

Damages claim queried

EACH year thousands of women in Australia who are raped and assaulted claim compensation from the perpetrators of the crimes against them, or through criminal compensation schemes established in each state and territory.

The amount they will receive will generally be less than \$100,000. And members of the Stolen Generation who have suffered a lifetime of mental illness and physical suffering because of a government policy to remove them from their parents, or the victims of sexual and other forms of abuse in educational institutions and orphanages, either get nothing in monetary compensation for the harm caused to them, or caps on the amounts they can claim of less than \$60,000.

So how is it then that lawyers for a young woman who alleges sexual harassment against the boss of the company that employs her, argue that she should receive a payout of \$37 million?

Even if the claim by lawyers for Kristy Fraser-Kirk, a former publicist for retailer David Jones who alleges that its former CEO Mark McInnes harassed her, is 100 per cent correct, it seems philosophically unsound for a justice system to accord such a gargantuan difference in monetary worth in cases involving what might be termed 'invasions of personal dignity'.

Ms Fraser-Kirk chronicles, in a Statement of Claim filed in the Federal Court last Monday a series of incidents which she alleges Mr McInnes instigated and which she claims were acts of harassment.

These included text messages and

emails from Mr McInnes that were sexually suggestive, conversations of a like nature, attempts by Mr McInnes to kiss her, and an incident in which he touched her bra.

These incidents took place in front of work colleagues and Ms Fraser-Kirk says her professional and personal reputation has been harmed.

It is interesting to note that Ms Fraser-Kirk is claiming punitive damages, which are damages awarded in cases where the courts decide to punish the wrongdoer to deter others from indulging in similar conduct. These awards are rare in Australia, but are de rigeur in the United States, one of the major reasons that litigation is a major economic issue for many sectors of that nation's economy.

Ms Fraser-Kirk is, without question, entitled to seek justice through the court. If the allegations she has made are proved to have occurred then she should certainly be entitled to compensation.

This is purely a matter for the court to decide.

But Ms Fraser-Kirk's case does allow us to contemplate for a moment how it is that those who suffer years, not just months of abuse, and who endure vicious assaults on them can be seen by the justice system in Australia to be worth so little by comparison. If a member of the Stolen Generation or a victim of Catholic Church or state institutional abuse lodged a claim for \$37 million it would be regarded very sceptically by the media.

In fact, it is only a few months ago that the South Australian government agreed to pay the amount of \$775,000 in damages to Bruce Trevorrow, now deceased, an



Aboriginal man who was taken from his family in 1957 and who suffered life-long depression and alcoholism.

That is about two per cent of the amount being claimed by Ms Fraser-Kirk.

As one legal scholar has recently observed, the purpose of damages is to compensate a person in a way that is consistent with 'what the person on Bondi beach usually regards as the appropriate response to an event that has caused injury.'

The quantum of Ms Fraser-Kirk's claim should prompt us to consider whether or not the amount of compensation paid out to sexual abuse victims is an 'appropriate response' to the injuries they have suffered as a consequence.

Faith in the justice system is undermined by inconsistency and glaring discrepancies in responses to wrongdoing.

GREG BARNES
Director, Australian Lawyers Alliance*

* The Australian Lawyers Alliance is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of individuals. Its 1500 members represent up to 200,000 people each year in Australia.

** This opinion piece first appeared on *The Drum - Unleashed* (ABC Online) on 3 August 2010.



IT'S NOT JUST A JOB.
IT'S AN EXTRAORDINARY CAREER.



Right now, Victoria Police is searching for an extra 1700 members to add to our already strong team of 11,500 police. We're after applicants from all walks of life, with varied skill sets and are ready to embark on a career that is highly rewarding, community-focused, challenging and secure. We are especially interested in hearing from women as well as men, those from ethnic backgrounds and individuals with existing qualifications that can be utilised within Victoria Police. To find out more about a range of police careers, application requirements and to take a test visit policecareer.vic.gov.au



VICTORIA POLICE

A Victorian Government initiative

ARE YOU READY FOR AN EXTRAORDINARY CAREER?