

VICTIM COMPENSATION AND DOMESTIC VIOLENCE: A NATIONAL OVERVIEW

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- The provision of compensation is now seen to represent good practice as part of a broader legal response to domestic violence. Compensation can assist women to deal with the aftermath of violence at both a practical and symbolic level.
- All eight Australian states and territories operate victim compensation schemes, although there are significant differences in their eligibility criteria, the composition of awards and the assessment processes used.
- Historically, domestic violence victims have found it difficult to access compensation but many Australian jurisdictions have now introduced special measures to improve women's access to the schemes. However, the recent trend towards debt recovery from perpetrators may have negative implications for some women.
- Advocates and lawyers can assist their clients by informing them about their entitlements to compensation and encouraging them to apply for it. Depending on their circumstances and the jurisdiction, women may be eligible for awards of up to \$75 000.
- Further research is needed into domestic violence victims' experiences of the compensation process.

INTRODUCTION

Since the first statutory scheme was introduced in Australia in 1967, victim compensation has become a key component of governments' response to violent crime. Victim compensation schemes now operate in all states and territories, although there are significant variations in the way they are structured (Freer 2004). They provide monetary awards to victims of crime in recognition of the harm they have suffered.

The importance of making victim compensation accessible to domestic violence victims is well established in policy circles. Internationally, the significance of compensation as a legal remedy for domestic violence victims is reflected in General Recommendation no. 19 (1992) of the *Convention on the Elimination of Discrimination Against Women* (CEDAW). It obliges states to provide appropriate protective and support services to victims of gender based violence, including compensation (United Nations 2007). More recently, the provision of compensation to domestic violence victims has also received critical attention in Australia, with the National Council to Reduce Violence against Women and their Children (2009, p. 98) describing it as 'a core component of a just legal response' to domestic violence. In particular, the Council stressed its role in

restoring an individual's sense of dignity and raising public awareness about the harms experienced by women.

As work on the Commonwealth Government's national plan to reduce violence against women continues, it is timely to review the current status of victim compensation in Australia. To that end, this paper seeks to inform readers about domestic violence victims' entitlements to compensation around the country and to encourage service providers to become proactive in advising women about this important avenue of financial restitution. By alerting readers to policies and practices in other states and territories, this paper aims to serve as a basis for more effective advocacy and policy, with better outcomes for victims in this area.

Importantly, this paper focuses on the legislative requirements of victim compensation schemes themselves rather than their implementation in practice. It is based on a comparative study of relevant legislation in all eight Australian states and territories (see Appendix), as well as an extensive review of literature on victim compensation. In undertaking this review, over 20 published articles and conference papers on compensation for sexual assault victims were identified.¹ In contrast, a much smaller body of Australian research, much of it outdated, addresses

the experiences of domestic violence victims (Forster 1999; Gubbay 1996; Jurevic 1996; O'Connell 1997; Whitney 1997; Wong 2004). This paper adds to the existing literature by providing a cross-jurisdictional perspective on compensation for domestic violence victims. It also highlights the breadth of reforms that have taken place in this area since the mid-1990s.

The paper is divided into three parts. The first section highlights the potential benefits for women in utilising victim compensation and provides a comprehensive overview of the current schemes operating in Australia. The second section examines past and current barriers faced by domestic violence victims when they apply for compensation and identifies innovative practices designed to make compensation more accessible to them. The final section examines the recent trend towards debt recovery from perpetrators and its implications for women's experiences of compensation proceedings.

The paper deals solely with women's entitlements to compensation under state run and funded schemes. However, it is important to bear in mind that two other mechanisms for compensation may be available to women. In most jurisdictions, it is also possible for a court to order an offender to pay reparation to their victim at the time of sentencing. A victim of crime may also initiate civil proceedings for damages, usually in the tort of battery (Forster 2005, p. 271).

While the paper focuses on domestic violence victims' access to compensation, many of the issues raised will also be relevant to those working with other victims of crime, especially sexual assault victims.

TERMINOLOGY

Throughout this paper, the term 'victim' rather than 'survivor' has been used in relation to those who experience domestic violence. While acknowledging the important debates concerning the implications of this terminology, the term 'victim' seems more appropriate in this context, as it is more consistent with the principle of compensation, as well as the language used in the legislation and by scheme administrators. The paper refers to victims of domestic violence as women, as they make up the large majority of people affected by domestic violence (Australian Bureau of Statistics 2006; Dearden & Jones 2009), but acknowledges the experience of some men as victims of domestic violence.

In addition, the term 'victim compensation' is used to refer to both traditional 'compensation based schemes' in which the state awards a victim a lump sum payment based on the severity of their injuries;

and 'financial assistance schemes' in which the state pays for or reimburses the cost of goods and services a victim requires to recover (Department of Justice and Attorney-General 2008, p. 16). The distinction between these schemes is significant when it comes to the calculation and timing of monetary awards to victims, with a greater emphasis on practical and immediate support in the latter schemes. Overall, however, so-called 'financial assistance schemes' are better understood as a different means of delivering compensation to victims, rather than a distinct alternative to compensation.

VICTIM COMPENSATION ACROSS AUSTRALIA

Compensation in its present form – as a payment made by the state to a victim of crime – is a relatively new innovation, introduced as a result of lobbying by victims' rights advocates, most notably British magistrate Margery Fry, in the 1950s (Cook, David & Grant 1999, p. 83). The first government sponsored compensation scheme was introduced in New Zealand in 1963, with the United Kingdom following closely behind in 1964. In Australia, victim compensation was first introduced in New South Wales in 1967 and was gradually taken up by other jurisdictions, with the Australian Capital Territory being the last to follow in 1983 (p. 83). Since victim compensation was first introduced, its benefits have been well documented. The following discussion outlines its main advantages and provides an overview of current schemes in Australia.

THE BENEFITS OF COMPENSATION

The benefits ascribed to compensation are both practical and symbolic. A primary objective of compensation schemes is to address the financial impact of crime on victims, such as medical costs or loss of income. Compensation awards may also recognise the indirect economic loss sustained by victims of crime, for example through loss of opportunities for education, reasonable living conditions or travel. In addition to these practical benefits, advocates stress the therapeutic benefits of receiving compensation. While many victims believe that no amount of money will compensate them for their experience, legal scholar Ian Freckelton (2001, p. 97) stresses that money is a 'symbol of value and importance' and is necessary in order to send the message that the community cares about those who have been harmed by crime.

Another strength of the compensation process is its potential to empower victims. Whereas the focus of criminal proceedings is on the offender, a key tenet of

victim compensation schemes is that they operate in a way that is victim centred (Dawson & Zada 1999, p. 7). At its best, the compensation process may help to restore the victim's sense of control and validate their experiences of trauma.

In addition to these benefits of compensation for all victims of crime, there may be specific benefits for those affected by domestic violence. For some women, the award of compensation may actually enable them to leave an abusive relationship (Freckelton 2001, p. 98). Compensation may also have heightened importance to domestic violence victims given the historically low rate of prosecution and conviction of offenders, and the tendency of the criminal justice system to minimise and trivialise women's experiences of violence (Douglas 2008; Preston & Gyde 2005; Women's Legal Services NSW 2007). Ingrid Gubbay (1996, p. 137), then a solicitor with the Sydney-based Women's Legal Resource Centre, reported in the mid-1990s that many of her clients who had received compensation felt that they had finally been believed. In this respect, the findings of a Canadian study highlighting the therapeutic value of compensation to sexual assault victims could equally be applied to domestic violence victims (Des Rosiers *et al.* 1998; Feldthusen *et al.* 2000).

In evaluating the value of victim compensation schemes to domestic violence victims, it is important to bear in mind they are not the only avenue of financial redress available to victims of crime. As noted earlier in this paper, other options include reparation orders and tort based claims. However, for domestic violence victims, there are several key advantages of victim compensation schemes over these other remedies. Firstly, whereas a reparation order may only be made if the offender is successfully convicted and is, therefore, subject to the criminal standard of proof, a claim for victim compensation only needs to be proved 'on the balance of probabilities'. The civil standard of proof is much easier to satisfy and often does not require court appearances (Gubbay 1996, pp. 136-137). Secondly, while victim compensation payments are generally lower than the amount a victim could receive through civil litigation, the process is seen to be more user-friendly and time efficient (Cook, David & Grant 1999, p. 64). Finally, the effectiveness of reparation orders and civil litigation depends on the perpetrator's ability to pay whereas victim compensation is paid directly by the government. As such, statutory schemes represent a more secure means of obtaining compensation (Freer 2004, p. 25).

For these reasons, the provision of victim compensation, though by no means a stand-alone remedy, is now seen to represent good practice as

part of a broader legal response to domestic violence (United Nations 2007; National Council to Reduce Violence against Women and their Children 2009). Indeed, the real question today is not so much whether or not compensation should be provided, but what form it should take.

KEY COMPONENTS OF AUSTRALIAN SCHEMES

While victim compensation is now an accepted part of a government's response to violent crime, each jurisdiction has its own approach to providing it to victims. There are three key areas of similarity and difference in current Australian schemes: the eligibility criteria, the composition of awards and the assessment processes.

Eligibility criteria

The first aspect of victim compensation schemes that varies across jurisdictions is the eligibility criteria. On the whole, the trend over the past two decades has been to widen the eligibility criteria and, thereby, enable a greater number of victims to access the schemes. For example, the Queensland Government estimates that the number of victims assisted under its new scheme, Victims Assist, will increase to three times that assisted under the old legislation (Department of Justice and Attorney General 2009). However, while all states and territories have moved in this direction, this has not brought about uniformity.

To begin with, the range of victims who are eligible for compensation differs across jurisdictions. In addition to compensating the primary or immediate victim – the focus of this paper – most schemes provide assistance to secondary victims. This category includes witnesses, as well as parents or guardians of children under the age of eighteen years who are subject to a violent act.ⁱⁱ Only the Australian Capital Territory, South Australia and Western Australia do not provide compensation to secondary victims. The other category of victim that may be recognised under schemes is the family or related victim. This category is usually confined to immediate family members (spouses, parents, children and siblings) and only applies in the case of a homicide. All schemes include provisions for family or related victims.ⁱⁱⁱ

Compensation claims are also subject to a range of other eligibility criteria. Among other things, the victim may be required to: provide evidence of injury; report the crime to police; and demonstrate that their conduct did not contribute to the crime. These requirements are discussed in further detail in the second section of the paper.

Composition of awards

The composition of compensation awards also differs across the country. While the main components of awards – financial and non-financial loss – are common across jurisdictions, the way in which these categories are defined and calculated differs. Moreover, there are significant disparities in the size of awards available.

FINANCIAL AND NON-FINANCIAL LOSS

In all states and territories, part of the award is designed to compensate the victim for any financial loss associated with the violent crime. The core expenses covered by the schemes are medical and counselling expenses, expenses associated with the loss of or damage to clothing worn at the time of the crime, and loss of earnings. In some cases, victims may also be able to claim expenses such as the cost of security upgrades, home relocation, cleaning or domestic assistance. In New South Wales, there is a prescribed list of expenses that can be claimed under the Victims Assistance Scheme, which operates concurrently to the Victims Compensation Scheme; while in Tasmania, the *Victims of Crime Assistance Regulations 2000* lists the cost of purchase and installation of any security, safety or therapeutic devices as claimable expenses.^{iv} In other jurisdictions, the applicant can only claim these non-core expenses if they have ‘exceptional circumstances’ and can prove that the items were necessary to their recovery.^v

In addition, all jurisdictions provide awards for some sort of non-financial loss. Three main mechanisms are currently used to calculate these awards:

- discretionary awards (South Australia, Tasmania, Western Australia)^{vi}
- awards for compensable injuries, with standard amounts set out in a schedule of injuries (New South Wales, Northern Territory)^{vii}
- awards of special financial assistance, usually dependent on the nature of the offence (Australian Capital Territory, Queensland, Victoria).^{viii}

SIZE OF AWARDS

The size of awards available to victims of crime varies considerably (see Table 1). All jurisdictions impose limits on the amount of compensation, with the highest awards available in Queensland and Western Australia.^{ix} Some states also set maximum amounts on particular components of assistance (eg. loss of earnings).^x Finally, in the Australian Capital Territory, New South Wales, the Northern Territory and South Australia, there are specific thresholds that must be met before a victim can claim compensation.^{xi}

Table 1: Awards for primary victims (single offence)

	Minimum amount	Maximum amount
ACT	\$100	\$50 000
NSW	\$200 for prescribed expenses \$7 500 for compensation	\$1 500 for prescribed expenses \$50 000 for compensation
NT	\$7 500	\$40 000
QLD	-	\$75 000
SA	Over \$2 000 for non-financial loss	\$50 000
TAS	-	\$30 000
VIC	-	\$60 000, plus \$10 000 in special assistance
WA	-	\$75 000

Assessment process

The final aspect of victim compensation schemes that varies across the country is the assessment process. The schemes fall into two main categories: administrative schemes and court based schemes.

In New South Wales, the Northern Territory, Queensland, Tasmania and Western Australia, claims are determined by government appointed assessors or commissioners. Applications are generally determined ‘on the papers’ – that is, based on the supporting evidence provided by applicants, without the requirement of a hearing. However, in Tasmania all victims have the option of attending a private oral hearing, described on the Victims Support Service website as an ‘opportunity to tell your story’ (Department of Justice 2009). By contrast, in New South Wales oral hearings are only held for appeals and must be specially requested by the applicant.^{xii}

In the other jurisdictions, compensation is administered through the courts: the Magistrates Court in the Australian Capital Territory; the Victims of Crime Assistance Tribunal (within the Magistrates Court) in Victoria; and the District Court in South Australia. Hearings are generally open to the public, although the Victorian legislation includes provisions enabling the victims to request a closed hearing and to make use of special protections (eg. use of closed circuit television or screens).^{xiii}

Clearly, there is no one model of victim compensation in Australia. Individuals’ entitlements to compensation are uneven, raising serious questions about the equity of current arrangements. It is within this broader context that the question of domestic violence victims’ access to compensation needs to be considered.

DOMESTIC VIOLENCE VICTIMS' ACCESS TO VICTIM COMPENSATION

Historically, domestic violence victims have faced significant barriers when seeking to access victim compensation. Some of these barriers are socio-cultural, for example women may still be dependent on their violent partner or fear reprisal; feelings of shame or the fear of being disbelieved may stop them from disclosing the violence to anyone (Gubbay 1996, p. 137; Jurevic 1996, para 17; Wong 2004, p. 14). Other barriers relate more specifically to the process of applying for compensation and may be exacerbated for certain victims; for example, for women from non-English speaking backgrounds. Some women may never find out about their entitlement to compensation due to a lack of information, while others may be deterred by documentation requirements or processing times (Gubbay 1996, p. 136).

However, one of the greatest impediments to women's access to victim compensation is the legislative requirements of the schemes themselves. Critics argue that victim compensation schemes, like the criminal law, are largely premised on a 'stranger violence model'. The schemes assume that the victim does not know the assailant, that the violence is a random act and that the victim is not dependent on the assailant (Whitney 1997, p. 103). As such, many schemes have historically included – and in some cases continue to include – specific requirements that discriminate against women who experience domestic violence (Jurevic 1996; O'Connell 1997; Whitney 1997). These requirements may totally exclude claims by women who experience domestic violence or, alternatively, may result in their awards for compensation being substantially reduced.

While legislative barriers to compensation still exist, some significant reforms have taken place in this area over the past decade, making the schemes much more accessible to domestic violence victims. This section discusses six key legislative requirements that restrict domestic violence victims' eligibility for compensation:

- definitions of violent crime and injury
- reporting and conviction requirements
- contributory conduct clauses
- relationship clauses
- time limitations
- definitions of related acts or injuries.

This section also identifies innovative practices designed to counter the discriminatory effects of each of these requirements. Some of these practices have been introduced specifically with domestic violence victims in mind, while others apply to all applicants.

DEFINITIONS OF VIOLENT CRIME AND INJURY

Victim compensation is specifically limited to criminal acts of violence and thus operates within the context of existing criminal law frameworks. As such, the capacity of schemes to compensate victims of domestic violence varies according to what forms of abuse are recognised as criminal acts under state legislation. In practice, this means that compensation is primarily available to women who experience physical and sexual violence or stalking, rather than verbal, emotional or financial abuse.

Furthermore, in order to receive compensation, applicants generally need to demonstrate that they were injured as a result of the violent crime, either physically or mentally. However, definitions of 'injury', in particular 'mental injury', differ from state to state. The Victorian, Northern Territory and Queensland legislation are most restrictive, defining mental injury as a 'mental illness or disorder' or a 'recognisable psychological or psychiatric disorder'.^{xiv} By contrast, other jurisdictions refer to 'psychological or psychiatric harm' (New South Wales), 'mental shock or nervous shock' (Australian Capital Territory, South Australia, Western Australia) and the 'impairment' of 'mental health' (Tasmania).^{xv}

In jurisdictions with a restrictive definition of mental injury, domestic violence victims may miss out on compensation if they cannot demonstrate that they have a recognisable psychiatric disorder. Alternatively, they may be deterred from applying for compensation if required to undergo a formal psychiatric assessment. Numerous studies of sexual assault victims have highlighted the difference between psychological counselling, which occurs in a safe environment and is geared towards the woman's empowerment; and psychiatric assessment, which is a non-therapeutic tool aimed solely at assessing the level of injury (Forster & Jivan 2005; Jarvis & McIlwaine 1996). Critics warn that victims risk being re-traumatised where psychiatric assessments are poorly administered.

Innovative practice

Since the mid-1990s, there has been considerable innovation in this area. Following the example of the United Kingdom, Australian jurisdictions began to experiment with provisions that identified domestic violence and/or sexual assault as injuries in their own right (Forster 2005). There are two main models that have been introduced: compensable injury provisions and special financial assistance provisions.

MAKING 'DOMESTIC VIOLENCE' AND 'SEXUAL ASSAULT' COMPENSABLE INJURIES

In 1996, New South Wales became the first jurisdiction to introduce special provisions for domestic violence and sexual assault, listing them as compensable injuries as part of a new tariff system of awarding compensation.^{xvi} The Northern Territory subsequently followed this model when it introduced the Victims of Crime Assistance scheme in 2006.^{xvii}

When applying for compensation, domestic violence and sexual assault victims in these jurisdictions have two options. Like other applicants, they can elect to claim compensation for specific physical injuries and/or a psychological or psychiatric disorder, in accordance with the schedule of injuries. Alternatively, they can claim domestic violence or sexual assault as a compensable injury. In both jurisdictions, the standard amount awarded for the compensable injury of domestic violence is \$7 500 to \$10 000, while three categories of awards are available for the compensable injury of sexual assault, based on the criminal seriousness of the offence (see Table 2).^{xviii} In New South Wales, the awards for sexual assault range from \$7 500 to \$50 000, while in the Northern Territory they range from \$7 500 to \$40 000.

One of the main benefits of these provisions is that the standard of evidence is lower than for other applications. In New South Wales, applicants for the compensable injury of domestic violence are still required to provide evidence that an injury has occurred. However, they are not required to undergo formal psychiatric assessment by an Authorised Report

Table 2: Awards for the compensable injury of sexual assault in New South Wales

Category	Acts of violence	Award range
1	Indecent assault; or an assault with violence in the course of attempted unlawful sexual intercourse	\$7 500- \$10 000
2	Unlawful sexual intercourse; or the infliction of serious bodily injury in the course of attempted unlawful sexual intercourse	\$10 000- \$25 000
3	A pattern of abuse involving category 1 or category 2 sexual assault; or unlawful sexual intercourse in which serious bodily injury is inflicted; or unlawful sexual intercourse in which two or more offenders are involved; or unlawful sexual intercourse in which the offender uses an offensive weapon	\$25 000- \$50 000

Note: For details of the Northern Territory scheme see the Victims of Crime Assistance Regulations

Writer (Brahe 2006). The evidence requirements in the Northern Territory are even less stringent. When claiming the compensable injury of domestic violence, applicants have the option of not submitting evidence of injury, in which case they are only eligible for the minimum standard amount of compensation (currently \$7 500 for the compensable injury of domestic violence).^{xix} If evidence is provided, they are eligible for a higher award.

The disadvantage of applying under these provisions is that the final amount awarded may be significantly less than if the applicant made a claim for specific physical injuries and/or a psychological or psychiatric disorder. For example, in New South Wales the standard award for a 'chronic psychological or psychiatric disorder that is severely disabling' is \$30 000 to \$50 000.

Data from New South Wales indicate that the vast majority of domestic violence victims are electing to apply under the special provisions. In 2007-08, a total of 750 awards were made to domestic violence victims, of which 638 (85%) were for the compensable injury of domestic violence (Victims Compensation Tribunal New South Wales 2008, pp. 17-18). In the long term, it is important that the impact of the \$10 000 cap on awards for the compensable injury of domestic violence is monitored to ensure eligible victims are not missing out on more substantial awards.

SPECIAL FINANCIAL ASSISTANCE

A different approach to recognising domestic violence, and more particularly sexual assault, as injuries in their own right has been adopted in the Australian Capital Territory, Queensland and Victoria through the provision of special financial assistance. The provisions introduced in these three jurisdictions are particularly important for women who experience sexual abuse, as they automatically fall into the higher award categories.

Australian Capital Territory

In the Australian Capital Territory, special assistance for pain and suffering is available to victims who sustain an 'extremely severe injury'. Most victims are only eligible for a flat award of \$30 000 but sexual assault victims can claim up to \$50 000 in special assistance.^{xx} In 2007-08, nine awards of special assistance were made to sexual assault victims, while six awards were made in 2008-09 (ACT Victims of Crime Coordinator 2008, p. 62; ACT Victims of Crime Coordinator 2009, p. 53). Unlike the special provisions in other jurisdictions, these provisions do not specifically address concerns around evidence requirements. However, they do provide a model for recognising the special needs of sexual assault victims which could be extended to domestic violence victims more generally.

Victoria and Queensland

In 2000, the Victorian Government introduced special financial assistance for victims who suffer a 'significant adverse effect' as a result of the violent act committed against them, including 'grief, distress, trauma or injury'. There are four categories of awards available. Sexual assault offences are specifically identified and fall into the two highest categories of awards, whereas domestic violence-related offences are not treated differently from non-domestic violence offences (see Table 3).^{xxi}

Table 3: Special financial assistance in Victoria

Category	Acts of violence	Award range
A	Sexual penetration of a person; or attempted murder	\$4 667- \$10 000
B	Attempted sexual penetration of a person; an indecent act with, or indecent assault against, a person; armed robbery; aggravated burglary; or the deprivation of liberty of a person for the purpose of sexual penetration, or demanding any ransom for their release	\$1 300- \$3 250
C	An attempt to commit a category B act of violence; threat of death; conduct endangering life; inflicting serious injury; or robbery	\$650- \$1 300
D	An attempt to commit a category C act of violence; threat of injury; assault against a person; attempted assault; the deprivation of the liberty of a person; or an act of violence not otherwise specified	\$130- \$650

While the introduction of special financial assistance in Victoria was welcomed by victim advocates, the amount of assistance available is minimal. The tense political climate in which it was established helps to explain this fact. Special financial assistance was introduced as a substitute for awards for pain and suffering, which had been abolished by the then Liberal Government in 1997. Sexual assault services were particularly outspoken in their opposition to this decision and welcomed the introduction of special financial assistance in 2000, while remaining critical of the Labor Government for capping it at \$7 500 (prior to 1997, victims could claim up to \$20 000 for pain and suffering), as well as for failing to make the awards fully retrospective (Freckelton 1997; Lantz & D'Arcy 2000). The minimal size of awards remains one of the main drawbacks of the Victorian scheme.

Queensland's special assistance provisions are modelled on Victoria's provisions, with some variations in the acts of violence specified under each category and the amounts awarded (see Table 4).^{xxii} While the size of awards remains minimal, one important

difference is that there is no requirement for the applicant to demonstrate that they experienced a 'significant adverse effect'.

Table 4: Special assistance in Queensland

Category	Acts of violence	Award range
A	Attempted murder; rape; incest with a person under the age of 16 or with an impaired capacity; maintaining a sexual relationship with a person under the age of 16	\$5 000- \$10 000
B	An attempt to commit a category A act of violence; a sexual offence; grievous bodily harm; acts intended to cause grievous bodily harm and other malicious acts; robbery whilst armed or with personal violence or in company; burglary with violence; torture; kidnapping; stupefying in order to commit an indictable offence	\$1 301- \$3 500
C	An attempt to commit a category B act of violence; serious assault; robbery; unlawful wounding; assault occasioning bodily harm, including whilst armed or in company	\$651- \$1 300
D	An attempt to commit a category C act of violence; assault; unlawful stalking; deprivation of liberty	\$130- \$650

Another noteworthy aspect of the Queensland legislation is its separate definition of injury in cases of sexual assault. The definition recognises the 'totality' of adverse impacts of sexual offences, including: sense of violation; reduced self worth or perception; and increased fear or increased feelings of insecurity.^{xxiii} This definition of injury acknowledges a broad range of social, interpersonal and behavioural effects that accord much more closely to sexual assault victims' experiences (Forster 2005, p. 290). Arguably, a separate definition of injury in cases of domestic violence is also warranted.

REPORTING AND CONVICTION REQUIREMENTS

One of the basic principles of victim compensation schemes is that they provide an incentive for victims to come forward and report crime (Freckelton 2001, p. 61). As such, victims are generally required to report the act of violence to police in a reasonable time and cooperate with any subsequent investigation and prosecution of the offence. In the Australian Capital Territory, victims are disqualified from claiming compensation if they fail to report the crime to the police; while in the other the states and territories, there is discretion to make an award if the victim can demonstrate that there were special circumstances preventing them from doing so.^{xxiv}

As domestic violence continues to be underreported, these conditions can be particularly prohibitive to victims' compensation claims (for case law, see: Jurevic 1997, paras 63-70). The reasons women may choose not to report domestic violence vary but include: feelings of shame, embarrassment and self-blame; fear of relation by the offender; a belief that the violence is too minor in nature; lack of knowledge about their legal rights; and poor experiences of the criminal justice system (Garcia-Moreno *et al.* 2005, p. 87; Mouzos & Makkai 2004, pp. 105-106). In this context, reporting requirements can be seen to penalise women for what is ultimately a systemic failure in the community's response to gender based violence.

In addition to having to meet reporting requirements, historically it was sometimes necessary for the perpetrator to have been successfully convicted before the victim could claim compensation. This requirement no longer applies in any state or territory. However, the Western Australian legislation still retains a provision that where the alleged offender is acquitted of the offence, the court can only grant compensation if it is satisfied that the offence was committed by another person.^{xxv} Somewhat ironically, a victim may have a better chance of receiving compensation if the police decide not to prosecute their case in the first place (Porter 2005, p. 9).

Innovative practice

Several jurisdictions have relaxed their reporting requirements, making it significantly easier for domestic violence victims, among others, to access compensation. This has been achieved in a range of ways, including by instructing assessors to consider:

- the nature of the injury (Victoria)^{xxvi}
- the nature of the relationship between the victim and the offender (New South Wales) or whether the offender was in 'a position of power, influence or trust' (Queensland, Victoria)^{xxvii}
- whether the victim reported the violence to a health professional or practitioner (New South Wales) or a counsellor, psychologist or doctor (Queensland)^{xxviii}
- whether the victim feared retaliation (New South Wales) or was being threatened or intimidated (Queensland, Victoria).^{xxix}

These clauses provide greater guidance to assessors in determining what is 'reasonable', thereby reducing the degree of subjectivity involved in awarding compensation. However, it could be argued that they still do not go far enough to acknowledge the systemic barriers to women reporting violence to or cooperating with police.

CONTRIBUTORY CONDUCT CLAUSES

Applicants are also subject to strict criteria regarding their conduct before, at the time of and after the violent offence. Some of the common requirements include that:

- the victim's conduct before and at the time of the offence did not contribute to their injury (all states and territories)^{xxx}
- the victim took reasonable steps after the violent act to mitigate their injury (New South Wales, Northern Territory, South Australia).^{xxxi}

Furthermore, in the Australian Capital Territory, the court is required to set off (that is, reduce) the amount of compensation awarded if the victim was intoxicated at the time of the offence. The court must calculate the amount to be awarded by reference to the degree of injury it considers the victim would have sustained if he or she had not been intoxicated at the time.^{xxxii}

These criteria have long been criticised for their potential to invite victim blaming attitudes in domestic violence cases. For example, they may result in self defensive actions being misconstrued as provoking the offender's violence, or in a woman being penalised for failing to seek medical treatment (for case law, see: Jurevic 1997, paras 27-42; Whitney 1997, pp. 106-108).

Innovative practice

New South Wales has taken some steps to counter the discriminatory impact of contributory conduct clauses on domestic violence cases. In particular, the assessor must consider the relationship between the victim and the offender in assessing whether the victim failed to take reasonable steps to mitigate the extent of their injury.^{xxxiii} Furthermore, in the Australian Capital Territory, sexual assault victims (but not domestic violence victims) are exempted from the intoxication set off.^{xxxiv} Overall, however, there has been little reform of this aspect of victim compensation schemes.

RELATIONSHIP CLAUSES

Historically, victim compensation schemes excluded claims where the victim was in a relationship with the perpetrator, on the basis that the offender might benefit from the claim. Relationship clauses clearly have a disproportionate impact on domestic violence victims, who for a variety of reasons may choose to remain with or return to their abusive partners (for case law, see: Forster 1999). Such clauses fail to recognise the power dynamics of domestic violence relationships and the personal and structural barriers to leaving, including women's fears for their safety, their financial

dependence on their partners, their lack of knowledge of or access to appropriate support services, and ineffective responses from services (Murray 2008, p. 67; Patton 2003, pp. xviii-xix). Furthermore, as Forster (1999) notes, such clauses imply that the presence of a familial relationship will somehow serve to reduce the level of harm suffered by victims, whereas the opposite is true: intra-familial abuse often magnifies the level of injury, due to the breach of trust involved.

Innovative practice

Most jurisdictions have abolished these clauses, with the exception of the Northern Territory and Western Australia.^{xxxv}

TIME LIMITATIONS FOR CLAIMS BY PRIMARY VICTIMS

Like many legal actions, victim compensation claims are subject to time limitations. These range from one year to three years after the offence took place or, in the case of child victims, usually after their eighteenth birthday (see Table 5).^{xxxvi} While there are provisions for time extensions in all states and territories, they are granted on a discretionary basis and cannot be relied upon.

Table 5: Time limitations for claims by primary victims

ACT	1 year
NSW	2 years
NT	2 years
QLD	3 years
SA	3 years
TAS	3 years
VIC	2 years
WA	3 years

As it may take women a considerable amount of time to disclose their experience of domestic violence, time limitations clauses can have a disproportionate impact on their eligibility for compensation (O'Connell 1997, p. 12).

Innovative practice

Four jurisdictions have introduced provisions which acknowledge the discriminatory impact of time limitations on domestic violence victims. In New South Wales and the Northern Territory, scheme administrators are required to consider whether the late application involves sexual assault, domestic violence or child abuse, while in Queensland and Victoria they are required to consider whether the offender was in 'a position of power, influence or

trust'.^{xxxvii} These clauses ensure greater consistency and have the potential to significantly improve outcomes for domestic violence victims. For example, in New South Wales, 550 out of time applications by domestic violence victims were granted in the 2007-08 financial year, while only four were refused (Victims Compensation Tribunal New South Wales 2008, p. 19).

DEFINITIONS OF RELATED ACTS OR INJURIES

Most schemes in Australia include clauses requiring related acts of violence or related criminal injuries to be treated as one claim.^{xxxviii} For example, in the Australian Capital Territory, magistrates are instructed to treat two or more criminal injuries as a single claim if they were committed at approximately the same time, if they were committed by two or more people acting together or if they arose out of the same circumstances. These clauses have the effect of limiting the government's liability to pay compensation.

Domestic violence, almost by definition, will involve repeated acts of abuse by the same offender, making women's compensation claims particularly vulnerable to these clauses. While the application of related acts clauses in such instances is contestable, the historical trend appears to have been towards their use, thereby significantly reducing the size of awards available to domestic violence victims (O'Connell 1997, p. 12). The application of such clauses to domestic violence situations is all the more problematic when one considers the devastating impact that on-going, long term domestic violence may have on women's well-being.

Innovative practice

In Queensland, the scheme manager must notify the applicant if they propose to treat multiple applications for compensation as a single application and invite the applicant to respond to the proposal.^{xxxix} Moreover, in Tasmania, a higher maximum amount of compensation is prescribed in the case of related acts. Up to \$50 000 may be awarded to a primary victim where there is more than one offence, compared to \$30 000 where there is a single offence.^{xl} This is another area of compensation schemes which requires further attention.

OTHER INITIATIVES

In addition to legislative reform, other initiatives to improve access to compensation have also been instigated in some jurisdictions. For example, applications for victim compensation were included in

the work of the Family Violence Court Division of the Victorian Magistrates Court at Heidelberg and Ballarat in 2005-06 (Victims of Crime Assistance Tribunal 2006, p. 3). In the following financial year, 31% of all applications for financial assistance lodged with the Tribunal at Ballarat and Heidelberg came within the jurisdiction of the Family Violence Court Division (Victims of Crime Assistance Tribunal 2007, p. 20). The early success of the new procedures highlights the capacity of specialist courts to provide holistic support to domestic violence victims. This model could be considered in other specialist courts in Australia.

In addition, some women may be eligible for free or subsidised legal advice to assist them with the compensation application. For example, the Victims of Crime Assistance Tribunal in Victoria can make awards for legal fees and Victorian Legal Aid may assist in some cases (R Alexander 2009, pers. comm., 4 December). Improving access to legal representation is an important part of the bigger picture of making victim compensation more accessible to women.

A FUTURE REFORM AGENDA

The process of making victim compensation more accessible to domestic violence victims is well underway. However, some jurisdictions continue to lag behind and even within the states and territories that have introduced special provisions for domestic violence and/or sexual assault victims, the process of reform remains uneven.

Moreover, a lack of available data makes it difficult to assess the success of these measures in practice. While most states and territories publish figures on the number of compensation awards made annually, only the Australian Capital Territory and New South Wales provide disaggregated statistics on the number of compensation awards to domestic violence victims. The performance of these two states is mixed. Since 2004-05, the percentage of awards to domestic violence victims in the Australian Capital Territory has never risen above 6% of total awards and reached as low as 1.1% in 2005-06. Furthermore, in every year except 2007-08, the average award paid to a domestic violence victim was considerably lower than the average award for all crimes (ACT Victims of Crime Coordinator 2006, p. 57; ACT Victims of Crime Coordinator 2007, p. 45; ACT Victims of Crime Coordinator 2008, p. 62; Victims of Crime Support Program 2005, p. 47). By contrast, the proportion of awards to domestic violence victims in New South Wales has steadily increased in the same period, rising to 28% of all compensation claims in 2007-08 (Victims Compensation Tribunal New South Wales 2008,

p. 16). The contrast between the two states is indicative of the inconsistencies in women's entitlements to compensation around Australia.

Certainly, women and their advocates can feel more confident of their chances of success when applying for compensation than a decade ago. Yet the challenge of making compensation accessible to domestic violence victims is by no means over. Furthermore, as the following section highlights, while some historic barriers to compensation have been removed, new barriers may be developing due to the recent trend towards debt recovery.

HOLDING PERPETRATORS ACCOUNTABLE

One of the philosophical underpinnings of victim compensation schemes is that it is the government's responsibility to protect citizens from crime and that, where the government fails in its duty of care, it is morally obliged to provide some form of redress. In response, some critics argue that they let perpetrators 'off the hook', absolving them of personal responsibility for the harm caused (see Freckelton 2001, pp. 76-77).

In practice, the schemes attempt to strike a balance between government responsibility and perpetrator accountability. Currently all Australian states and territories reserve the right to recover any amount of compensation awarded from the offender. In most states restitution action only takes place if the offender has been convicted, while in the Northern Territory a conviction is not required.^{xii} The process for making a recovery order differs from state to state but offenders generally have the opportunity to contest the order (for example, on the basis of their ability to pay) and it may subsequently be reduced or cancelled.

To date, the appropriateness of debt recovery policies in domestic violence situations has received little critical attention. This section of the paper highlights current debt recovery efforts around Australia and discusses the practical implications of the policies for victims' experiences of the compensation process.

THE TREND TOWARDS DEBT RECOVERY

Over the past decade, many states and territories have become more proactive in recovering money from offenders. For example, in New South Wales, approximately \$28 million was recovered from offenders between 2000 and 2008, compared to \$13 million between 1988 and 2000 (Victims Compensation Tribunal New South Wales 2008, p. 23). New South Wales was by no means alone in pursuing offenders more rigorously. Many other jurisdictions are also following this path (see Table 6).

Table 6: Snapshot of debt recovery efforts in the financial year 2007-08

ACT	The Magistrates Court made thirteen provisional recovery orders. Six provisional orders were confirmed (ACT Victims of Crime Coordinator 2008, p. 61).
NSW	The Director of the Victims Compensation Tribunal made 1 170 provisional orders valued at approximately \$21 million. A total of \$3.33 million was recovered from offenders (Victims Compensation Tribunal New South Wales 2008, p. 23).
NT	The Solicitor for the Northern Territory reported that it had improved procedures for identifying debt recovery files (Department of Justice 2008, p. 42).
SA	The Attorney-General's Department reported that it had introduced a new debt recovery system to ensure 'optimal' recovery from offenders (Attorney-General's Department and Department of Justice 2008, p. 116).
WA	The Office of the Criminal Injuries Compensation Assessor recovered \$1.2 million from offenders (Department of Attorney General 2008, p. 16).

Note: Data was not available for Queensland, Tasmania and Victoria.

Simultaneously, some jurisdictions have bolstered legislation enabling sentencing courts to order offenders to pay compensation to their victims. Victoria led the way in 2000, amending the *Sentencing Act 1991* to enable courts to make reparation orders for pain and suffering, in addition to damage and loss to property (Freckelton 2001, p. 300). As noted earlier in this paper, the mechanism for making reparation orders operates in parallel to statutory victim compensation schemes and the two should not be confused with one another. However, it is noteworthy that there has been a shift towards greater perpetrator accountability in both realms.

There are a number of reasons why governments have become more proactive in pursuing debt recovery. As the number of victims applying for compensation has grown, the financial viability of schemes has come under question. From an administrative perspective, the recovery of money from offenders has the potential to substantially reduce the overall cost of the schemes to the government (Corns 2000, p. 97). It may also help to increase the total pool of funds available to victims.

The political environment has also favoured the shift towards debt recovery. The policy is consistent with the increasing focus on restorative justice, with its emphasis on restoring victims to the position they were in prior to the crime (Ristovski & Wetheim 2005, p. 63). Moreover, the push in favour of debt recovery has come from victims and their advocates, who see it as a mechanism to promote greater perpetrator

accountability. For example, participants in a 1999 South Australian survey of victims of crime identified 'making the offender accountable' as the primary rationale for compensation, with 86% ranking it as 'very important' and only 2.3% stating that it was 'not important' (Justice Strategy Unit 2000, p. 59). Sixty percent of respondents indicated that they would be prepared to accept a smaller amount of compensation if it was paid by the offender rather than the state (p. 60). More recently, the Queensland Victims of Crime Review Stakeholder Reference Group expressed unanimous support for the recovery of money from offenders by the government (Department of Justice and Attorney-General 2008, p. 14). The Stakeholder Reference Group included a wide range of victim support groups and legal services.

However, whether or not it is appropriate to make a recovery order in instances of domestic violence offences is not altogether clear. There is very little research demonstrating either the advantages or disadvantages of this provision for victims themselves. Although some of the difficulties associated with debt recovery are canvassed in the literature on this topic, the focus tends to be on the feasibility of enforcing recovery orders, rather than the impact on victims.^{xlii}

While the concept of perpetrator accountability is attractive in theory, the impact of making recovery orders on victims' experiences of the compensation process needs to be carefully weighed. Some of the potential ramifications for domestic violence victims are considered below.

OFFENDER INVOLVEMENT IN COMPENSATION PROCEEDINGS

A key tenet of victim compensation schemes is that they operate in a way that is victim centred (Dawson & Zada 1999, p. 7). As debt recovery policies may result in greater offender involvement in compensation proceedings, there is a real danger that they jeopardise this principle.

Like many aspects of victim compensation, the nature of offender involvement in compensation proceedings differs significantly from state to state. In the Australian Capital Territory, New South Wales, Queensland and Tasmania, the offender's involvement in the compensation proceedings appears to be minimal. For example, in the Australian Capital Territory, their involvement is restricted to cases where the victim's version of events is disputed or the police file shows contradictions (Victim Support ACT 2007); and in Tasmania, perpetrators are specifically excluded from attending hearings with the commissioner (Department of Justice 2009).

By contrast, the legislation in the Northern Territory, South Australia, Victoria and Western Australia allows for more significant involvement of offenders in compensation proceedings (see Table 7).^{xliii} In these jurisdictions, offenders may be notified when an application for compensation is lodged and are entitled to be present if a hearing takes place. In some cases, they may also be given access to the victim's application and any supporting documentation.

Table 7: Provisions triggering the offenders' involvement in compensation proceedings

NT	A copy of the application must be given to the offender if practicable.
SA	A copy of the application must be served on the offender and they are party to any proceedings before the court.
VIC	Any person considered to have a legitimate interest in the application, including the offender, may be notified of and is entitled to be present at the hearing. The victim must be advised first and given the opportunity to express any objections.
WA	If a hearing is held, the assessor must notify any interested person, including the offender, of its time and location. They may also be provided with edited copies of documentation (Department of Attorney General 2009).

The impact of greater offender involvement in compensation proceedings is twofold. On the one hand, there is a risk that some women will be discouraged from applying for compensation if it means they will have to confront the perpetrator, for example if the perpetrator has the right to be present at any hearings that are held. On the other hand, where women choose to continue with the application process, there is a risk that they will have less control over the process and that the therapeutic potential of compensation will be undermined. Over a decade ago, the Melbourne-based Centre Against Sexual Assault (CASA) House warned that the policy of notifying offenders 'created a more adversarial process which can further traumatise applicants' (Jarvis & McIlwaine 1996, p. 146; see also CASA House 1997, pp. 98-101). In this respect, the policy of debt recovery potentially raises similar dilemmas to pro-arrest and pro-prosecution policies, in terms of the extent to which the victim's views are taken into account (Hoyle & Sanders 2000).

IMPACT ON VICTIM SAFETY

As well as potentially reducing the victim centred nature of compensation proceedings, debt recovery policies may trigger new safety concerns for domestic violence victims. Because domestic violence victims are known to their offenders and may still be in regular contact with them (for example, if they have children and shared parenting arrangements are in place), the potential for retaliation and harassment is significantly higher than for other victims. Women may be concerned that a recovery order will result in a new incident or an escalation of violence, or that retribution will take other forms, for example the withdrawal of child support. Even if a recovery order is not made but the offender is notified of the application, there may be a risk of them harassing the victim for money.

While it may still be appropriate and perhaps desirable to make a recovery order, it is important that these safety issues are identified early on so that appropriate planning can take place. It is not clear what, if any, policies are currently in place to assess the risk of harassment and retaliation, or to monitor offenders' actions after they are notified of a compensation application or served with a recovery order.

MANAGING THE IMPACT OF DEBT RECOVERY POLICIES

As governments bolster their debt recovery efforts, it is vital that the impact on domestic violence victims' experiences of the compensation process is reviewed. At a minimum, greater clarity is required regarding the policies for notification of offenders and risk assessment. It is important that women are aware of the policies so that they are able to make informed choices about whether to pursue compensation.

In Victoria, the Victims of Crime Assistance Tribunal has attempted to tackle some of these issues. Practice Direction 5 of 2003 sets out the procedure for notifying offenders and requires the Tribunal Member to consider any objections made by the victim (Gray 2003). Furthermore, victims are able to make use of special protections during compensation hearings, such as closed circuit television or screens.^{xliv} Closed circuit television facilities are also available at hearings in Western Australia (Department of Attorney General 2009). It remains to be seen whether these measures are adequate in addressing the concerns raised in this paper.

MOVING FORWARD

Over the past decade, the provision of compensation has come to be understood as part of a best practice legal response to domestic violence. As this national overview demonstrates, policy makers now have a range of options before them when considering how to make their respective schemes more accessible to domestic violence victims. However, on a more cautionary note, it is important to acknowledge that the process of reform remains uneven. In addition, this paper has identified a range of new issues which have emerged around debt recovery procedures.

Due to the limited availability of data, this paper has focused on the legislative aspects of current victim compensation schemes in Australia. However, there is a real need for research which looks at the practical application of this legislation. Research in this field would be greatly enriched if jurisdictions improved their data collection processes and made key statistics publicly available, including the frequency and success rate of applications for compensation by domestic violence victims, and the size of awards made, as compared to other victims of crime. Furthermore, in-depth qualitative research focusing on the experiences of women who have accessed compensation is needed to draw out the nuances of the different schemes.

As the national dialogue about reducing violence against women continues, states and territories have an unprecedented opportunity to learn from each other about what works best when it comes to delivering compensation to domestic violence victims. In the meantime, it is important that advocates and lawyers familiarise themselves with the entitlements of domestic violence victims in their states and ensure that women are made aware of this important source of financial assistance and justice.

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Note: Legislation is always subject to change. The information contained in this paper reflects the legislation current at the time of writing. Please be aware that this information does not represent legal advice. Please also note that the legislative provisions referenced in this paper are generally only applicable to victims who fall into the category of the primary or immediate victim. Readers should consult the relevant legislation for provisions affecting secondary or related victims.

ENDNOTES

- i Key studies include: CASA House 1997; Des Rosiers et al. 1998; Feldthausen et al. 2000; Freckleton 1998; Forster 2002a & b; Forster 2005; Forster & Jivan 2005; Forster & Parkinson 2000; Gubbay 1996; Jarvis & McIlwaine 1996; Lantz & D'Arcy 2000; and Porter 2005.
- ii *Victims Support and Rehabilitation Act 1996 (NSW)* s8; *Victims of Crime Assistance Act 2006 (NT)* s11; *Victims of Crime Assistance Act 2009 (Qld)* s26; *Victims of Crime Assistance Act 1976 (Tas)* s2(1); *Victims of Crime Assistance Act 1996 (Vic)* s9.
- iii *Victims of Crime (Financial Assistance) Act 1983 (ACT)* s16; *Victims Support and Rehabilitation Act 1996 (NSW)* s9; *Victims of Crime Assistance Act 2006 (NT)* s13; *Victims of Crime Assistance Act 2009 (Qld)* s26; *Victims of Crime Act 2001 (SA)* s17(2)-(3); *Victims of Crime Assistance Act 1976 (Tas)* s2(1); *Victims of Crime Assistance Act 1996 (Vic)* s11; *Criminal Injuries Compensation Act 2003 (WA)* s4.
- iv *Victims Support and Rehabilitation Regulation 2006 (NSW)* r4; *Victims of Crime Assistance Regulations 2000 (Tas)* r5(1)(b)(ix)(B).
- v ACT Victim Support 2007; *Victims of Crime Assistance Act 2006 (NT)* s10(5)(d); *Victims of Crime Assistance Act 2009 (Qld)* s39(g); *Victims of Crime Assistance Act 1996 (Vic)* s8A. There is no specific mention of these expenses in the *Victims of Crime Act 2001 (SA)* or *Criminal Injuries Compensation Act 2003 (WA)*.
- vi *Victims of Crime Assistance Act 1976 (Tas)* s4(2)(d); *Victims of Crime Act 2001 (SA)* s4.
- vii *Victims Support and Rehabilitation Act 2006 (NSW)* Sch 1; *Victims of Crime Assistance Regulations (NT)* Sch 3.
- viii *Victims of Crime (Financial Assistance) Act 1983 (ACT)* s10 & s11; *Victims of Crime Assistance Act 2009 (Qld)* Sch 2; *Victims of Crime Assistance Act 1996 (Vic)* s8A; *Victims of Crime (Special Assistance) Regulations 2000 (Vic)*.
- ix *Victims of Crime (Financial Assistance) Act 1983 (ACT)* s14; *Victims Support and Rehabilitation Act 1996 (NSW)* s14A(5) (a) & s19(2); *Victims of Crime Assistance Act 2006 (NT)* s38(1); *Victims of Crime Assistance Act 2009 (Qld)* s38; *Victims of Crime Act 2001 (SA)* s20(3)(iii); *Victims of Crime Assistance Regulations 2000 (Tas)* r4(1); *Victims of Crime Assistance Act 1996 (Vic)* s8 & s8A(5); *Criminal Injuries Compensation Act 2003 (WA)* s31(1).
- x *Victims Support and Rehabilitation Act 1996 (NSW)* s18(4); *Victims of Crime Assistance Act 2006 (NT)* s38(2); *Victims of Crime Assistance Act 2009 (Qld)* s39(e); *Victims of Crime Act 2001 (SA)* s20(3)(a)(i); *Victims of Crime Assistance Act 1996 (Vic)* s8.
- xi *Victims of Crime (Financial Assistance) Act 1983 (ACT)* s12(1) (b); *Victims Support and Rehabilitation Act 1996 (NSW)* s14A(3) (a) & s20(1)(a); *Victims of Crime Assistance Act 2006 (NT)* s38(3); *Victims of Crime Act 2001 (SA)* s20(3)(a).
- xii *Victims Support and Rehabilitation Act 1996 (NSW)* s38; see also Brahe 2005.
- xiii *Victims of Crime Assistance Act 1996 (Vic)* s37(3).
- xiv *Victims of Crime Assistance Act 2006 (NT)* s6(b); *Victims of Crime Assistance Act 2009 (Qld)* s27(1)(b); *Victims of Crime Assistance Act 1996 (Vic)* s3(1).
- xv *Victims of Crime (Financial Assistance) Act 1983 (ACT)* Dictionary; *Victims Support and Rehabilitation Act 1996 (NSW)* Dictionary; *Victims of Crime Act 2001 (SA)* s4; *Victims of Crime Assistance Act 1976 (Tas)* s2(2); *Criminal Injuries Compensation Act 2003 (WA)* s3.

- ^{xvi} *Victims Support and Rehabilitation Act 1996* (NSW) Sch 1 s6 & s7A.
- ^{xvii} *Victims of Crime Assistance Regulations* (NT) r5.
- ^{xviii} *Victims Support and Rehabilitation Act 1996* (NSW) Sch 1; *Victims of Crime Assistance Regulations* (NT) Sch 1 & Sch 3, Part 1.
- ^{xix} *Victims of Crime Assistance Regulations* (NT) r17.
- ^{xx} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s10(1)(f).
- ^{xxi} *Victims of Crime Assistance Act 1996* (Vic) s8A; *Victims of Crime (Special Assistance) Regulations* (Vic).
- ^{xxii} *Victims of Crime Assistance Act 2009* (Qld) Sch 2.
- ^{xxiii} *Victims of Crime Assistance Act 2009* (Qld) s27(1)(f). The definition of injury in the case of sexual assault also includes: lost or reduced physical immunity; lost or reduced physical capacity (including the capacity to have children), whether temporary or permanent; adverse effect of others reacting adversely to the person; adverse impact on lawful sexual relations; and adverse impact on feelings.
- ^{xxiv} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s12(1)(c); *Victims Support and Rehabilitation Act 1996* (NSW) s30(1)(b); *Victims of Crime Assistance Act 2006* (NT) s43; *Victims of Crime Assistance Act 2009* (Qld) s81 & s82; *Victims of Crime Act 2001* (SA) s20(7); *Victims of Crime Assistance Act 1976* (Tas) s5(3A); *Victims of Crime Assistance Act 1996* (Vic) s52(a); *Criminal Injuries Compensation Act 2003* (WA) s38.
- ^{xxv} *Criminal Injuries Compensation Act 2003* (WA) s13. This section does not apply where the defendant is acquitted due to unsoundness of mind (s14).
- ^{xxvi} *Victims of Crime Assistance Act 1996* (Vic) s53(e).
- ^{xxvii} *Victims Support and Rehabilitation Act 1996* (NSW) s26(3); *Victims of Crime Assistance Act 2006* (NT) s31(3)(a); *Victims of Crime Assistance Act 2009* (Qld) s54(2)(c); *Victims of Crime Assistance Act 1996* (Vic) s29(2)(c).
- ^{xxviii} *Victims Support and Rehabilitation Act 1996* (NSW) s30(1)(b1); *Victims of Crime Assistance Act 2009* (Qld) s81(1).
- ^{xxix} *Victims Support and Rehabilitation Act 1996* (NSW) s30(2)(d); *Victims of Crime Assistance Act 2009* (Qld) s81(2)(c); *Victims of Crime Assistance Act 1996* (Vic) s53(d).
- ^{xxx} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s31(2)(a); *Victims Support and Rehabilitation Act 1996* (NSW) s30(1)(a); *Victims of Crime Assistance Act 2006* (NT) s41(1)(a); *Victims of Crime Assistance Act 2009* (Qld) s85(2); *Victims of Crime Act 2001* (SA) s20(4); *Victims of Crime Assistance Act 1976* (Tas) s5(3); *Victims of Crime Assistance Act 1996* (Vic) s54; *Criminal Injuries Compensation Act 2003* (WA) s41.
- ^{xxxi} *Victims Support and Rehabilitation Act 1996* (NSW) s30(1)(d1); *Victims of Crime Assistance Act 2006* (NT) s41(1)(c); *Victims of Crime Act 2001* (SA) s20(8)(a).
- ^{xxxii} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s37.
- ^{xxxiii} *Victims Support and Rehabilitation Act 1996* (NSW) s30(2A).
- ^{xxxiv} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s37(2).
- ^{xxxv} *Victims of Crime Assistance Act 2006* (NT) s41(1)(d); *Criminal Injuries Compensation Act 2003* (WA) s36.
- ^{xxxvi} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s27(2); *Victims Support and Rehabilitation Act 1996* (NSW) s26(1); *Victims of Crime Assistance Act 2006* (NT) s31; *Victims of Crime Assistance Act 2009* (Qld) s54(1); *Victims of Crime Act 2001* (SA) s18(2)(a); *Victims of Crime Assistance Act 1976* (Tas) s7(1A); *Victims of Crime Assistance Act 1996* (Vic) s29; *Criminal Injuries Compensation Act 2003* (WA) s9.
- ^{xxxvii} *Victims Support and Rehabilitation Act 1996* (NSW) s26(3); *Victims of Crime Assistance Act 2006* (NT) s31(3)(a); *Victims of Crime Assistance Act 2009* (Qld) s54(2)(c); *Victims of Crime Assistance Act 1996* (Vic) s29(2)(3).
- ^{xxxviii} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s4(2); *Victims Support and Rehabilitation Act 1996* (NSW) s5(3)-(4); *Victims of Crime Assistance Act 2006* (NT) s5(3); *Victims of Crime Assistance Act 2009* (Qld) s25(4); *Victims of Crime Act 2001* (SA) s23(2); *Victims of Crime Assistance Act 1976* (Tas) s6A(2); *Victims of Crime Assistance Act 1996* (Vic) s4; *Criminal Injuries Compensation Act 2003* (WA) s33.
- ^{xxxix} *Victims of Crime Assistance Act 2009* (Qld) s70(3)-(4).
- ^{xl} *Victims of Crime Assistance Act 1976* (Tas) s6A & *Victims of Crime Assistance Regulations 2000* (Tas) r4(1)(b).
- ^{xli} *Victims of Crime (Financial Assistance) Act 1983* (ACT) s54; *Victims Support and Rehabilitation Act 1996* (NSW) s46; *Victims of Crime Assistance Act 2006* (NT) s56(3)(b); *Victims of Crime Assistance Act 2009* (Qld) s107; *Victims of Crime Act 2001* (SA) s28; *Victims of Crime Assistance Act 1976* (Tas) s7A; *Victims of Crime Assistance Act 1996* (Vic) s51(1); *Criminal Injuries Compensation Act 2003* (WA) s49.
- ^{xlii} Commentators have expressed concerns about the ability of offenders from low socio-economic backgrounds to pay, and have also noted that more affluent offenders may seek to sequester or hide their assets (Victims Compensation Tribunal New South Wales 2008, p. 24; Freckelton 2001, p. 114).
- ^{xliii} *Victims of Crime Assistance Act 2006* (NT) s33(2)(a); *Victims of Crime Act 2001* (SA) s18(4)(c) & s19; *Victims of Crime Assistance Act 1996* (Vic) s34(2)-(3) & s35(1); *Criminal Injuries Compensation Act 2003* (WA) s25(1)-(2).
- ^{xliv} *Victims of Crime Assistance Act 1996* (Vic) s37(3).

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APPENDIX

Table 8: Legislation governing victim compensation across Australia

ACT	<i>Victims of Crime (Financial Assistance) Act 1983</i>
NSW	<i>Victims Support and Rehabilitation Act 1996</i> <i>Victims Support and Rehabilitation Regulation 2006</i>
NT	<i>Victims of Crime Assistance Act 2006</i> <i>Victim of Crime Assistance Regulations</i>
QLD	<i>Victims of Crime Assistance Act 2009</i>
SA	<i>Victims of Crime Act 2001</i>
TAS	<i>Victims of Crime Assistance Act 1976</i> <i>Victims of Crime Assistance Regulations 2000</i>
VIC	<i>Victims of Crime Assistance Act 1996</i> <i>Victims of Crime (Special Assistance) Regulations 2000</i> <i>Victims of Crime Assistance (Delegation) Regulations 2003</i>
WA	<i>Criminal Injuries Compensation Act 2003</i>

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