

# Good Law or Bad Lore? The Efficacy of Criminal Injuries Compensation Schemes for Victims of Sexual Abuse: A New Model of Sexual Assault Provisions

CHRISTINE FORSTER<sup>†</sup>

## I. INTRODUCTION

This article seeks to assess the capacity of the criminal injuries compensation schemes that operate in Australia to provide an effective avenue of compensatory redress for victims of sexual abuse. Sexual abuse is pervasive in Australia society,<sup>1</sup> as in other western jurisdictions,<sup>2</sup> and the provision of an *effective* avenue of compensatory redress, this article argues, can provide therapeutic, economic and symbolic benefits. Although three jurisdictions, New South Wales, Queensland, and Victoria, have introduced specific sexual assault provisions into their criminal injuries compensation schemes easing access for some victims,<sup>3</sup> victims of sexual abuse face considerable

---

<sup>†</sup> Faculty of Law, University of New South Wales.

1. See Australian Bureau of Statistics (ABS) *Womens Safety Survey* (Canberra: AGPS, 1996) 14; and more recently ABS *Recorded Crime* (Canberra: AGPS, 2000).
2. In the USA, Russell's findings in 1983 revealed that 38% of a random sample of women had experienced unwanted sexual abuse before the age of 18: D Russell 'The Incidence and Prevalence of Intrafamilial and Extrafamilial Sexual Abuse of Female Children' (1983) *Int'l J Child Abuse Negl* 7. Finkelhor found in 1984 that 15% of women and 6% of men reported that they had been sexually abused before the age of 16: D Finkelhor *Child Sexual Abuse: New Theory and Research* (New York: Free Press, 1984). In 1990 Finkelhor et al found in another study that 27% of girls and 16% of boys reported abuse before the age of 18: D Finkelhor 'New Ideas in Child Sexual Abuse Prevention' in RK Oates (ed) *Understanding and Managing Child Sexual Abuse* (Sydney: Harcourt Brace Jovanovich, 1990). In the UK in 1985, Baker and Duncan found that 12% of women and 8% of men reported abuse before the age of 16: AW Baker & SP Duncan 'Child Sexual Abuse: A Study of Prevalence in Great Britain' (1985) 9 *Child Abuse Negl* 457. In New Zealand in 1988, Mullen et al (below n 8) found that 10% of women reported sexual abuse before the age of 13: PE Mullen, SE Romans-Clarkson, VA Walton & GP Herbison 'Impact of Sexual and Physical Abuse on Women's Mental Health' (1988) *I Lancet* 841. In 1993, Anderson et al, in another New Zealand study, found that 32% women reported sexual abuse before the age of 16: JC Anderson, JL Martin, RE Mullen, S Romans & P Herbison 'The Prevalence of Childhood Sexual Abuse: Experiences in a Community Sample of Women' (1993) 32 *J Am Acad Child Adolesc Psychiatry* 911.
3. Victims Support and Rehabilitation Act 1996 (NSW) Sch 1; Criminal Offence Victims Act 1995 (Qld) Regs 1A(1) & (3); Victims of Crime Assistance Act 1996 (Vic) s 3.

hurdles when they seek compensatory redress in all jurisdictions. At the outset, restrictive pre-conditional clauses place burdens, exacerbated with the adoption of criminal standards, on victims of sexual assault not faced by victims of other crimes. First, the requirement that a 'crime' recognised in the criminal law has occurred excludes some forms of harmful sexual abuse, such as coercive sexual activity where 'consent' is given.<sup>4</sup> Second, a reliance on convictions to establish that a 'crime' has occurred and 'reasonable reporting' clauses, which require that the 'crime' is reported to police authorities within a 'reasonable' time, fail to take account of the consequences of the secrecy and shame that surround sexual abuse. The secrecy and shame has, in part, led to low reporting rates of sexual abuse by victims, a reluctance by police to pursue prosecutions and a low rate of convictions even when prosecutions are pursued<sup>5</sup> particularly in relation to Aboriginal victims.<sup>6</sup> Third, limitation provisions which require that a claim is lodged within a set period of time do not accommodate sexual abuse victims who often do not connect their injuries with the abuse they have experienced until many years after the event. Finally, 'related acts' clauses which reduce multiple 'crimes' into a single crime if they are similar in nature or perpetrated by the same offender, frequently operate to reduce claims by victims of multiple sexual assaults and entrench a view of sexual abuse as an isolated event by a 'depraved' stranger.<sup>7</sup>

If the above pre-conditional clauses are satisfied the schemes create further hurdles for victims of sexual abuse because the narrow categories of compensable injury and loss identified in the schemes do not accord with the injuries typically experienced by victims as evidenced in a significant body of research.<sup>8</sup> The result of the

- 
4. See D Miers 'Criminal Injuries Compensation: The New Regime' (2001) *J Personal Injury* 371, 389.
  5. See J Stubbs 'Sexual Assault, Criminal Justice and Law and Order' (Paper presented at the *Practice and Prevention: Contemporary Issues in Adult Sexual Assault in NSW Conference*, Sydney, 12–14 Feb 2003).
  6. Research suggests that Aboriginal women are less likely to report sexual abuse, the police are less likely to pursue prosecutions if the victim is Aboriginal, and it is less likely the jury or judge will convict if the victim is Aboriginal. See E Carter *Aboriginal Women Speak Out* (Adelaide: Adelaide Rape Crisis Centre, 1987) who estimates 88% of rapes of Aboriginal women are unreported. See also L Kelly 'Indigenous Womens Stories Speak for Themselves: The Policing of Apprehended Violence Orders' (1999) 4(25) *ILB* 4.
  7. See Stubbs above n 5.
  8. L Tong, K Oates & M McDowell 'Personality Development Following Sexual Abuse' (1987) 11 *Child Abuse Negl* 371; J Cohen & A Mannarino 'Psychological Symptoms in Sexually Abused Girls' (1988) 12 *Child Abuse Negl* 571; A Einbender & W Friedrich, 'Psychological Functioning and Behaviour of Sexually Abused Girls' (1989) 57 *J Consult Clin Psychol* 155; I Winfield, L George, M Swartz & D Blazer 'Sexual Assault and Psychiatric Disorders Among a Community Sample of Women' (1990) 147 *Am J Psychiatry* 335; J Beitchman, K Zucker, J Hood, G da Costa & D Akman 'A Review of the Short-term Effects of Child Sexual Abuse' (1991) 15 *Child Abuse Negl* 537; J Bushnell, J Wells & M Oakley-Browne 'Long-Term Effects of Intrafamilial Sexual Abuse in Childhood' (1992) 85 *Acta Psychiatry Scand* 136; P Mullen, J Martin, J Anderson, S Romans & G Herbison 'Childhood Sexual Abuse and Mental Health in Adult Life' (1993) 163 *Br J Psychol* 721; D Fergusson,

discriminatory operation of the pre-conditional clauses and the narrow definition of injury and loss in the schemes is that victims often do not receive compensation commensurate with their injuries. At the same time, the symbolic and therapeutic potential of the scheme is significantly reduced. Finally, the use of criminal notions of harm and injury remove the focus from the injuries suffered by the victim to the culpability of the perpetrator frustrating the underlying restitutionary rationale of the schemes to compensate victims.<sup>9</sup>

This article proposes a new model of sexual assault provisions and recommends that it be introduced into all the criminal injuries compensation schemes operating throughout Australia. That model responds to the literature that identifies the coercive nature of many instances of sexual abuse; the shame and secrecy that often surrounds sexual abuse and the accompanying reluctance of victims to report the matter to state authorities; the 'limited' responses of the police and the criminal justice system towards sexual abuse particularly in relation to Aboriginal victims; and the cultural, social, vocational, psychological, interpersonal, and behavioural effects that victims of sexual abuse typically experience.

Part II overviews the high rate of sexual abuse in the Australian community and details the devastating harms that research indicates are typically suffered by victims of sexual abuse. Part III considers the benefits that an effective model of compensation provides for victims themselves and the wider community. Part IV considers the emergence and rationales of criminal injuries compensation schemes. Part V identifies the source of data on which the research in this article is based. Part VI details the hurdles faced by sexual abuse victims when they seek to access the schemes. Part VII evaluates the three models of sexual assault provisions introduced into New South Wales, Victoria and Queensland. Part VIII proposes a new model of sexual assault provisions.

## II. SEXUAL ABUSE AND THE LEGAL SYSTEM

The incidence and phenomenon of sexual abuse has become a matter of vast public concern in the Australian social and political arena over the past two decades. Its emergence into the public arena did not mark the beginning of sexual abuse as an event but signified the process of the constitution of sexual abuse in Western society as a 'recognisable, harmful behaviour'.<sup>10</sup> This process was sparked, in part,

---

M Lynskey & L Horwood 'Childhood Sexual Abuse and Psychiatric Disorders in Young Adulthood: Part I: The Prevalence of Sexual Abuse and the Factors Associated with Sexual Abuse' (1996) 35 J Am Acad Child Adolesc Psychiatry 1355.

9. See P Burns *Criminal Injury Compensation* 2nd edn (Toronto: Butterworths, 1992) 116.

10. C Smart 'A History of Ambivalence and Conflict in the Discursive Construction of the "Child Victim" of Sexual Abuse' (1999) 8 Social & Legal Studies 393. See a similar statement by C MacKinnon *Feminism Unmodified* (Cambridge: Harvard UP, 1987) 103: 'sexual harassment, the event, is not new to women. It is the law of injuries that it is new to.'

by persistent and vocal demands by various feminist groups,<sup>11</sup> by a growing international focus on the rights of children and women<sup>12</sup> and extensive media attention.<sup>13</sup> Numerous studies around the world have documented and analysed both the incidence<sup>14</sup> and effects<sup>15</sup> of sexual abuse in relation to child and adult victims.

As in other Western nations, research suggests sexual abuse is pervasive in Australian society and that it is mostly perpetrated against women and children irrespective of age, culture, class and background. In 1996, the Australian Bureau of Statistics found that approximately one fifth of women surveyed had experienced sexual violence since the age of 15;<sup>16</sup> however this may be a conservative estimate as those who have been assaulted may either refuse to participate in a study or fail to disclose during an interview for reasons such as shame, fear or denial.<sup>17</sup> In a community study of the prevalence of child sexual abuse in Australia in 1997, Fleming found that 35 per cent of women reported 'some sexual abuse or experience that was unwanted or distressing during childhood'.<sup>18</sup> The Australian Bureau of Statistics recorded that, on a national level, 15 630 sexual assaults were reported to authorities in 2000.<sup>19</sup> Although studies have consistently shown that reported rates of such harm are unacceptably high, those reported rates may underestimate the actual prevalence of sexual abuse in the community. Because of massive under-reporting, it is difficult to estimate with accuracy the numbers of women and children subjected to sexual abuse. According to the 1998 Crime and Safety Australia Survey, a national

- 
11. See R Graycar & J Morgan *The Hidden Gender of Law* 2nd edn (Sydney: Federation Press, 2002) 343.
  12. See the UN Convention on the Rights of the Child (adopted in 1990) to which Australia is a signatory. Article 19 provides that signatories shall take all appropriate legislative and other means including judicial involvement to protect the child from sexual abuse. Article 39 provides that signatories shall undertake all appropriate measures to promote the physical and psychological recovery and social integration of a child victim from abuse in an environment that promotes the health, self-respect and dignity of the child. For a discussion of the growth of international concern with the rights of the child, see H Steiner & P Alston *International Human Rights in Context: Law, Politics, Morals* 2nd edn (Oxford: OUP, 2000) 511-538. See also the Convention on the Elimination of All Forms of Discrimination Against Women (adopted in 1979). The convention obligates countries that ratify it to take 'all appropriate measures to ensure the full development of women in relation to a range of different capacities including their political, educational, employment, health care, economic, social, legal, marriage and family relations'.
  13. See C Atmore 'Towards 2000: Child Sexual Abuse and the Media' in A Howe (ed) *Sexed Crime in the News* (Sydney: Federation Press, 1998) 124, 127; and A Howe 'Notes From a War Zone' in Howe *ibid*, 29, 33.
  14. See above nn 1 and 2.
  15. See above n 8.
  16. See ABS *Womens Safety Survey* above n 1, 14.
  17. See P Eastaale 'The Cultural Context of Rape and Reform' in P Eastaale (ed) *Balancing the Scales Rape, Law Reform and Australian Culture* (Sydney: Federation Press, 1998) 1, 7.
  18. J Fleming 'Prevalence of Childhood Abuse in a Community Sample of Australian Women' (1997) 166 *Med J Aust* 65, 66.
  19. See ABS *Recorded Crime* above n 1.

survey of households, 33 per cent of sexual assaults are reported by victims to the police.<sup>20</sup> That figure is higher than the findings of the Women's Safety Survey, which reported that only 15 per cent of sexual violence had been reported to the police in the preceding 12 months.<sup>21</sup> The Australian research, as in other Western nations, consistently indicates a high proportion of sexual offences involve persons known to each other.<sup>22</sup>

Australian statistics in relation to sexual violence dramatically worsen when confined to indigenous society. A recent New South Wales Report confirmed that the victimisation rates for both sexual assault and child sexual assault are higher in the Aboriginal population than in the general population.<sup>23</sup> In the recent National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families, 17.5 per cent of witnesses reported having experienced sexual abuse and exploitation in government institutions, missions or foster care.<sup>24</sup> A recent Queensland Report recorded 'horrific injuries, scarred bodies, stabbings, bashings, sexual assaults and mentally traumatised victims' in Aboriginal communities, resembling reports from war zones.<sup>25</sup> Moreover, under-reporting is particularly significant amongst Aboriginal and Torres Strait Island women.<sup>26</sup> It was recently estimated that as many as 88 per cent of rape cases in Aboriginal communities may never be reported.<sup>27</sup>

A range of regulatory, legal and social responses have been initiated over the past two decades in response to growing concerns in the community about the incidence of sexual assault. In the political arena, both the Commonwealth<sup>28</sup> and various state<sup>29</sup> governments have conducted a variety of commissions and inquiries.

---

20. ABS *Crime and Safety Australia* (Canberra: AGPS, 1998).

21. See ABS *Womens Safety Survey* above n 1, 32.

22. See R Hogg & D Brown *Rethinking Law and Order* (Sydney: Pluto Press, 2001) 63; see also ABS *Womens Safety Survey* above n 1, 23 which found that only 23% of the perpetrators of the sexual violence described was a stranger to the victim.

23. J Fitzgerald & D Weatherburn *Aboriginal Victimisation and Offending: The Picture from Police Records* (Sydney: NSW Govt Printer, 2001).

24. Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (Sydney: HREOC, 1997) 194.

25. B Robertson *Aboriginal and Torres Strait Islander Womens Task Force on Violence Report* (Brisbane: Qld Govt Printer, 1999) 91.

26. See J Bargen & E Fishwick *Report of the Taskforce on Sexual Assault and Rape in Tasmania* (Hobart: Tas Govt Printer, 1998).

27. See Robertson above n 25, 98.

28. J Bargen & E Fishwick *Sexual Assault Law Reform: A National Perspective* (Canberra: AGPS, 1995); B Cook, F David & A Grant *Sexual Violence in Australia* (Sydney: Australian Institute of Criminology, 2001).

29. Eg P Salmelainen & C Coumarelos *Adult Sexual Assault in NSW* (Sydney: NSW Bureau of Crime Statistics & Research, 1983); R Bonney *Criminal (Sexual Assault) Amendment Act 1981: Monitoring and Evaluation, Interim Report No 1, Characteristics of the Complainant, the Defendant and the Offence* (Sydney: NSW Bureau of Crime Statistics & Research, 1985); K Weekley *Rape: A Four Year Police Study of Victims* (Adelaide: SA Police Dept, 1986); LRC (Vic) *Rape: Reform of Law and Procedure Report 42* (Melbourne: Vic Govt

In response to the findings and recommendations of the ensuing reports a number of measures have been implemented. In general, priority has been given to strategies located within the body of criminal law designed to prevent abuse, to protect victims and to punish offenders.<sup>30</sup> For example, in the late 1980's to the early 1990's substantial reforms were made throughout Australian jurisdictions to procedural and evidentiary rules. The definitions of sexual assault were transformed to include the range of violations which women experience and new offences such as stalking were introduced.<sup>31</sup> Court proceedings were also transformed providing alternative arrangements for complainants to give evidence via closed circuit television in many jurisdictions.<sup>32</sup> Specialist courts for sexual assault cases are gradually being introduced with New South Wales currently trialing a specialist court to hear sexual assault cases involving children.<sup>33</sup> To assist victims through the court process crisis centres, refuges, and sexual assault referral centres have been introduced. In relation to police practices most states have now introduced Police Codes of Practice applicable to sexual assault cases to ensure an appropriate balance between investigation and sensitive support for victims.<sup>34</sup>

In contrast to the reforms in the criminal law, few resources have been allocated to the facilitation and expansion of avenues of redress to compensate victims of sexual abuse for the injuries they suffer. Nevertheless, sexual abuse, for both children and adults, causes devastating harm. Initial effects frequently include fear, anger, guilt, shame, low self-esteem and depression.<sup>35</sup> To cope with the abuse many deny or repress the intolerable memories. Those who do reveal the abuse may encounter familial or institutional resistance, disbelief or blame. Schools, religious authorities and other institutions that fear exposure in the media and the community may use their power to 'silence' the victim, often intensifying the injuries and their effects.<sup>36</sup> Apart from the initial impact, sexual abuse also has severe long-term effects. These typically include low self-esteem, feelings of isolation and alienation, major depression, inability to relate to others, difficulties with inter-personal and sexual relationships, impairment of sexual pleasure.<sup>37</sup> Many victims are promiscuous, have

---

Printer, July 1991); LRC (NSW) *Sexual Violence: The Hidden Crime. Inquiry into the Incidence of Sexual Offences in NSW* Part I (Sydney: NSW Govt Printer, 1993); LRC (Vic) *Sexual Offences: Interim Report* (Melbourne: Vic Govt Printer, 2003).

30. See Bargen & Fishwick above n 28, 14.

31. For an account of criminal law reform in NSW, see D Brown, D Farrier, S Egger & L McNamara *Criminal Laws* (Sydney: Federation Press, 2001) 874.

32. N Cowdery 'Current Issues in the Prosecution of Sexual Assault' (2005) 11 UNSW Law J Forum 2.

33. R Ellis, 'The Specialist Child Sexual Assault Jurisdiction' (2005) 11 UNSW Law J Forum 8.

34. LRC (Vic) *Sexual Offences: Interim Report* (Melbourne: Vic Govt Printers, 2003) 178.

35. S Romans, J Martin & P Mullen 'Womens Self-Esteem: A Community Study of Women Who Report and Do Not Report Childhood Sexual Abuse' (1996) 169 British J Psychiatry 696.

36. A Silverman, H Reinherz & R Giaconia 'The Long Term Sequelae of Child Adolescent Abuse: A Longitudinal Community Study' (1996) 20 Child Abuse Negl 709.

37. See P Mullen & J Fleming 'Long Term Effects of Child Sexual Abuse' (1998) 9 Issues in Child Abuse Prevention <<http://www.aifs.gov.au/nch/issues9.html>>.

drug addictions, are suicidal, suffer eating disorders, and have multiple personality disorders.<sup>38</sup> Incest survivors commonly suffer guilt, self-hatred, denial, repression, disassociation and amnesia.<sup>39</sup> Frequently they are unable to trust others, particularly men and persons in positions of authority.<sup>40</sup>

### III. BENEFITS OF AN EFFECTIVE COMPENSATORY AVENUE

Compensation cannot remedy the devastating harms that victims of sexual assault typically experience. However, there are a number of potential benefits to an effective avenue of compensatory redress both for the victims of sexual abuse themselves and the wider community. At the outset the provision of money can provide a route to some measure of economic freedom for the victim.<sup>41</sup> It can create the financial means to access counselling and other rehabilitative services to have a holiday, and to commence studies.<sup>42</sup> It can facilitate a move to another city, provide the opportunity to buy a house or to make a residence safer.<sup>43</sup> Compensation may also have a role to play in the recovery of victims from the medical, psychological, cultural, vocational and relational consequences of sexual abuse. Feldthusen argues that the process of obtaining compensation may be 'therapeutic' when 'the complaint, the process, or the outcome is expected to, or does, assist the victim along the path to recovery'.<sup>44</sup> Likewise, Herman writes that the compensatory process often has components such as 'acknowledgement of harm, an apology or public humiliation of the perpetrator' that may benefit the victim far more than any material gain.<sup>45</sup> According to Herman, the response of the community has a powerful impact on the resolution of the trauma for the victim. Public acknowledgment and community action are crucial, she argues, to 'rebuild the survivor's sense of order and justice'.<sup>46</sup> The rehabilitation of victims may also benefit the family, friends and partners of victims and the wider community itself, which benefits from having fully functioning

---

38. S Romans, J Martin, J Anderson, G Herbison & P Mullen 'Sexual Abuse in Childhood and Deliberate Self-Harm' (1995) 152 Am J Psychiatry 1336.

39. See J Herman *Father, Daughter Incest* (Cambridge: Harvard UP, 1981).

40. See generally J Herman *Trauma and Recovery: From Domestic Abuse to Political Terror* (London: Pandora, 1992); PE Mullen, JL Martin, JC Anderson, SE Romans & GP Herbison 'The Effect of Child Sexual Abuse on Social, Interpersonal and Sexual Function in Adult Life' (1994) 165 British J Psychiatry 35, 38.

41. See J Conaghan 'Tort Litigation in the Context of Intra-familial Abuse' (1998) 61 MLR 132.

42. See N West 'Rape in the Criminal Law and the Victims Tort Alternative: A Feminist Analysis' (1988) 50 Toronto L Rev 96, 113.

43. See I Freckelton 'Compensating the Sexually Abused' in P Easta (ed) *Balancing the Scales: Rape, Law Reform and Australian Culture* (Sydney: Federation Press, 1998) 191, 196.

44. See B Feldthusen 'The Civil Action for Sexual Battery: Therapeutic Jurisprudence?' (1993) 25 Ottawa L Rev 203, 211.

45. See Herman above n 39, 190.

46. Ibid, 70.

citizens.<sup>47</sup> The presence of an effective compensatory framework also has a symbolic function potentially contributing to the prevention of sexual abuse by providing a clear statement of its unacceptability in the community.<sup>48</sup>

There are three avenues in Australia for victims of sexual abuse to obtain compensation. Reparation orders, rarely used, are a remedy located in the criminal law.<sup>49</sup> The order specifies a monetary sum awarded at the time of sentencing payable by the defendant to the plaintiff rather than as a fine to the state.<sup>50</sup> The second avenue is civil litigation for damages, usually in the tort of battery, although some cases have proceeded in the tort of negligence and in equity. In the Australian context however civil litigation has not yet proved to be an effective avenue of redress.<sup>51</sup> The barriers that impede victims include the following. The Australian courts have employed a restrictive approach to limitation periods failing to recognise the difficulties created by the shame, secrecy and denial that continue to surround sexual abuse and hinder victims from lodging claims within a limited time period.<sup>52</sup> Although the advent of the cross-vesting scheme in Australia facilitated several successful claims by providing the opportunity for sexual abuse claims to be heard alongside property settlements its subsequent demise has removed that avenue.<sup>53</sup>

---

47. See Freckelton above n 43, 194.

48. See West above n 42, 98; see also J Temkin, *Rape and the Legal Process* 2nd edn (Oxford: OUP, 2002) 347. R Dixon 'Rape as a Crime in International Humanitarian Law: Where to From Here?' (2002) 13 Euro J Intl Law 697, 712.

49. See V Morabito 'Compensation Orders Against Offenders: An Australian Perspective' (2000) 4 Singapore J Intl and Comparative Law 59. Morabito examines the frequency of reparation orders in the Commonwealth jurisdiction. He notes that the majority of reparation orders are made in favour of the Department of Taxation and the Department of Social Security rather than in favour of victims of crime.

50. See eg Victims Support and Rehabilitation Act 1996 (NSW) Pt 4, where the courts may order the payment of compensation at the time of sentencing. See also Crimes Act 1900 (ACT) s 437; Sentencing Act 1995 (NT) s 88; Penalties and Sentences Act 1994 (Qld) s 35; Criminal Law (Sentencing) Act 1988 (SA) ss 52, 53; Sentencing Act 1991 (Vic) ss 84, 86; Criminal Code (Tas) ss 424, 425A.

51. See *Paramasivam v Flynn* (1998) 160 ALR 203 where the court refused to recognise a cause of action in equity to ground recovery for sexual abuse committed years earlier by a guardian against a ward in his care; *Carter v Corporation of the Sisters of Mercy of the Diocese of Rockhampton* [2001] QCA 42 where the plaintiff, who was placed in an orphanage by the State of Queensland and repeatedly raped by an employee at the orphanage, failed in an action in negligence and battery; *NSW v Lepore*; *Samin v Queensland*; *Rich v Queensland* [2003] HC A 4 where the three plaintiffs, sexually abused by teachers during school hours and on school grounds, unsuccessfully argued they were owed a non-delegable duty by the school authorities. The judges left open the possibility of a successful action in vicarious liability.

52. See A Marfording 'Access to Justice for Survivors of Child Sexual Abuse' (1997) 5 TLJ 221, 221; R Graycar & J Morgan 'Disabling Citizenship: Civil Death for Women in the 1990s' (1995) 17 Adel L Rev 49; L Bunney 'Limitation of Action: Effect on Child Sexual Abuse Survivors in Queensland' (1998) 18(4) Qld Lawyer 12; B Matthews 'Limitation Periods and Child Sexual Abuse Cases: Law, Psychology, Time and Justice' (2003) 11 TLJ 218.

53. The cross-vesting scheme is vested in the Supreme Court of each State and Territory, most of the jurisdiction of the Family Court and most of the civil jurisdiction of the Federal

Other factors deterring victims of sexual abuse from pursuing civil litigation are well documented in the literature. The high costs of litigation, particularly if the action is unsuccessful,<sup>54</sup> the gruelling nature of the process,<sup>55</sup> the impecuniosity of perpetrators,<sup>56</sup> the likelihood of failure,<sup>57</sup> the history of exclusion of women's injuries from compensation law,<sup>58</sup> all combine to discourage victims from the litigation option. The final avenue of redress is the statutory 'Criminal Injuries Compensation' schemes that exist in each Australian state and territory. It is these schemes that are the focus of this article.

#### IV THE EMERGENCE OF CRIMINAL INJURIES COMPENSATION SCHEMES

State-run statutory schemes designed to facilitate compensation for victims of crime began to emerge in western jurisdictions in the early 1960s. The impetus for the schemes can be attributed to Margery Fry, a British magistrate and social reformer, who wrote widely in the 1950s promoting the concept of state-funded schemes to compensate victims of crime. Her views, situated within the ethos of the emerging welfare state, were a powerful catalyst to the emergence of the schemes.<sup>59</sup> New Zealand was the first to introduce a scheme in 1964, followed by the United Kingdom in the same year.<sup>60</sup> In Canada, the first scheme was established in Saskatchewan in 1967<sup>61</sup> and by 1981 all Canadian provinces had introduced statutory schemes.<sup>62</sup>

New South Wales was the first Australian jurisdiction to introduce a scheme to compensate victims of crime in 1967 and gradually all other jurisdictions introduced similar models. There are currently a total of 12 criminal injuries compensation

---

Court. Each Supreme Court was given the jurisdictions of the Supreme Court of all the other States and Territories. This allowed sexual abuse claims to be heard alongside property settlement claims. See eg the successful cases of *W & W; R & G* (1994) 17 FLR 751 where two girls, sexually abused by their stepfather, received \$97 000 and \$80 000 respectively for pain and suffering, emotional shock, post traumatic stress disorder, anxiety and depression; and *Re Q* (1995) FLC 751. The cross-vesting avenue however was removed in 1999, when it was held to be unconstitutional to confer State jurisdiction on Federal Courts: see P Parkinson *Tradition and Change in Australian Law* 2nd edn (Sydney: Law Book Co, 2001) 168.

54. See West above n 42, 98; Feldthusen above n 44, 279.

55. See B Feldthusen, O Hankisky & L Greaves 'Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse' (2000) 12 Canadian J Women & Law 66.

56. See West above n 42, 99.

57. Ibid.

58. See J McConnell 'Incest as Conundrum: Judicial Discourse on Private Wrong and Public Harm' (1992) 1 Texas J Women & Law 143, 151.

59. See I Freckleton 'Criminal Injuries Compensation: A Cost of Public Health' (1999) 7 J Law & Med 193, 196.

60. Criminal Injuries Compensation Act 1963 (UK).

61. P Burns *Criminal Injury Compensation* 2nd edn (Toronto: Butterworths, 1992) 5.

62. Ibid.

schemes operating in Australia.<sup>63</sup> Some jurisdictions have several schemes operating concurrently, each one applicable to a different time period, and some schemes have a range of different maximum awards. For example, the Criminal Injuries Compensation Act 2004 (WA) provides six different maximum awards depending on the date of the offence. The schemes have different maximum awards ranging from \$10,000 in Tasmania to \$75,000 in Queensland. There are two different models of awarding compensation for injury in the schemes. The first is the tariff-model which specifies particular amounts of award for each type of injury, usually in the form of an attached schedule, and leaves magistrates and assessors with minimal discretion. Queensland and New South Wales are the only two jurisdictions that are currently using this model. The second and most popular model used by all other jurisdictions is the discretionary model. The discretionary model leaves the magistrate or assessor to ascertain the appropriate amount within the maximum award provided by the particular scheme.

Sexual assault victims rarely used the schemes during the first two decades of their operation. The first three recorded cases were in New South Wales and all involved the abduction and rape of the victim by a perpetrator unknown to her.<sup>64</sup> However, as community concern grew about the incidence of sexual abuse, there was an increasing presence of victims' rights organisations, sexual assault centres and community legal centres all encouraging and supporting claims by sexual assault victims. Consequently, by the 1990s, the number of victims of sexual abuse lodging applications for compensation in criminal injuries compensation schemes had rapidly increased. For instance, although in 1984-85 fewer than 50 claims for crimes compensation were made in the Australian Capital Territory, by 1995-96, a decade later, the figure had increased almost sixfold to over 300. A quarter of the applications in this period were lodged by victims of sexual assault.<sup>65</sup> In Victoria, in the 1997-1998 period 1 200 awards were made to victims of crime of which 368 were awarded to victims of sexual assault.<sup>66</sup> In Western Australia, in the year ending December 2003 122 awards out of a total 951 were in relation to sexual offences.<sup>67</sup>

---

63. Criminal Injuries Compensation Act 1983 (ACT); Victims of Crime (Financial Assistance) Act 1983 (ACT); Criminal Injuries Compensation Act 1967 (NSW); Victims Support and Rehabilitation Act 1996 (NSW); Criminal Injuries (Compensation) Act 1975 (NT); Crimes Compensation Act 1982 (NT); Crimes (Victims) Assistance Act 1990 (NT); Criminal Code 1899 (Qld); Criminal Code Amendment Act 1968 (Qld); Criminal Offence Victims Act 1995 (Qld); Criminal Injuries Compensation Act 1969 (SA); Criminal Injuries Compensation Act 1978 (SA); Victims of Crime Act 2001 (SA); Criminal Injuries Compensation Act 1976 (Tas); Criminal Injuries Compensation Act 1972 (Vic); Victims of Crime Assistance Act 1996 (Vic); Criminal Injuries Compensation Act 2003 (WA).

64. *R v Bowen* (1969) 90 Weekly Notes 82; *Reg v Forsythe* [1972] 2 NSWLR 951; *R v Fraser* [1975] 2 NSWLR 521.

65. A-G Dept (ACT) *Reform of the Australian Capital Territory Criminal Injuries Compensation Scheme* (Canberra: ACT Govt Printer, 1997) 5.

66. Victorian Victims of Crime Assistance Tribunal *Annual Report* (Melbourne, 1998).

67. Office of Criminal Injuries Compensation (WA) *Chief Assessors Annual Report* (Perth, 2003) 5.

## V. SOURCES OF DATA

This article, in evaluating the capacity of the schemes to provide an effective means of compensatory redress for victims of sexual assault draws upon judgments relating to 114 plaintiffs from all eight Australian jurisdictions. The judgments constitute all those available from online databases that record unreported and reported decisions and hardcopy law reports, which involve claims by victims of sexual abuse under the various criminal injuries statutory frameworks that exist in each of the Australian jurisdictions. It is not possible, however, to ensure a full set of reasons for decisions from the various state and territory tribunals. Cases are usually heard initially by tribunals who often do not publish the reasons for their decisions. However, when the matter is appealed to a court, usually after an initial review within the tribunal, these reasons become publicly available in either reported or unreported form. Despite this, there is no way of verifying that all the cases that go to appeal in the court system have been made available in various published forms so as to ensure a fully comprehensive data set of decisions. This limits the analysis of this article in two particular ways. First, most applications are not appealed. Therefore, although the findings of decisions that are on appeal might be expected to 'filter down' to consideration of initial applications there is no way of verifying that this process is occurring. Inevitably the conclusions in this article about the application of legal principles are tentatively based on those decisions that are a result of the appeal process. Second, the availability of cases varies between jurisdictions and therefore comparisons are sometimes based on very few examples.

The earliest judgment analysed was in 1969,<sup>68</sup> the most recent in June 2004.<sup>69</sup> Thirty-five cases were heard the Supreme Court of the Australian Capital Territory;<sup>70</sup> five in the Supreme Court of the Northern Territory;<sup>71</sup> one in the Supreme Court of Tasmania;<sup>72</sup> 23 in the Supreme Court of Western Australia;<sup>73</sup> five in the Supreme

---

68. *R v Bowen* above n 64.

69. *Victims Compensation Fund Corporation v GM & 5 Ors* [2004] NSWCA 185.

70. *Application 69 Under the Criminal Injuries Compensation Act 1983 (ACT)* (1991) 103 FLR 297; *Commonwealth v Cartwright* [1990] ACT SC 25; *Criminal Injuries Compensation Act 1983 & Robertson* [1991] ACT SC 68; *Widera* [1995] ACT SC 109; *Cribb* [1992] ACT SC 16; *In the Matter of An Application Under the Criminal Injuries Compensation Act 1983* [1994] ACT SC 37; *A* [1995] ACT SC 95; *AC* [1994] ACT SC 54; *AN* [1994] ACT SC 84; *DJN* [1994] ACT SC 20; *E* [1995] ACT SC 117; *FMS* [1993] ACT SC 59; *J* [1994] ACT SC 129; *JRB* [1993] ACT SC 85; *K* [1995] ACT SC 35; *KB* [1992] ACT SC 105; *L* [1993] ACT SC 87; *LM* [1994] ACT SC 45; *M* [1995] ACT SC 120; *Mahon* [1995] ACT SC 16; *MJ* [1996] ACT SC 44; *Millar* [1991] ACT SC 113; *NA* [1994] ACT SC 60; *P* (unreported) CIC 25, Hogan M, 12 Oct 1995; *RA* [1998] ACT SC 115; *Brown* [1995] ACT SC 15; *SK* [1995] ACT SC 89; *SS* [1993] ACT SC 45; *Vincent* [1995] ACT SC 78; *Brooks* [1994] ACT SC 95; *Duchesne* [1991] ACT SC 108; *McCasker* [1991] ACT SC 110.

71. *Alfonso v Northern Territory* (1990) 131 NTR 5; *An Application by Eldridge for Criminal Injuries Compensation* (unreported) NT Sup Ct, 2001, BC200103402; *C v C* (1993) 111 FLR 467; *Northern Territory v Woodruffe* (unreported) NT Sup Ct, Bailey J, 1 Oct 1999, BC9906418; *LMP v Lennis Collins and the Northern Territory* (1993) FLR 289.

72. *R v Southee* (unreported) Tas Sup Ct, Cox J, 18 Feb 1993, BC9400354.

Court of South Australia;<sup>74</sup> 17 in the Supreme Court of Queensland;<sup>75</sup> in New South Wales one determination by an assessor of the Victim's Compensation Tribunal (accessed from the acting solicitor with permission of the victim),<sup>76</sup> seven cases in the Supreme Court,<sup>77</sup> two cases in the Court of Appeal,<sup>78</sup> and one case in the

73. *A* (1994) 73 ACR 56; *B v S* (unreported) WA Sup Ct, Murray J, 10 May 1995, BC9503616; *Braybook v Lavars* [1998] WA SC 356; *Broome v Broome* [1998] WA SC 380; *C v BC*; *D v BC* (unreported) WA Sup Ct, Murray J, 5 Jun 1997, BC9702405; *Opie v Opie* (WA Sup Ct, Nicholson J, 20 Nov 1991, BC9100892; *E v P*; *T v P* (unreported) WA Sup Ct, McKechnie J, 10 Dec 2001, BC200107723; *F v H* (unreported) WA Sup Ct, Nicholson J, 27 Aug 1992, BC9201034; *J v Peterson* (unreported) WA Sup Ct, Scott J, 20 Sep 1994, BC9401971; *Komon v Podirsky* (unreported) WA Sup Ct, Rowland J, 12 Jun 1991, BC9101094; *L v L* [1999] WA SC 262; *L v W* (unreported) WA Sup Ct, Murray J, 22 Apr 1993, BC9301220; *M v J*; *J v J* (unreported) WA Sup Ct, Scott J, 4 Nov 1992, BC9200912; *M v Hoogwerf* [1998] WA SC 380; *McD v Edwards*; *O v J* (unreported) WA Sup Ct, Wallwork J, 13 Feb 1992, BC9201336; *Patorniti v Silvestro* (unreported) WA Sup Ct, Templeman J, 22 May 1997, BC9702693; *P v C* (unreported) WA Sup Ct, Seaman J, 23 Jan 1992, BC9201372; *S v L*; *Y v L* (unreported) WA Sup Ct, Heenan J, 20 Nov 1997, BC9706158; *S v Van Den Ende* (unreported) WA Sup Ct, Parker J, 4 Sep 1995, BC9504129; *S v Neuman* (1995) 84 A Crim R 419; *T v Petchell* (unreported) WA Sup Ct, Anderson J, BC9301544; *The Applicant v Larkin*, *Withnell v Wilkinson* [1976] WAR 1999; *V v W*; *A v W* (unreported) WA Sup Ct, Walsh J, 23 Mar 1993, BC9301112; *X v Y* (unreported) WA Sup Ct, Parker J, 13 Sep 1996, BC9604210.
74. *Kyriacou v Power* [2000] SA SC 138; *Matthews v South Australia* [1999] SA DC 95; *P v South Australia* (1992) 60 A Crim R 286; *S v South Australia and Chen* [1997] SA DC 3606; *South Australia v Bole* (unreported) SA Sup Ct, Cox, Prior, Lander JJ, 31 Aug 1993, BC9400354; *T v South Australia and Bridge* (unreported) SA Sup Ct, Legoe, Milhouse, Olsson JJ, 19 Jun 1992, BC9200360.
75. *Bird v Bool* (unreported) Qld Sup Ct, Derrington J, 15 Oct 1997, BC9705223; *Hendry v Llorente* [2001] 2 Qd R 415; *In the Matter of An Application by Lorna Jack for Criminal Compensation Pursuant to s 663B of the Criminal Code (Qld)* (unreported) Qld Sup Ct, Chesterman J, 20 Mar 1998, BC9801078; *In the matter of R v Tiltman*; *and in the Matter of the Application for Compensation by Dawe* (unreported) Qld Sup Ct, Lee J, 22 Jun 1995, BC9505961; *KAB v DJB* [2000] Q SC 498 (unreported) Qld Sup Ct, Atkinson J, 22 Dec 2000, BC200008274; *Marston v Kello* [2000] QCA 410 (unreported) Qld Sup Ct, Davies JA, Ambrose, Chesterman JJ, 6 Oct 2000, BC200005994; *R v Bridge & Madams*; *Ex Parte Larkin* (1989) 1 Qld R 554; *R v Chong*; *Ex Parte Chong* [2001] 2 Qld R 301; *R v GL Harrison* (unreported) Qld Sup Ct, Ambrose J, 22 Apr 1993, BC9302574; *R v Tiltman* (unreported) Qld Sup Ct, Lee J, 28 Apr 1995, BC9505961; *R v Wraight & Dakin*; *Ex Parte Fullerton* [1980] Qld R 582; *R v Tamcelik*; *Ex Parte Ozcan* [1998] 1 Qld R 330; *R v Morrison*; *Ex Parte West* [1998] 2 Qld R 79; *Re Application for Compensation by Pershouse* (unreported) Qld Sup Ct, Wilson J, 30 Apr 1999, BC9902379; *Re Wilkinson* [1999] QSC 177; *R v Conway* (unreported) Qld Sup Ct, Chesterman J, 20 Mar 1998, BC9801078; *Whyte v Robinson* (unreported) Qld SC, Atkinson J, 28 Mar 2000, BC200002253.
76. *Valerie Linow v NSW Victims of Crime Compensation Tribunal*, Notice of Determination, File Ref 731123, 15 February 2002.
77. *Harvey v Victims Compensation Tribunal* (unreported) NSW Sup Ct, Dowd J, BC200104361; *Smith v Victims Compensation Tribunal* (unreported) NSW Sup Ct, Stanton J, 10 Jun 1993, unreported BC9202760). *Semica v District Court of NSW* [1999] NSW SC 428; *R v Bowen* above n 64; *R v C* [1982] 2 NSWLR 674; *Reg v Forsythe* [1972] 2 NSWLR 951; *R v MacDonald* (1979) 1 NSWLR 451; *R v Field* (1982) 1 NSWLR 488; *Reg v Fraser* (1975) 2 NSWLR 521.
78. *Victims Compensation Fund Corporation v GM* above n 69; *Director-General v District Court of NSW & Stark* (1993) 32 NSWLR 409.

District Court;<sup>79</sup> in Victoria four cases in the Supreme Court,<sup>80</sup> one case in the Court of Appeal,<sup>81</sup> one case in the High Court,<sup>82</sup> and two cases in the Administrative Appeals Tribunal.<sup>83</sup> The judgments include 77 applications by children of which all but one was the victim of repeated and multiple acts of abuse by one or more offenders known to the victim. Three of these victims were male while the rest were female. Thirty-seven were applications by adults all of whom were female and all but two were the victims of isolated attacks by unknown offenders.

## VI. FAILURES OF THE SCHEMES FOR VICTIMS OF SEXUAL ASSAULT

An analysis of the case examples revealed that victims of sexual abuse face considerable hurdles when they seek compensatory redress in the criminal injuries compensation schemes which operate in Australia. These hurdles are initially located in a series of prescribed 'pre-requisite' conditions that must be met by an applicant before any legally compensable injury can emerge and which place upon victims of sexual assault extra burdens not faced by victims of other crimes. Once the pre-requisite conditions are met victims face further hurdles because the narrow statutory definitions of injury and loss do not encapsulate the injuries they typically suffer. The primary assumption underlying the provisions that has led to the burdens on sexual assault victims is that all applicants are similarly situated; that all 'harms' engender similar responses by the police, the court system and other dominant institutions in the community; and that all victims of crime suffer similar injuries. As this section will illustrate that assumption is not grounded in the actual experiences of sexual abuse victims.

### 1. The pre-requisite conditions and the burdens they create

#### (a) Requirement for a 'crime'

The initial requirement that must be satisfied by an applicant seeking compensation in the schemes is that an event, recognised in the criminal law as a 'crime', has occurred.<sup>84</sup> For each 'crime' an amount up to the maximum of the scheme can be

79. *GM v Victims Compensation Fund* (unreported) NSW District Ct, Sidis J, 18 Jun 2003.

80. *Smith v VCT* (unreported) Vic Sup Ct, Stanton J, 10 Jun 1993, BC9202760; *Arnold v Crimes Compensation Tribunal* (unreported) Vic Sup Ct, Brooking, Tadjell, Phillips JJ, 5 Dec 1996, BC9606066; *Powley v Crimes Compensation Tribunal* (unreported, Vic Sup Ct, Phillips, Galaway JJA, Hedigan AJA, 9 Dec 1996, BC9606831; *Thomas v CCT* (unreported) Vic Sup Ct, Macnamara DP, 30 Apr 1997.

81. *Hards v Crimes Compensation Tribunal* (1994) 7 VAR 141.

82. *H, B, E v Crimes Compensation Tribunal* [1997] 1 VR 608.

83. *CAB v CCT* (unreported) Vic AAT, Macnamara DP, 1 Jun 1998, no 35843; *Filomeno v CCT* (unreported) Vic AAT, Macnamara DP, 30 April 1997, no 41286).

84. That event is variously termed in the schemes as an 'offence', 'act of violence', a 'violent crime', a 'personal offence' or a 'conviction' See Victims (Financial Assistance) Act 1983

awarded. Sexual abuse is recognised in the criminal law only to the extent that it fits a model of crime as a violent physical invasion of personal integrity. Sexual assault sometimes accords with the paradigm of a violent unexpected attack perpetrated by a stranger to the victim. However, often the nature of the offence is coercive where the victim is 'groomed' over a period of time,<sup>85</sup> involves a breach of trust,<sup>86</sup> and continues to be clothed in secrecy and shame.<sup>87</sup> It is often not accompanied with the kind of 'violent' criminal activity envisaged in the criminal law. Therefore harmful sexual abuse, such as coercive sexual activity, may not rank as a crime in the criminal law<sup>88</sup> and victims of sexual abuse cannot lodge a claim for compensation in such instances. The injuries that flow from behaviour not recognised as a 'crime' in the criminal law are left uncompensated.

### (b) Reliance on convictions

Not only is a 'crime' that is recognised in the criminal law required, but also, whilst only five of the 12 schemes currently operating in Australia require a criminal conviction before a claim can be lodged,<sup>89</sup> there is a discernible trend in the courts to rely on convictions as the basis for determining whether a 'crime' has occurred and, crucially, the number of 'crimes' that have occurred. Of the 114 case examples analysed in this research only five cases proceeded in the absence of criminal convictions.<sup>90</sup> The result of this process is an unofficial requirement for a criminal conviction in all jurisdictions. The reliance on convictions to determine whether a

---

(ACT) s 9(a); Victims Support and Rehabilitation Act 1996 (NSW) s 14(1)(a); Criminal Injuries (Compensation) Act 1970 (NT) s 3; Crimes Compensation Act 1982 (NT); Crimes (Victims Assistance) Act 1990 (NT) s 5(1); Criminal Offence Victims Act 1995 (Qld) s 19(1)(a); Victims of Crime Assistance Act 1996 (Vic) s 7(1); Criminal Injuries Compensation Act 1978 (SA) s 7(1); Victims of Crime Act 2001 (SA) s 17(1); Criminal Injuries Compensation Act 1976 (Tas) s 4(1)(a); Criminal Injuries (Compensation) Act 1970 (WA) s 4(1); Criminal Injuries Compensation Act 1982 (WA) s 7(1).

85. J Conte, S Wolf & T Smith 'What Sexual Offenders Tell Us About Prevention Strategies' (1989) 13 Child Abuse Negl 293.
86. L Budin, S Wolf & T Smith 'Sex Abuse Prevention Programs: Offenders Attitudes About Their Efficacy' (1989) 13 Child Abuse Negl 77.
87. See Herman above n 39.
88. See Miers above n 4, 389 where he discusses a decision in the UK criminal injuries scheme in which stroking a girls breasts and thigh did not constitute a 'crime'.
89. Criminal Injuries (Compensation) Act 1970 (NT); Criminal Code 1899 (Qld); Criminal Offence Victims Act 1995 (Qld); Criminal Injuries (Compensation) Act 1970 (WA) s 6(3); Criminal Injuries Compensation Act 1985 (WA) s 8(1). In South Australia, although no conviction is required, the criminal standard of proof rather than the civil standard is applicable for applications under the Criminal Injuries Compensation Act 1978 (SA). This provision however has been removed in new legislation that came into effect on 1 January 2002 but the criminal standard will continue to apply to injuries that occurred prior to the commencement of the new Act: see Victims of Crime Act 2001 (SA).
90. *P v South Australia* (1992) 60 A Crim R 286; *In An Application Under the Criminal Injuries Compensation Act 1983 & SK* [1995] ACT SC 89; *CAB v CCT* (unreported) Vic AAT, MacNamara DP, 1 Jun 1998, 1995/35843; *H & B & E v CCT* [1997] 1 VR 608.

'crime' has occurred disadvantages victims of sexual abuse in several ways. First, it inappropriately introduces the criminal standard of proof 'beyond reasonable doubt' into claims lodged by victims of sexual abuse, replacing the civil standard 'on the balance of probabilities'. The criminal standard requires a much greater level of proof and although it might be pertinent in a criminal context where the focus is on the defendant, its application in state-run compensation schemes defies the compensatory victim-focused objectives of the schemes.

Second, reporting rates,<sup>91</sup> and prosecution and conviction rates<sup>92</sup> of sexual assault in the criminal justice system are extremely low and consequently a reliance on criminal conviction places an extra burden on sexual assault victims. Victims are discouraged from reporting sexual abuse because of the secrecy and shame that continues to surround sexual abuse, the gruelling nature of the criminal justice system in sexual assault matters, and the knowledge that control over the proceedings resides with the police authorities.<sup>93</sup> Aboriginal women are even less likely than other victims to report the abuse because of a history of discrimination by institutional structures, because of community pressure to keep the matter from the scrutiny of the state, because of a concern by victims about the well-being of their partners and family members when detained in police custody and because of a lack of culturally appropriate legal advice.<sup>94</sup> Even when sexual abuse is reported to the authorities statistics show that the police continue to be reluctant to pursue prosecutions.<sup>95</sup> Research suggests that the police are even more reluctant to pursue prosecutions in relation to Aboriginal women.<sup>96</sup> Finally, even when charges are laid there are extremely low rates of convictions,<sup>97</sup> and even lower rates for Aboriginal victims.<sup>98</sup> This may be in part because of the higher standard of proof, the onerous evidentiary requirements and the rules that surround the defence of consent.<sup>99</sup>

Third, the criminal justice system, in contrast to compensation law, is primarily punitive and retributive and focuses on the culpability of the conduct that leads to

91. See ABS *Womens Safety Australia* above n 1, which found only 15% of sexual assault victims had reported to the police in the preceding 12 months.

92. See also B Cook, F David & A Grant *Sexual Violence in Australia* (Canberra: Australian Institute of Criminology, 2001), who report that in 1997 in New South Wales 2 973 sexual assaults were recorded by police, 1 382 sexual assaults were cleared by police, 977 perpetrators were charged in the criminal courts and 293 were found guilty.

93. See J Stubbs 'Shame, Defiance and Violence Against Women: A Critical Analysis of 'Communitarian Conferencing' in S Cook & J Bessant (eds) *Womens Encounters with Violence: Australian Experiences* (London: Sage, 1997) 109, 122.

94. J Atkinson 'Violence Against Aboriginal Women. Reconstitution of Community Law: The Way Forward' (1990) 2(2) ALB 6.

95. See Cook, David, Grant above n 92.

96. See J Bargen & E Fishwick *Heroines of Fortitude: The Experiences of Women in Court as Victims of Sexual Assault* (Sydney: NSW Govt Printer, 1996) 95.

97. See Cook, David & Grant above n 92.

98. See Robertson above n 27.

99. See N Lacey 'Beset by Boundaries: The Home Office Review of Sex Offences' [2001] Crim L Rev 3, 11-12.

an offence.<sup>100</sup> Consequently, in criminal cases involving multiple sexual assaults in either a familial context, or in a 'gang rape' context it is usual for a selection of 'representative' charges to be made. This means that a selection of charges is chosen by the police for prosecution that often do not include all of the assaults that have actually occurred. This is partly because of the difficulties of proving sexual assault charges combined with the limited resources of the police and the prosecution which make it impractical to pursue charges for every sexual assault. It is also because the underlying rationale of the criminal law is primarily to punish the offender and deter others from similar behaviour.<sup>101</sup> It does not promote the aim of the criminal system to proceed with charges for every alleged incident of assault or battery that may number in the hundreds in cases involving a cycle of familial sexual abuse. However, the reduction of actual sexual assaults to a selection of 'representative' charges in the criminal justice system means that the use of the 'convictions approach' in the criminal injuries compensation schemes does not reflect or measure the level of harm suffered by the applicant but instead reflects community standards of culpability. The applicant can only be awarded compensation for injuries that can be linked to those convictions regardless of the extent of the harm he or she has suffered. It is therefore the application of the criminal process that determines the amount of compensation received by each applicant. This is clearly at odds with the restitutionary function of the schemes.

### (c) 'Reasonable' reporting clauses and time limitations

Most of the schemes have 'reasonable reporting' clauses, which require a victim to report the 'offence' to the police authorities within a reasonable time. The period ranges from one to three years.<sup>102</sup> Limitation clauses, present in most schemes, limit the time period during which a victim can lodge a claim.<sup>103</sup> Although most schemes incorporate a discretion to extend the time,<sup>104</sup> which the case examples revealed is

100. See D Brown, D Farrier, S Egger & L McNamara *Criminal Laws* 3rd edn (Sydney: Federation Press, 2001) 1.

101. *Ibid.*, 21.

102. Victims Support and Rehabilitation Act 1996 (NSW) s 30(1)(b); Crimes (Victims Assistance) Act 1990 (NT) s 12(b); Criminal Injuries Compensation Act 1978 (SA) s 7(9a)(a); Victims of Crime Act 2001 (SA) s 20(7)(a); Criminal Injuries Compensation Act 1978 (SA) s 7(9a)(a); Victims of Crime Act 2001 (SA) s 20(7)(a); Victims of Crime Assistance Act 1996 (Vic) s 52(a)(i). In Western Australia and Tasmania, although there is no specific requirement to report to the police within a 'reasonable time', the Chief Assessor and the Master are prevented from making an award if they are of the opinion that the applicant did not do any act or thing which he or she ought to have done 'to assist in the identification, apprehension or prosecution of the perpetrator'. This could be interpreted to mean a failure to report the 'offence': see Criminal Injuries Compensation Act 2003 (WA) s 38; Victims of Crime Assistance Act 1978 (Tas) s 5(3A).

103. Criminal Offence Victims Act 1996 (Qld) s 40(1)(b); Criminal Injuries Compensation Act 2003 (WA) s 9; Victims Support and Rehabilitation Act 1996 (NSW) s 26(1); Victims of Crime Assistance Act 1996 (Vic) s 29(1); Criminal Injuries Compensation Act (NT) 1982 s 5(1); Criminal Injuries Compensation Act 1978 (SA) s 7(1).

104. Criminal Injuries Compensation Act (ACT) 1985 s 27(3); Victims Support and Rehabilitation Act 1996 (NSW) s 26(3)(b); Crimes (Victims Assistance) Act (NT) 1990 s 5(3); Limitation

usually exercised in sexual abuse claims, there is no explicit exception for victims of sexual abuse in any of the schemes. Both the reasonable reporting clauses and the limitation provisions are premised on assumptions about what a crime is and how victimised persons behave or should behave. Reasonable reporting clauses assume that prospective applicants are all equally able to report the 'crime' to the relevant authorities. Time limitations assume that all members of each community and all communities within Australia are equally able to access the legal system at any given time and to pursue compensatory redress within the specified time period. However, as discussed above, since many sexual abuse victims experience the abuse as shameful, victims are discouraged from reporting the abuse or pursuing claims within the specified time limitation periods.<sup>105</sup> The provision places an unreasonable burden on victims of sexual assault particularly upon Aboriginal women who, as discussed in the previous section, face even greater obstacles in reporting sexual abuse to the police and other state authorities.<sup>106</sup>

#### (d) 'Related acts' clauses

Victims of sexual abuse who are able to satisfy the 'reasonable reporting' provisions and the limitation provisions and have convictions on which to rely are further disadvantaged by the 'related acts' provisions that are present in most schemes.<sup>107</sup> The clauses reduce multiple crimes to a single 'crime' for the purposes of compensation if they are 'related'. The grounds on which a series of acts can be legally reduced to a single act typically include similarity between the events that caused the injuries or similarities in the injuries themselves, or a close timeframe between the events that caused the injuries. Most jurisdictions also include a general plenary phrase such as 'otherwise related to each other' that gives the judiciary a broad discretion to find a series of 'crimes' to be related.<sup>108</sup>

Victims of sexual abuse are vulnerable to the 'related acts' provisions. In the Australian Capital Territory, New South Wales and Queensland the courts have identified the presence of a familial relationship between the applicant and the perpetrator as a

---

Act 1975 (Qld) ss 30(1)(iii)-(iv), 31(2)(a); Criminal Injuries Compensation Act 1978 (SA) s (4); Victims of Crime Assistance Act 1996 (Vic) s 29(3)(c). Victims of Crime Assistance Act 1996 (Vic) s 29(3)(d)-(g); Criminal Injuries Compensation Act 1985 (WA) s 17(2); Criminal Injuries Compensation Act 1982 (WA) s 9(2).

105. See R Kaspiew 'Rape Lore: Legal Narrative and Sexual Violence' (1995) 20 MULR 350, 375-380

106. *Ibid*, 374.

107. Criminal Injuries Compensation Act 1983 (ACT) s 7(20); Victims Compensation Act 1996 (NSW) s 5(1); Crimes (Victims Assistance) Act 1996 (NT) s 14; Criminal Code 1899 (Qld); Criminal Offence Victims Act 1995 (Qld) s 26(3); Criminal Injuries Compensation Act 1978 (SA) s 9; Criminal Injuries Compensation Act 1976 (Tas) s 6(2); Victims of Crime Assistance Act 1996 (Vic) s (4); Criminal Injuries Compensation Act 1985 (WA) s 20(2).

108. For example, in NSW the phrase 'for any other reason': see Victims Compensation Act 1996 (NSW) s 5(3)(b). In Victoria the statute includes the phrase 'share some other common factor': see Victims of Crime Assistance Act 1996 (Vic) s 4(iii).

relevant factor that substantiates the ‘relatedness’ of separate incidents of sexual abuse. For example, in a recent New South Wales case, a series of sexual assaults on a 13 year old girl by her mother and her stepfather were held to be ‘related’ on the basis that the familial relationship between the three parties amounted to ‘similar circumstances’.<sup>109</sup> Statistically most sexual violations occur in a familial context perpetrated by someone known to the victim and form part of a cycle of abuse often spanning long periods of time.<sup>110</sup> Indeed, of the 114 plaintiffs in the case examples considered in this research 77 had experienced multiple incidents of sexual abuse within a familial context. Victims of sexual abuse are more likely therefore than other victims to experience multiple assaults perpetrated by the same offender in similar circumstances.

The presence of a familial context therefore acts to reduce the amount of potential compensation even although research that suggests that the violation of the trust and dependency typically present in familial relationships is likely to worsen the level of harm suffered by the victim.<sup>111</sup> As well as reducing the potential award of sexual abuse victims the related acts clauses also operate to entrench ‘stock stories’<sup>112</sup> about the incidence of sexual assault by presenting continuous abuse as a single event perpetuating an understanding of sexual assault as typically an isolated event perpetrated by a stranger.<sup>113</sup> The clauses are acting to remove focus from the systemic, institutional and societal basis of familial sexual abuse masking the statistical reality that sexual abuse most often occurs in a familial context perpetrated by someone known to the victim, and contributes therefore to the continuance of the ‘enduring myth of stranger danger’.<sup>114</sup>

## 2. Statutory categories of injury and the harms typically suffered: A contrast

If victims of sexual abuse satisfy the ‘pre-requisite’ conditions of the schemes, as detailed in the previous section, they face further barriers because of the way the schemes and the judiciary conceptualise legal and therefore compensable injury. There are three primary categories of injury and loss in the schemes – loss of earnings,<sup>115</sup> bodily harm and nervous or mental shock. Victims can only claim

109. *Senica v District Court of NSW* [1999] NSW CA 428.

110. See ABS *Womens Safety Survey* above n 1, where it was found that 78% of perpetrators were known to the victims.

111. See above n 8.

112. R Delgado has coined this term to describe the truth-claiming function of traditional legal decision-makers however ‘the stock story is not the only one that can be told’: R Delgado ‘Story-telling For Oppositionists and Others: A Plea for Narrative’ (1989) 87 *Michigan L Rev* 2411, 2412.

113. See Hogg & Brown above n 22, 50.

114. See Stubbs above n 5, 6.

115. Six jurisdictions provide for the recovery of loss of earnings. In the ACT ‘financial assistance can be awarded as a consequence of total or partial incapacity for work’: Victims of Crime

compensation for injuries that fit within those defined categories. As this section illustrates the three categories of loss in the schemes reflect a criminal law notion of crime as a violent attack perpetrated by a stranger that results either in visible injuries such as bruising, lacerations and knife wounds or severe psychiatric injuries caused by the sudden and unexpected attack.

Only seven out of the 114 plaintiffs in the case examples received compensation in the category of loss of earnings.<sup>116</sup> The paucity of loss of earnings awards in instances of sexual abuse could be for a variety of reasons. Although in the common law loss of earnings is calculated on the basis of a lost capacity to earn<sup>117</sup> the schemes provide only for an actual loss of earnings and all are limited to a short period of one to three year after the occurrence of the 'crime'. For child victims there will not be any loss of 'actual' earnings, rather a lost capacity to earn, and for adult victims the provision will only apply if the victim takes time off paid employment at the time of the crime. The schemes do not encompass therefore the kind of long-term losses that sexual abuse victims commonly suffer. The cases also revealed that there was a failure by lawyers and applicants to lodge specific claims for loss of earnings. That failure may be attributable to an association of sexual abuse with 'emotional' and 'psychological' harm which may discourage lawyers and their clients from embarking on this route and the judiciary from envisaging such harm as applicable to victims of sexual abuse.

The second category is bodily harm, which is typically interpreted in the courts as direct physical injury. In the two tariff jurisdictions, New South Wales and Queensland, bodily harm is specifically identified with an attached table of injuries. Only a few plaintiffs in the case examples received compensation in this category as victims rarely experienced 'direct' physical injuries such as scarring, wounds or

---

(Financial Assistance) Act 1983 (ACT) s 10(1)(b). In New South Wales, compensation for 'financial loss up to \$10 000 out of the schemes maximum of \$50 000 can be awarded for actual loss of earnings to be calculated at the rate of the weekly payment of compensation payable under the Workers Compensation Act 1987': Victims Support and Rehabilitation Act 1996 (NSW) s 18(1)(b). In the Northern Territory, in the later two frameworks operating in that jurisdiction, and in Tasmania, pecuniary loss to the maximum of the scheme can be awarded to the victim as a result of their total or partial incapacity for work: Criminal Compensation Act 1982 (NT) s 9(1)(b); Crimes (Victims Assistance) Act 1989 (NT) s 9(1)(b); Criminal Injuries Compensation Act 1975 (Tas) s 4(3)(b). In Victoria, earnings lost by the victim as a direct result of total or partial incapacity for work can be compensated for a period of 2 years after the act of violence: Victims of Crime Assistance Act 1996 (Vic) s 17. In Western Australia, up to the maximum of the scheme can be awarded for loss of earnings under both of the latter frameworks: Criminal Injuries Compensation Act 1982 (WA) s 3; Criminal Injuries Compensation Act 1985 (WA),

116. *Duchesne* [1991] ACT SC 108; *P v South Australia* (1992) 60 A Crim R 286; *R v Bridge & Madams, Ex Parte Larkin* (1989) 1 Qld R 554; *S v South Australia & Chen* [1997] SADC 3606; *X v Y* (unreported) WA Sup Ct, Parker J, 13 Sep 1996, BC9604210; *S v Neumann* (1995) 84 A Crim R 419; *Semca v District Court of NSW* [1999] NSW SC 428.

117. H Luntz & D Hamblly *Torts: Cases and Commentary* 5th end (Sydney: Butterworths, 2002).

bruising. The third category is nervous shock or mental injury, which in some jurisdictions has been interpreted as a requirement for a 'recognisable psychiatric illness'.<sup>118</sup> In all other schemes, even though there is no official requirement for a recognisable psychiatric illness, there appears to be an expectation amongst all actors in the process (lawyers, plaintiffs and judges) that a psychiatric diagnosis should be sought from an expert. This expectation was apparent in the 114 case examples considered in this research where in every case a report from an 'expert' verifying the presence of a psychiatric condition was submitted by the plaintiff and considered by the court. All of the plaintiffs received compensation in the category of nervous or mental shock in relation to a variety of 'psychiatric' conditions, frequently post-traumatic stress disorder syndrome (PTSD).<sup>119</sup> Of the 114 plaintiffs in the data set there were 58 diagnoses of post-traumatic stress disorder and 30 diagnoses of other psychiatric disorders. Imposing a requirement or placing an expectation on victims of sexual abuse to establish that they are suffering from a recognisable psychiatric illness is problematic for victims. It places a significant onus on them to present their injuries so that they align with a psychiatric category. That process of pathologising the harms of sexual abuse may require victims to portray themselves as vulnerable, helpless, 'sick' and shamed, which may not assist them in recovery. It also contributes to a historical connection between women and mental illness that a significant body of theorists argue reinforces a societal understanding of women as irrational, hysterical and helpless.<sup>120</sup>

The types of harms protected in the schemes are driven by a vision of a crime as an isolated violent attack perpetrated by a stranger to the victim resulting in either visible physical injuries or psychiatric injuries from the shock of the unexpected attack. Sexual assault sometimes accords with the paradigm of a violent unexpected attack perpetrated by a stranger to the victim. However, the nature of the offence is often coercive where the victim is 'groomed' over a period of time,<sup>121</sup> involves a breach of trust,<sup>122</sup> and is clothed in secrecy and shame.<sup>123</sup> It is often not accompanied with the kind of 'violent' criminal activity envisaged in the criminal law. Consequently,

---

118. Victoria, New South Wales and Queensland.

119. As defined in American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* 4th edn (Washington, 1994) 424.

120. See N Tuana *The Less Noble Sex: Scientific, Religious and Philosophical Conceptions of Womens Nature* (Indianapolis: Indiana UP, 1993) 75; E Martin 'Medical Metaphors of Womens Bodies' in K Conby, N Medina & S Stanbury (eds) *Writing on the Body: Female Embodiment and Feminist Theory* (New York: Columbia UP, 1997) 15; J Astbury *Crazy For You: The Making of Womens Madness* (Melbourne: Oxford UP, 1996); N Theriot 'Womens Voices in Medical Discourse: A Step Towards Deconstructing Science' (1993) *Signs* 1, 8.

121. J Conte, S Wolf & T Smith 'What Sexual Offenders Tell Us About Prevention Strategies' (1989) 13 *Child Abuse Negl* 293.

122. L Budin, S Wolf & T Smith 'Sex Abuse Prevention Programs: Offenders Attitudes About Their Efficacy' (1989) 13 *Child Abuse Negl* 77.

123. See Herman above n 39.

in contrast to the three primary categories of loss and injury available in the schemes, the typical effects of sexual abuse suffered by victims are not visible physical injuries or the kind of psychiatric injury that might result from a shocking, violent and unexpected event. Instead, they are best described as interpersonal, social, behavioural, or vocational.<sup>124</sup> In the case of Aboriginal women, the harm may be specifically cultural and linked to community perceptions of the harm and the cultural expectations embedded in Aboriginal society.<sup>125</sup> Community perceptions of the assaults, where a traditional view of sexual assaults as 'serious and totally unacceptable', often resulting in harsh punishment such as spearing or even death,<sup>126</sup> appears to have persisted and consequently shame and loss of self-esteem may be extreme. That stigma may keep victims from fulfilling social and cultural obligations essential to the lives of Aboriginal women in many rural communities, such as 'women's business' and ceremonies.<sup>127</sup> Some harm may not be specifically 'cultural' but because of cultural norms result in greater injury to the victim. The close knit and inter-reliant nature of many Aboriginal communities may magnify the effects of ostracism.<sup>128</sup> It may also mean that Aboriginal women, who are forced to leave their families and communities due to sexual abuse, may be 'injured' by a loss of crucial support systems because they are forced to rely on the structures outside their community, which have a history of racism and marginalisation.<sup>129</sup>

## VII. SEXUAL ASSAULT PROVISIONS: CURRENTLY OPERATING MODELS

### 1. The United Kingdom: First of its kind

The United Kingdom was the first Western jurisdiction to introduce sexual assault provisions into its criminal injuries compensation scheme.<sup>130</sup> In 1995 the United Kingdom in a major overhaul of its scheme introduced a tariff-based model including separate categories of award for child and adult sexual abuse.<sup>131</sup> Initially there were six levels of award for child sexual abuse and six levels of award for adult victims of sexual abuse.<sup>132</sup> In 2001 the scheme was amended to include amongst other things,

---

124. See above n 8.

125. See J Tolmie & J Stubbs 'Race, Gender and the Battered Woman Syndrome: An Australian Case Study' (1995) 8 Canadian J Women & Law 122 who explore the limitation of analysing Aboriginal and Torres Strait Islander womens experiences as an 'extreme version of that experienced by other women'.

126. See P Eastaugh *Less than Equal: Women and the Australian Legal System* (Sydney: Butterworths, 2000) 183.

127. See Cook, David & Grant above n 92, 31.

128. C Cunneen & T Libesman *Indigenous People and the Law in Australia* (Sydney: Butterworths, 1995) 5.

129. See Tolmie & Stubbs above n 125, 130.

130. Criminal Injuries Compensation Act 1995 (UK) Sch 1.

131. *Ibid*, s 23(a).

132. *Ibid*, Sch 1.

a further substantial widening of the categories of sexual assault for both adults and children.<sup>133</sup> The amended scheme included 13 levels of awards for adult victims of sexual assault ranging from £1 000 to £33 000 and 16 levels of award for child victims of sexual assault also ranging from £1 000 to £33 000.<sup>134</sup> The English jurisdiction adopted, according to Duff,<sup>135</sup> a 'hybrid' offence and victim-centred approach to sexual assault. Duff's characterisation of the English approach reflects the two ways in which awards for sexual assault victims are calculated in this jurisdiction. Initially, the categories have only an offence-based criterion. Each category accords with offences in the criminal law; the level of harm to the victim is not considered. Compensation is awarded if the applicant proves that the designated offence occurred. The bands of award in all categories therefore reflect the criminal seriousness of the offence, rather than the degree of injury suffered by the victim. A major benefit of adopting offence-based categories lies in their potential to remove the requirement to provide proof of injury as compensation can be awarded upon proof of the offence. The offence-based component of the English sexual assault provisions therefore recognises the wrong that is inherent in the sexual assault itself. Such an approach is consistent with the common law approach to sexual assault where victims (in those jurisdictions where civil actions have been successfully pursued such as Canada)<sup>136</sup> commonly pursue tort actions in battery. In the tort of battery, the essence of the action is the infringement of a right to personal integrity: there is no requirement for an injury to establish liability.<sup>137</sup> This is beneficial in that it eases access to compensation for victims and also because it provides a state and public recognition of the inherent 'harm' of sexual assault.

There is also a victim-centred component in the United Kingdom model that provides compensation on the basis of the severity of the injuries suffered by the victim. This is in the form of a 'top up' award which can be made in most categories upon proof of a 'serious internal bodily injury' or a 'permanent severe' psychiatric illness. For example, the award for a rape upon proof of the 'crime' is £7 5000. However, upon proof of a 'permanent severe' psychiatric illness the victim can receive a further £12 500. This is beneficial in that it attempts to compensate victims according to the severity of their injuries and therefore meets the underlying restitutionary purpose of compensation law. However, the United Kingdom model provides compensation for only a narrow range of injuries and the variety of injuries typically experienced by victims of sexual abuse, as explored earlier in this article, including vocational, behavioural, social, inter-personal and cultural injuries or losses, are not included in the scope of the scheme.

---

133. See Miers above n 4, 275.

134. Criminal Injuries Compensation Act 1995 (UK), Sch 1.

135. See P Duff 'Criminal Injuries Compensation' (1998) *Oxford J Legal Studies* 105, 133.

136. See B Feldthusen 'The Civil Action for Sexual Battery: Therapeutic Jurisprudence' (1993) 25 *Ottawa L Rev* 204.

137. See Luntz & Hamblly above n 117, 680.

## 2. New South Wales: A primarily offence-based model

New South Wales included three different levels of compensation for sexual assault victims when it introduced a tariff-based model of awarding compensation in 1996.<sup>138</sup> The provisions were modelled on the English sexual assault provisions described in the previous section. Category One includes indecent assault or assault with violence in the course of attempted unlawful sexual intercourse. The award range is \$7 500 to \$10 000. The second category includes unlawful sexual intercourse or the infliction of serious bodily injury in the course of attempted unlawful intercourse. The award range is \$10 000 to \$25 000. The third category includes a pattern of abuse involving category one or two sexual assault; unlawful sexual intercourse in which serious bodily injury is inflicted; unlawful sexual intercourse in which two or more offenders are involved; or unlawful sexual intercourse in which the offender uses an offensive weapon. The award range is between \$2 000 to \$50 000.<sup>139</sup>

The New South Wales model incorporates a 'hybrid' offence-based and victim-centred approach. It uses different criteria to the United Kingdom but the rationale is similar. Each of the three categories of award accords with criminal offences, and, as the offence becomes more serious in the eyes of the criminal law, the award range also becomes higher. At the outset, therefore, the approach is offence-based as criminal culpability, rather than the level of harm suffered by the victim, determines the range of award that is applicable. However, once the relevant 'sexual assault' band range is selected the assessor has a discretion to determine the precise figure to award within that band. No guiding formula is provided to the assessor to determine the level of award within the band. In this sense the New South Wales model differs from the United Kingdom model where a victim-centred criterion is specifically identified. In the United Kingdom model the amount within the range is determined by the severity of the injuries suffered and must fall within either of two specifically identified categories: 'serious internal' bodily injuries or 'severe disabling' psychiatric illness.

In the absence of a guiding formula the New South Wales assessors could have adopted either an offence-based approach or a victim-centred approach to calculate the amount of award in the designated award range. An offence-based approach would require the award to be calculated according to the criminal seriousness of the 'crime'. A victim-centred approach would require the award to be calculated according to the seriousness of the injuries suffered by the victim. In a recent case the New South Wales Court of Appeal considered the two alternatives and concluded that although the New South Wales model is, at the outset, offence-based, the method of calculation once the appropriate award band is determined is victim-centred.<sup>140</sup> The Court also concluded that the offence-based component of the

138. Victims Support and Rehabilitation Act 1996 (NSW).

139. *Ibid*, Sch 1.

140. See *GM* above n 79.

provisions operates in conjunction with the victim-centred component and no award can be made in the absence of proof of injury even if the offence-based component is satisfied.<sup>141</sup> That decision has clarified the legal position in relation to the sexual assault provisions and the requirement to provide proof of injury. However, the decision leaves the New South Wales model of sexual assault provisions with few ascertainable benefits and a number of specific drawbacks. First, the offence-based approach reduces the restitutionary potential of the scheme. This is because each level of award is determined by the seriousness of the offence in the criminal law, rather than the level of harm suffered by the victim. The more serious the offence in the criminal law the higher the award range that the victim can qualify for. For example, a victim of an indecent assault is confined to the offence-based Category One and can only be awarded an amount between \$7 500 and \$10 000 regardless of the severity of injuries suffered by the victim. Although a primary aim of compensation law is to compensate injured persons in line with the severity of their injuries, the offence-based approach in the New South Wales model reduces the scope for that outcome.

Second, the New South Wales model requires proof of injury yet does not extend the type of injuries that can be compensated within the scheme. Compensable injury continues to be defined as either a recognisable psychiatric illness or bodily harm. Since the injuries suffered by victims of sexual abuse can rarely be categorised as bodily injury, the New South Wales model perpetuates the onus on applicants to prove themselves 'mentally ill' in order to receive compensation. The failure to redefine the concept of injury leaves many of the injuries typically suffered by victims of sexual abuse uncompensated.

Third, the presence of an upper band to incorporate multiple crimes has beneficial effects but also has disadvantages. On the beneficial side, the upper band, which is specifically targeted at victims who have experienced multiple sexual assaults, explicitly recognises that sexual abuse may occur in a climate of ongoing and multiple offences and acknowledges their devastating consequences by providing a higher award range. It removes the opportunity for the courts to use familial relationships to conclude that a series of assaults are 'related' and reduce the award. However, the upper band of award removes the potential for the applicant to be compensated for each separate 'crime' and consequently victims may receive less compensation than applicants in other jurisdictions who can pursue multiple awards for 'non-related crimes.' The reliance on criminal convictions to calculate the amount of award, evident in all jurisdictions, may also be reduced in instances of multiple abuses in the New South Wales model because the award range is already determined by the nature of the 'crime'. Although this could be viewed as a disadvantage (the availability of only a single award for multiple 'crimes') a *higher* award to reflect the devastating effects of multiple assaults would overcome this limitation.

---

141. See *ibid.*

### 3. **Victoria: A narrow 'hybrid' offence and victim-centred model**

In Victoria, all awards for bodily injury and nervous or mental shock were removed from its criminal injuries compensation framework in 1996 with the introduction of the Victims of Crime Assistance Act 1996 (Vic). Since the vast majority of awards received by victims of sexual abuse fall within the category of nervous or mental shock this effectively removed them from the scope of the scheme. However, in 2000 limited awards for non economic loss were reintroduced into the Victorian scheme for victims who had suffered a 'significant adverse effect' from an 'act of violence' that falls within four specified categories of offences. A significant adverse effect includes 'grief, distress, trauma or injury'.<sup>142</sup> The four categories of offences are:

- A. Any offence that involves the sexual penetration of a person or attempted murder, with a range of \$3 500–\$7 500;
- B. Any offence that involves attempted sexual penetration of a person or indecent act or assault, armed robbery, aggravated burglary, the deprivation of the liberty of any person for the purpose of sexual penetration or demanding any ransom for their release, with a range of \$1 000–\$2 500;
- C. Any offence that involves an attempt to commit a category B act of violence, or a threat of death, or conduct endangering life, or inflicting serious injury or robbery, with a range from \$500–\$1 000;
- D. Any offence that involves an attempt to commit a category C act violence or a threat of injury or an assault against a person or an attempted assault or the deprivation of the liberty or an act of violence not otherwise specified, with a range of \$100–\$500.<sup>143</sup>

The Victorian model is offence-based like the New South Wales model and also explicitly requires proof of injury. Thus, the nature of the offence will determine the initial range of award. As well as establishing that an offence within one of the categories has occurred the victim must show that she or he has suffered a 'significant adverse effect'. The actual amount awarded within the applicable range will be based on the severity of the 'significant adverse effect' suffered by the victim. A guiding formula to assist the assessor to determine the precise amount of award once the range of award is identified is provided in the regulations. The maximum should be awarded in Category A if the applicant has suffered a very serious physical injury<sup>144</sup> or been the victim of a series of 'related acts' of indecent assault or sexual penetration.<sup>145</sup> The category B maximum should be awarded if the

142. Victims of Crime Assistance Act 1996 (Vic) s 3.

143. Ibid, s 8A(5) & Reg 5.

144. Ibid, Reg 5 (a).

145. Ibid, Reg 5(c).

victim has suffered a serious injury<sup>146</sup> or been the victim of 'related acts' of violence.<sup>147</sup>

The main advantage of the Victorian model is that it provides a more expansive range of compensable injuries. The categories of compensable injuries are extended by the definition of a significant adverse effect as 'grief, distress, trauma or injury'. Although the term injury is likely to be interpreted in instances of sexual abuse as direct bodily harm and recognisable psychiatric illness the terms 'distress and trauma' may allow for the inclusion of other injuries suffered by victims of sexual abuse. The extended definition of injury partially removes the onus to prove a recognisable psychiatric illness which has been a significant feature of the Victorian model.<sup>148</sup> Once a significant adverse effect is established then the maximum in the two top tiers of awards is payable if the victim experienced multiple acts of abuse or a 'very serious injury'. This will remove the judicial focus on criminal convictions and the impact of the 'related acts' clauses since the new formula will guide the courts in determining the amount of award.

Generally, however, the Victorian model functions ineffectively in reconciling the problems identified earlier in this article. The categories of offence are narrowly defined and do not even include the range of behaviours that typically constitute a sexual offence in the criminal law. Further, the main advantage of an offence-based approach is its potential to remove the requirement to provide proof of injury. However, in this model, the offence-based component does not operate to remove that requirement. This is because the adverse effect clause in the Victorian model means the applicant must still establish that she or he has suffered a 'significant adverse effect' before any compensation can ensue. In the end the most significant drawback of this model is the low range of awards with a statutory maximum of only \$7 500. It is, however, the only avenue for non-pecuniary compensation remaining in the Victorian jurisdiction and therefore the only avenue for victims of sexual abuse to pursue compensation.

#### 4. Queensland: A broad 'victim-centred' model

Queensland introduced a sexual assault provision into the Criminal Offence Victims Act 1995 (Qld) in 1997. It did this with the inclusion of the 'adverse impact clause'. The adverse impact clause applies to Queensland victims of indictable 'personal offences' of a sexual nature that have occurred after 18 December 1995.<sup>149</sup> The clause, by providing a separate list of compensable forms of injury, specifically

---

146. Ibid, Reg 7(a).

147. Ibid, Reg 7(b).

148. S Jarvis & F McIlwaine 'Telling the Whole Story. Reports to the Crimes Compensation Tribunal' (1996) 7 Aust Feminist LJ 145.

149. Criminal Offence Victims Regulation 1995, Regs 1A(1) & (3).

expands the meaning of legally compensable harm to include a broad range of social, interpersonal and behavioural effects that accord much more closely to the effects typically experienced by victims of sexual abuse. The statute lists as possible harms that can be compensated (provided a ‘personal offence’ of a sexual nature has occurred) the following: a sense of violation, reduced self-worth or perception, post-traumatic stress disorder, disease, lost or reduced physical capacity, increased fear or increased feelings of insecurity, adverse impact on lawful sexual relations, adverse impact on feelings, and anything the court considers is an adverse impact of a sexual offence.<sup>150</sup>

The Queensland model has some good features. The ‘adverse impact’ clause introduces a fully victim-centred formula for sexual assault victims. This means that compensation is awarded purely on the basis of the level of harm suffered by the victim rather than the seriousness of the event that has caused the harm (such as in the models adopted in the United Kingdom, New South Wales and Victoria). This is desirable because it means that the provision accords with the restitutionary aims of compensatory law attempting to put the person back in to the position they were in prior to the ‘crime’ rather than adopting the objects and aims of the criminal justice system and awarding compensation on the basis of the culpability of the perpetrator. Crucially, the comprehensive list of compensable harms in the adverse impact clause (which align closely to the ‘social, behavioural and interpersonal’ harms identified previously as typically suffered by victims of sexual abuse) significantly widens the form of legally compensable injuries for victims of sexual abuse. It overcomes the previous limited definition of injury employed in the Queensland legislation which confined compensable injuries to direct bodily harm and recognisable psychiatric illnesses increasing the potential for victims of sexual abuse to receive compensation for the harms they typically suffer. It removes the onus currently on victims of sexual abuse to establish a recognisable psychiatric illness and enables victims to access the full \$75 000 maximum of the scheme rather than being limited to the \$20 000 maximum for nervous shock. The different maximum awards for bodily injury and nervous shock in the Queensland schemes had previously resulted in an unofficial ‘cap’ of \$20 000 on claims by victims of sexual abuse. It had done this by characterising any harm suffered by victims of sexual abuse as either psychiatric or psychological therefore confining them to the nervous shock maximum. The potential of the adverse impact clause to result in a higher award was evidenced in *Whyte v Robinson*<sup>151</sup> where the judge, unsure of whether the applicant could make use of the adverse impact clause, had made two determinations of the amount of award based on both legal frameworks. Under the previous definition of injury, which confined the applicant to the nervous shock category (compensating only recognisable psychiatric illness to a maximum of

150. Victims of Crime Assistance Act 1996 (Vic) Regs 7(a), s 1A(2)(a)–(k).

151. (Unreported) Qld Ct of Appeal, McPherson, Thomas JJA and Atkinson J, 28 Mar 2000, BC200002253.

\$20 000), the award was assessed at \$12,000. Under the adverse impact clause utilising its much broader criteria of harm to a maximum of \$75 000, the award was assessed at \$40 000.

The Queensland model however has several limitations. Although the 'adverse impact' clause does increase the potential amount awarded to victims of sexual abuse and provides recognition of a broader range of the injuries typically experienced by victims of sexual abuse it is limited in scope. The Act applies only to specific 'criminal' sexual offences. As the Queensland scheme continues to require a criminal conviction those 'specific' sexual offences must be proved to a criminal standard of proof and the victim must have convictions obtained in the criminal justice system in order to lodge an application. The Queensland model does not therefore remove the hurdles faced by victims of sexual abuse who are required to obtain a criminal conviction before an application for compensation can be successfully lodged. Finally, this model does not remove the impact of the 'related acts' clauses as the courts are still required to determine whether multiple 'acts of violence' are related and constitute a single 'act of violence'.

## VIII. SEXUAL ASSAULT: A NEW MODEL OF PROVISIONS

### 1. Why specific sexual assault provisions?

This article proposes that sexual assault provisions should be introduced into all criminal injuries compensation schemes currently operating in Australia. There are two particular reasons for this conclusion. First, the presumption in most schemes that the legal rules in the schemes should apply in the same way to all victims of crime has not led to substantive equality for victims of sexual abuse.<sup>152</sup> Majury and others have argued that if the effect of a practice or policy does not lead to substantive equality then subordinated groups may need to be treated differently.<sup>153</sup> The different characteristics of sexual abuse – the gender specific nature of sexual abuse,<sup>154</sup> the difficulties faced by victims in reporting abuse to the police partly because of the shame and secrecy that continue to surround sexual abuse,<sup>155</sup> the gruelling nature of the criminal justice system for victims of sexual abuse,<sup>156</sup> the low rate of ensuing convictions<sup>157</sup> and the differing form of the injuries typically experienced by sexual

152. Substantive equality refers to 'actual' or 'real' equality rather than simply the equal application of rules and laws. For a discussion of substantive equality, see R Kapur & B Cossman *Subversive Sites: Feminist Engagements with Law in India* (New Delhi: Sage Publications, 1996) 176.

153. D Majury 'The Charter, Equality Rights and Women: Equivocation and Celebration' (2002) 40 Osgoode Hall LJ 297, 305; Kapur & Cossman *ibid*, 292.

154. See Kaspiew above n 105, 374.

155. See Stubbs above n 5, 122.

156. See West above n 42, 112.

157. See Stubbs above n 5.

assault victims – are not relevant considerations within the schemes as they currently operate. The inclusion of sexual assault provisions can address the different and specific concerns of victims and are a key measure to ensure equality of outcome.

Second, the presence of sexual assault provisions explicitly acknowledges that sexual abuse is a harmful and destructive practice. The presence of sexual assault provisions provides a symbolic message to the community of the unacceptability of sexual abuse. That symbolic message can operate to ‘act back’ on cultural norms in the wider Australian community contributing to a change in institutional and community responses to sexual abuse.<sup>158</sup> That message is rendered more powerful, because the schemes are state-run and state-funded. Further, as Dr Sandra Harder (quoted by Thwaites in the Victorian Legislative Assembly) put it: ‘The symbolic recognition of the validity of the victim’s experience provides reassurance to victims that the legal system and the community care about their pain. This reassurance and recognition assists patients in their recovery’.<sup>159</sup> For a victim who may have endured the secret of childhood abuse for many years an acknowledgment that what happened is not her or his fault and that someone in authority is prepared to believe her or him can offer an important new perspective and play a significant role in their recovery

## 2. The model proposed

Each of the models discussed in the previous section address some of the problems previously identified as faced by victims of sexual assault in the schemes. However, neither the United Kingdom model nor the three models of sexual assault provisions currently operating in Australia provide the ideal model for determining compensatory awards for victims of sexual assault. The new model of sexual assault provisions suggested in this article incorporates some of the features of the three currently operating models but also includes new features. The new model of sexual assault provisions proposed in this article contains two tariffs, one for child victims and one for adult victims. In the child victim tariff there are five categories of award, and in the adult victim tariff there are four categories of award. Categories One to Four in the child victim tariff and Categories One to Three in the adult victim tariff do not require the provision of proof of injury in order to receive the base amount in each category. A victim-centred formula of assessment is provided to guide the assessor in her or his determination of the appropriate amount within each range. Each of the two tariffs includes a final victim-centred category which enables the assessor to award an extra amount if the plaintiff has suffered ‘severe’ injuries regardless of which of the categories of award they qualify for. Whilst no law reform solution can fully address those barriers confronting victims of sexual assault that are embedded in community and police attitudes, an effective and sensitive model of sexual

---

158. See Dixon above n 48.

159. Mr J Thwaites, Victoria, *Hansard* (LC) 21 Nov 1996, 1452.

CHILD VICTIMS OF SEXUAL ASSAULT

Category	Victim-Centred Criteria	Range of Award
One	A single non-invasive indecent assault	\$10 000–\$15 000
Two	A single invasive assault	\$15 000–\$25 000
Three	Repeated non-invasive or invasive sexual assaults by one or more offenders	\$25 000–\$50 000
Four	A pattern of abuse involving invasive sexual assaults in which the offender is in a position of trust in relation to the victim.	\$50 000–\$75 000
Five	Any of the previous four categories of injury can attract an additional award of \$50 000 if they have resulted in a ‘severe’ cultural, vocational, social, behavioural, interpersonal social or psychological effect	\$50 000

In determining the level of award within each of the above categories the assessor must have regard to the cultural, vocational, psychological, behavioural, interpersonal, and social loss experienced by the victim.

ADULT VICTIMS OF SEXUAL ASSAULT

Category	Victim-Centred Criteria	Range of Award
One	A single non-invasive indecent assault	\$10 000–\$15 000
Two	A single invasive assault	\$15 000–\$25 000
Three	Repeated non-invasive or invasive sexual assaults by one or more offenders	\$25 000–\$50 000
Four	Any of the previous four categories of injury can attract an additional award of \$50 000 if they have resulted in a ‘severe’ cultural, vocational, social, behavioural, interpersonal social or psychological effect	\$50 000

In determining the level of award within each of the above categories the assessor must have regard to the cultural, vocational, psychological, behavioural, interpersonal, and social loss experienced by the victim.

provisions can facilitate claims by a wider range of victims, compensate victims more fully for the injuries they suffer and provide a less traumatic means of receiving compensation.

### **3. Benefits of the model proposed**

#### **(a) Multiple levels of award for child and adult victims**

The sexual assault provisions proposed above incorporate multiple levels of award as in the United Kingdom, New South Wales and Victorian models. Multiple levels of award (with clear criteria as to how the award should be assessed) are an effective assurance that applicants will not cluster in the low range of awards. The use of multiple levels of award also enables the tariff to reflect the literature that verifies the typical effects suffered by victims of sexual abuse, without relying on expert reports and the discretion of the assessor. Each award level reflects a gradation of the seriousness of injuries as reflected in the research as typically resulting from particular events. For example, research suggests that a single non-invasive act of sexual abuse is less likely to result in serious long term effects than a series of invasive assaults.<sup>160</sup> The provisions also contain a clear guiding formula to assist the assessor in determining the amount of award. Such guidance encourages consistency between decisions and between jurisdictions.

The proposed model incorporates separate tariffs for child and adult victims since research suggests that although the injuries typically experienced by child and adult victims are similar in some ways, there are also some significant differences. By introducing separate models the scope to expand or modify each is easily achieved. The amount of award for each category should be at the level that the state considers it can afford. The amount chosen reflects the limits of the most generous model currently operating in Australia (ie, Queensland). The amount should be generous to recognise the seriousness of sexual abuse, the devastating harm that it causes and to mark state and societal disapproval of sexual abuse.

#### **(b) Primarily victim-centred rather than offence-based**

The general underlying rationale of the model of sexual assault provisions that this article recommends is victim-centred rather than offence-based. The levels of award are based on the severity of the injuries suffered by the victim rather than the criminal seriousness of the event that caused the injuries. Although some of the categories of award may appear to accord with an offence-based approach, this is because the criminal seriousness of the event also reflects the typical severity of injury as a result of that event as reflected in the research. For example, research

---

160. See above n 8.

suggests that multiple acts of invasive abuse perpetrated on a child by a person known and trusted by the child victim causes devastating harm. Thus, the highest level of award in the model for child victims compensates 'a pattern of abuse involving invasive sexual assaults in which the offender is in a position of trust in relation to the victim'. In terms of criminal seriousness, incest and other child sexual abuse perpetrated by a person in a position of trust are also regarded as very culpable and serious events. This article argues, however, that it is the severity of the injury rather than the criminal culpability of the event that should be the focus of the levels of award. Any accord between the two is coincidental rather than designed.<sup>161</sup>

The rationale for a model that compensates sexual abuse victims based on the injuries they suffer rather than the culpability of the perpetrator is in accord with the restitutionary basis of compensation law. The focus of the award process should be on the victim who should be compensated to the extent of her or his injuries and put back into the position he or she was in prior to the 'offence', as much as money can achieve such an outcome and to the extent that the state can afford.

### **(c) Expansive definition of injury**

The injuries identified in the literature that explores the typical effects of sexual abuse identifies serious vocational and educational harm (particularly for child victims) behavioural loss such as an inability to form close relationships; low self esteem; physical responses to the abuse such as eating disorders, drug abuse and suicide attempts; and social loss such as humiliation and shame excluded in many jurisdictions despite being 'one of the essential elements of almost every sexual assault'<sup>162</sup> as the injuries typically suffered by victims of sexual assault.<sup>163</sup> These injuries are largely excluded from the statutory categories of injury adopted in the schemes.

The model of sexual assault provisions proposed has therefore expanded the meaning of injury to include vocational, cultural, social, behavioural, and interpersonal injuries identified in the literature as typifying the harm suffered by victims of sexual abuse. Cultural loss is also included. Although in tort law there is an emerging, albeit limited, discourse recognising the 'cultural loss and opportunity' of injured indigenous Australians the statutory schemes define harm precisely and are unlikely to embrace the developing trend of tort law without specific legislative change. Even if the recognition of culture as a source of harm does not always increase the

---

161. Research conducted in New South Wales found that there is little correlation between the seriousness of a criminal sexual offence and the severity of injuries experienced by the victim. See H Swanston H, P Parkinson P, S Shrimpton, B O'Toole & K Oates 'Statutory Compensation for Victims of Child Sexual Assault: Examining the Efficacy of a Discretionary System (2001) 8 Int'l Review of Victimology 37.

162. See Walsh J per *V v W*; *A v W* (unreported) WA Sup Ct, 1993, BC9301113.

163. See above n 8.

amount of the award for Aboriginal victims its presence could challenge prevailing norms and contribute to changes in the ways Aboriginal people are viewed in Australian society.<sup>164</sup>

#### **(d) Removal of the requirement to provide proof of injury**

The structure of the model proposed partially removes the requirement to prove that an injury occurred (other than the invasion of personal integrity implicit in the act of sexual assault). This is achieved, however, not with an offence-based approach but with the adoption of a victim-centred approach. For each of the first four categories in the model for child victims and for the first three categories in the model for adult victims, proof of the event specified is sufficient for compensation at the lowest level of the award band. For example, if a child victim experiences a single non-invasive sexual/indecent assault then compensation of \$10,000 will be awarded. If the applicant can prove injury according to the formula provided ('In determining the level of award within each of the above categories the assessor shall have regard to the cultural, vocational, psychological, behavioural and social loss experienced by the victim') then the award may be raised to the maximum of the award range. Although this could be interpreted as an offence-based approach the key difference is that the categories are determined by the research that focuses on the typical injuries suffered by victims of sexual abuse and their seriousness rather than the criminal culpability of the perpetrator. The removal of the requirement to prove an injury consequential on the assault acknowledges sexual assault as an unacceptable invasion of personal integrity. It distinguishes sexual assault in this way from other offences on the basis that it is an abhorrent and inevitably injurious wrong that the state on behalf of society should recognise and provide compensation for.

The final category in both models ('Any of the previous three categories of injury can attract an additional award of \$50 000 if they have resulted in a 'serious' cultural, social, vocational, behavioural, social or psychological effect') recognises that it is not possible to develop a hierarchy of the effects of sexual abuse based on the sequence of events that caused them. For example, although research indicates that multiple acts of intrusive 'penetrative' abuse perpetrated by a person who is in a position of trust in relation to the victim causes the most serious harm,<sup>165</sup> other research indicates that the stability of the home and surrounding environment of the victim at the time of the abuse may significantly lessen the injuries.<sup>166</sup> Therefore, a child in a supportive family environment who is sexually abused by a person in a

---

164. R Graycar 'Compensation for the Stolen Children: Political Judgments and Community Values' (1997) 4(3) UNSW LJ 24; see also M Thornton *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford UP, 1996) 34-40.

165. See Mullen & Fleming above n 37.

166. See Herman above n 39, 59.

position of trust such as a teacher or a priest may not be harmed as severely as a child in a non-supportive family environment abused by a parent. Alternatively, a victim of a single incident of indecent assault might suffer devastating harm, despite research that suggests such an event is not typically as harmful as other invasive and repeated forms of abuse. The presence of the final category, which applies to all victims of sexual abuse, is therefore designed to further compensate victims who have suffered devastating injuries and are inadequately compensated in the previous categories.

## IX. CONCLUSION

This article has proposed a new model of sexual assault provisions and recommended that it be introduced into all criminal injuries compensation schemes currently operating in Australia. The introduction of sexual assault provisions in three jurisdictions - New South Wales, Victoria and Queensland - provided the starting point for the model of provisions recommended in this article. The model recommended is victim-centred, as in the Queensland model, rather than offence-based. It is victim-centred in the sense that the award is based on the severity of the injuries suffered by the victims rather than, as in an offence-based model, the criminal seriousness of the event that caused the injuries. It is multi-tiered as in the United Kingdom, New South Wales and Victorian models. A multi-tier system ensures that applicants will not cluster in the lower range of awards, creates the opportunity to provide a clear guiding formula to ensure consistency of awards, and enables the tariff to reflect the literature that verifies the typical effects suffered by victims of sexual abuse, without relying on expert reports and the discretion of the assessor. The model incorporates separate tariffs for child and adult victims as in the United Kingdom model, and partially removes the requirement to prove that an injury occurred (other than the actual act of sexual assault) on the basis that sexual assault is an abhorrent and injurious event for which compensation should be paid. The provisions provide a clear guiding formula to assist the assessor in determining the amount of award and to promote consistency between decisions and between jurisdictions. Finally, the model proposed in this article has expanded the meaning of injury and loss to reflect the vocational, cultural, social, behavioural, and interpersonal injuries identified in the literature as typically suffered by victims of sexual abuse.

In conclusion, as well as easing access to the schemes for victims of sexual abuse the presence of an *effective* model of sexual assault provisions in criminal injuries compensation schemes is an authoritative and crucial statement of the unacceptability of sexual abuse in the Australian community.

---

