Criminal Injuries Compensation for Family and Domestic Violence

Rob Guthrie
Criminal Injuries Assessor
Defining Domestic Violence

• Law Reform Commission of WA (LRC) – shift in terminology from domestic to family and domestic violence

• Domestic violence refers to “behaviour occurring between people who are in or have been in an intimate relationship”

• Family Violence – broader concept covers violence between family members
Why domestic violence occurs

As noted by Professor Chung and LRC***

• Individual pathology –
• Social stressors – poor anger control
• Intergenerational transmission –
• Gendered expectations (inequality)
• Indigenous family violence (multifactorial)
• Coercive control (why not leave?)
Behaviours which feature in family and domestic violence

- Physical violence and damage to property
- Psychological and emotional abuse***
- Sexual violence
- Economic abuse***
- Social abuse ***
- Usually hidden, ongoing and difficult for the “victim” to leave
Family and domestic violence in Criminal Injuries Compensation

• About 2800 claims per annum
• 62% of claims by women and girls
• About 45% of claims are for FDV
• 75-80% offenders are men (see ABS data)
Cycle of Violence

- Honeymoon phrase (it was ok in the beginning)
- Tension building – standover (he wouldn’t let me go out)
- Explosion – physical violence (“only when he was drunk…”)
- Remorse (I didn’t mean it – you made me do it)
- Buyback (I went back to him because he said he would change/would not do it again)
Gendered experience

- FDV – claimants predominantly female
- Highest concentration in 18-39 year age group
- Affects primary victims and also secondary victims (witnesses/children)
Time limitations – Section 9

• 3 year claim period
• FDV characteristically ongoing over sustained periods
• Claim times starts at last incident
• Extension of time where just – will be just where coercion evident – fear of reprisals
• Indigenous issues often relevant – remoteness, barriers to reporting, literacy, access to advice
CIC Act is premised on reporting incidents – a kind of mutual obligation – no compensation unless prepared to assist police.

Relevant to DFV where many incidents (during honeymoon period and tension building) are not reported.

Cases make some allowance for non-reporting in DVF situations.
Contributory Conduct - Section 41

- May refuse or reduce and award where contribution to the injury
- Very rarely invoked to refuse an award
- Assessors recognise issues in relation to coercion and control (in extreme cases – Stockholm syndrome)
- May reduce where in breach of VRO (JDQ [2010] WADC 93)
Continuing Relationship - Section 36

- Section 36 prevents an award being made where there is a relationship or connection between the offender and the victim or close relative AND
- The award is likely to benefit or advantage the person who committed the offence
- ***Closing files or awards in trust as options
- No awards were refused under S36 in 2015/16
Types of compensation

• Claims can be made for proved offences (where there is a conviction)
• Or alleged offences
• Injuries – pain and suffering
• Loss of income
• Medical expenses – past and future
Types of compensation

- Medical report fees (interim payments available)
- Travel costs, personal items damage
- May include mental and nervous shock
Conclusions

- DFV under-reported and probably under-claimed
- Not all forms of DFV are compensable – requires proof of injury (physical or mental)
- Reporting to police an issue in many cases
- Continuing relationship concerns