobelle Barrett Meyering*

#### **INTRODUCTION**

**[Slide 1]**

I'm very pleased to be speaking on the topic of victim compensation and domestic violence in this session. It's a topic that, I think, goes to the heart of the conference theme, *Sustaining Families in Challenging Times* – and it's also an issue that it's useful to have a national perspective on.

#### **OVERVIEW**

**[Slide 2]**

What I want to do today is to:

- Introduce you to the basics of victim compensation schemes around Australia
- Give you some context for the research I've undertaken in this area and a sense of how the different states and territories compare
- And look at where we might go from here, by setting out some policy and research directions for the future.

#### **THE BASICS**

**[Slide 3]**

I'm assuming that most of you probably don't know a lot about victim compensation – or that if you do, your knowledge is limited to the scheme in your state or territory – so I wanted to start off with some of the basics of the schemes.

**[Slide 4]**

The first thing to note about victim compensation schemes is that they provide awards to victims of criminal acts of violence. In practice what that means is that they only cover a small part of the spectrum of behaviours that we understand to comprise family violence.

The second thing to note is that they are statutory schemes – that is, they are government funded. This differentiates them from two other important legal avenues of compensation for victims of family violence:

- Sentencing or reparation orders, which can be made when an offender is convicted
- Civil litigation.

While these remedies are important, they are often even more difficult for women to access – which is part of why victim rights groups began advocating for a statutory scheme in the first place.

The third and final thing to keep in mind when we're talking about victim compensation is that it's available to a range of victim categories. In the context of family violence, there are a number of different scenarios where claims might be made:

- In terms of primary victims, we would usually be thinking about a woman who is assaulted by her partner and that's going to be the focus of my presentation today. However, we might also be looking at a child who has been physically or sexually abused by one or more of their family members, or a grandparent who has been subjected to elder abuse.
- In terms of secondary victims – who are covered in five of the eight states and territories – we might be looking at the parent of that child who has been abused by another family member – or we might be looking at a child who has witnessed their mother being assaulted by their father.

- And finally, in cases of intimate partner homicide, the parents, siblings or children of the murder victim would be eligible for compensation.

**[Slide 5]**

To illustrate some of these scenarios, I've selected a few examples from the ACT, which is unique in providing case summaries of all of the victim compensation awards made each year.

As you can see, these first two cases involved women who were assaulted by their partners. They experienced physical and psychological injuries, and in both cases the offender was charged, and in at least one case they were convicted. These two cases are quite indicative of the ACT system, whereby victims can only claim compensation if they report the act of violence to police – other states are less strict in this area, an issue I'll come back to.

**[Slide 6]**

These next two cases involved children who were sexually assaulted by family members. In the first case, the mother and her partner had perpetrated the abuse, while in the second case the offence was committed by the child's adoptive father. What's interesting about this second case is that the application was made by the adoptive mother on behalf of the child, who was the primary victim – but if this case had occurred in one of the five states which provide compensation to secondary victims, the adoptive mother may have been able to make her own independent claim for compensation.

These four cases illustrate some of the disparities between different jurisdictions – which is really the key issue that I want to come to later in this presentation.

**[Slide 7]**

As you would also have seen from these case studies, the awards for victim compensation can be reasonably substantial – and in fact, they go up to \$75 000 depending on what state you're in. In terms of thinking about the importance of victim compensation – certainly that is one of the very practical benefits of the scheme.

However, there are a range of less tangible, symbolic benefits. For example, victim compensation may have therapeutic benefits in terms of validating women's experiences.

Another point which is often made about the compensation process is that it is victim centred – in contrast to criminal proceedings where the focus is on the offender, an issue which has long concerned domestic violence victims and their advocates.

These benefits aren't just recognised by researchers – I think there is also broad consensus among governments and policy makers that victim compensation is important – although there also obviously tensions there when it comes to paying it out.

That brings me to the policy context for this presentation.

#### **[Slide 8]**

#### **CONTEXT**

It is an interesting time to be talking about victim compensation. It certainly seems to me that victim compensation is once again on the political agenda, in a way that it probably hasn't been for some time.

#### **[Slide 9]**

Just in the last year, two states have undertaken general reviews of their victim compensation schemes – Queensland, where a review in 2008 led to the establishment of a new scheme, Victims Assist, in December last year; and Victoria, where a review is currently underway.

At the same time, within the family violence sector, we've seen both the National Council to Reduce Violence against Women and their Children and the Australian Law Reform Commission take up the issue of compensation.

#### **[Slide 10]**

There have also been some signals from the Commonwealth Government that this is an area of concern to them. This last quote comes from the Attorney General's address to the Family Violence Prevention Legal Services National Conference in May this year, in which he also announced one-off funding of \$3 million towards legal assistance and awareness raising in this area.

It's within this context of renewed policy interest that we have also been undertaking research in this area at the Clearinghouse.

**[Slide 11]**

Our interest was first sparked by a study which we are currently completing on financial security for women affected by domestic violence. That study involved interviews with 57 women and 50 workers at eight services across Queensland, South Australia and Victoria. We were somewhat concerned to find that very few women had utilised compensation, and moreover, that most service workers reported limited experience or knowledge of their state scheme.

As a result, we decided to take a closer look at women's entitlements to victim compensation ourselves. In January this year, we published a comparative study of the legislation in all eight states and territories as part of our Stakeholder Paper series. I'm going to spend the rest of today going through the key findings from that paper – but for those that are interested in finding out more, I have hardcopies of the full paper with me – and you can also download it from the Clearinghouse web site.

The question that really drove my research for that paper was: how do the states and territories compare?

**[Slide 12] - [Slide 13]**

**DIFFERENT STATES, DIFFERENT MODELS**

What I found is that, while all states and territories provide victim compensation, there are significant disparities across the jurisdictions in terms of the:

- Composition and size of awards (which range from a maximum of \$30 000 in one state to \$75 000 in another)

- Eligibility criteria (for example, whether or not it is mandatory to report the crime to police)
- Application process (with some states processing compensation claims through a purely administrative system and others relying on the courts).

These disparities between the states and territories become even more obvious when we start looking at some of the barriers that women affected by domestic violence face when they consider applying for compensation.

**[Slide 14]**

## **BARRIERS**

For some time now, feminist critics have argued that victim compensation schemes are premised on a 'stranger violence model' – they assume that the victim does not know the assailant, that the violence is a random act and that the victim is not dependent on the assailant. What that means is that women's claims for victim compensation often don't fit the mould of what's required.

I'm going to give you three examples of the 'stranger violence model' today.

The first example is the types of loss that are covered by the schemes. While all of the schemes across Australia cover medical and counselling expenses and loss of earnings – costs that many victims of crime incur – most don't automatically cover security upgrades, home relocation, or house cleaning and repairs, expenses that are often incurred by women leaving violent relationships.

The 'stranger violence model' also emerges in terms of the eligibility requirements for claiming victim compensation. A good example is the requirement that victims report the act of violence to police – which is strictly observed in the ACT, as I mentioned previously – but which also exist in other states and territories, albeit with more discretion to recognise the 'special circumstances' that might 'reasonably' prevent a victim from doing so. We know that, for a whole range of reasons, domestic violence is underreported – making this requirement highly problematic for women trying to claim compensation, particularly where the assessors are ill-formed about the dynamics of domestic violence.

The last example that I've given here of the 'stranger violence model' is the recent trend towards debt recovery. While victim compensation schemes are government funded, there is a growing trend across Australia to try to recover some of this money from offenders. This is contentious issue for the family violence sector. On the one hand, debt recovery policies appear to be an attractive mechanism for increasing perpetrator accountability. On the other hand, there are concerns that they result in greater offender involvement in compensation proceedings – they mean that the offender becomes aware of the compensation application, and in some cases they may also be entitled to access documents or attend compensation hearings. It's an issue which I think needs further exploration.

Finally, in addition to these barriers that originate from the 'stranger violence model' of victim compensation schemes, there are also barriers that relate more generally to women's access to justice – including the question of whether they are aware of schemes in the first place and whether they have access to legal advice when preparing their claim.

### **ARE WOMEN ACCESSING THE SCHEMES?**

So, having identified all of these barriers – and I've only given you a sample today – the big question is: what is their impact in practice? To what extent do they actually prevent women from accessing victim compensation?

#### **[Slide 15]**

To be honest, there are no clear cut answers to those questions. There is very limited data available – and the figures from the two states that we do know about differ significantly, ranging from just 4.8% of the total awards in the ACT in 2008-2009 to 28% of total awards in NSW in 2007-2008 – and that's not including awards for sexual assault.

#### **[Slide 16]**

### **SPECIAL PROVISIONS**

Now, the reason why we are seeing much better outcomes in New South Wales has a lot to do with the introduction of a range of special provisions that specifically address some of the barriers women face. New South Wales was the first jurisdiction in Australia to introduce measures of these kinds in 1996, following the example of the United Kingdom – and four other states have since followed.

I want to spend the rest of this presentation focusing on these measures.

Interestingly, the measures that have been introduced have typically applied to both domestic violence and sexual assault – but in some cases, there have been some key changes just in the area of sexual assault, and I've included them here because obviously they would obviously be relevant to many victims of family violence – and also because they provide a model for where we might head in the future.

Together, the special provisions around domestic violence and sexual assault can be grouped into two main categories.

The first category comprises provisions identifying domestic violence or sexual assault as injuries in their own right and which are attached to specific amounts of money. This category can be further broken down into two groups:

- The creation of new categories of compensable injuries
- The provision of special assistance.

The second category comprises provisions that give greater guidance to assessors on how they assess applications.

### **[Slide 17]**

#### **COMPENSABLE INJURY**

To begin with the first category – in two Australian jurisdictions, offence based awards for domestic violence have been established by introducing new categories of ‘compensable injuries’. This model has been adopted in New South Wales and the Northern Territory, both of which use a tariff system to award compensation – in other words, there are standard amounts of money associated with particular physical and psychological injuries which you need to nominate when applying for compensation.

Consistent with that approach, in 1996 New South Wales included domestic violence in its schedule of injuries, with a standard award of \$7500 to \$10 000, while also creating three categories of awards for sexual assault, based on the criminal seriousness of the offence.

While New South Wales was no doubt a leader in this area, one of the criticisms that has since been made of its system is that applicants still need to demonstrate that they have experienced harm, although the test is lower – for example, they might still need to provide evidence of psychological harm although they don’t need to meet the criteria of a recognised psychiatric disorder. This defeats one of the purposes of introducing an offence based award for domestic violence, which is to minimise the trauma in having to re-tell and prove one’s story.

In light of that criticism, when the Northern Territory introduced awards for domestic violence and sexual assault in 2006, it did not include a requirement for evidence of harm to be provided. The Northern Territory legislation makes it explicit that the experience of domestic violence is by definition evidence of harm – setting an excellent standard for other jurisdictions to follow.

**[Slide 18]**

**SPECIAL ASSISTANCE**

A somewhat different approach has been taken in the ACT, Queensland and Victoria. None of these jurisdictions use a tariff model so they have instead introduced awards of special assistance, which are essentially awards for pain and suffering. What also differentiates them from New South Wales and the Northern Territory is that the provisions they have adopted are much stronger around the issue of sexual assault than domestic violence.

So as you can see from the PowerPoint slide, in Victoria, there are four categories of awards for special financial assistance – sexual offences are specifically identified and fall into the two highest categories of awards, whereas domestic violence-related offences are not treated differently from non-domestic violence offences. These awards were first introduced in Victoria in 2000 and they are available to victims who suffer a ‘significant adverse effect’, which might include ‘grief, distress, trauma or injury’.

**[Slide 19]**

Queensland’s provisions are very similar to Victoria’s but there is no requirement for the applicant to demonstrate that they experienced a ‘significant adverse effect’. Another noteworthy aspect of the Queensland legislation is its more inclusive definition of injury in cases of sexual assault. The definition recognises the ‘totality’ of adverse impacts of sexual offences, including: sense of violation; reduced self worth or perception; and increased fear or increased feelings of insecurity – something that could also be picked up on in relation to domestic violence.

Finally, we have the Australian Capital Territory, which has another model of special assistance altogether. This assistance is only available to victims who sustain an

‘extremely severe injury’ and in most cases takes the form of a flat award of \$30 000 – but sexual assault victims can claim up to \$50 000.

So as you can see there is a lot of diversity in the types of awards that have been developed for victims of domestic violence and sexual assault, although there is also some overlap.

### **[Slide 20]**

#### **GREATER GUIDANCE**

The same goes for the provisions that have been developed to give greater guidance to assessors when dealing with matters involving domestic violence.

The main innovations in this area have been around the reporting requirements, contributory conduct clauses and the process for requesting time extensions. The importance of these measures is that they remove some – although not all – of the discretion in assessing compensation claims and ensure that the process is better informed about the dynamics of domestic violence. They are discussed in more detail in the Clearinghouse Stakeholder Paper.

#### **COMPARISON**

### **[Slide 21]**

When you put all of this together, the picture that forms is one of limited progress – in particular:

- The size of the awards that have been introduced still remains quite limited
- Some provisions still retain problematic evidence requirements, for example in New South Wales
- The progress around sexual assault has been much greater than around domestic violence.

Above all – as this slide shows, the process of reform remains uneven. Some jurisdictions are not represented at all, and even within the states and territories that have introduced special provisions, the approach has been somewhat ad hoc.

### **[Slide 22]**

## **FUTURE DIRECTIONS**

For that reason, there is certainly still work to be done in this area – and I want to conclude by pointing to some future directions for policy makers and researchers.

### **[Slide 23]**

Within the policy arena, there is clearly a need to amend legislation – for states and territories to adopt, extend or standardise special provisions, depending on how far they have already progressed. It is very encouraging to see that that is also the position being taken by the Australian Law Reform Commission – their recent consultation paper for the Family Violence Inquiry included a whole raft of proposals to that effect.

### **[Slide 24]**

In addition, states and territories should be making it a priority to:

- Review their debt recovery processes
- Boost funding for legal assistance for compensation applications.

More generally, I think that court specialisation and court support services have a role to play here, as mechanisms which have been shown to improve outcomes for domestic violence victims within the justice system.

### **[Slide 25]**

Finally, researchers can also help to build the case for reform in this area by collecting better quantitative data around compensation claims and by renewing the focus on women's experiences of the compensation process.

Our aim, at the end of the day, should be to make sure that victim compensation schemes are made easily accessible to women and families affected by domestic violence so that they are able to utilise this important source of financial assistance and justice.

### **[Slide 26]**