

Victims Compensation Tribunal  
New South Wales

---

Chairperson's Report  
2011/2012

---



**Victims Services**  
Attorney General & Justice

Produced by  
Victims Services, Department of Attorney General and Justice, Sydney

Further copies may be obtained from

The Chairperson  
Victims Compensation Tribunal  
Locked Bag 5118  
Parramatta NSW 2124

Phone: 02) 8688 5511  
Fax: 02) 8688 9630  
Email: [vs@agd.nsw.gov.au](mailto:vs@agd.nsw.gov.au)  
Website: [www.lawlink.nsw.gov.au/vs](http://www.lawlink.nsw.gov.au/vs)

ISSN 1444-609X



**Victims Compensation  
Tribunal**  
of New South Wales

The Hon. Greg Smith SC MP  
Attorney General and Minister for Justice  
Governor Macquarie Tower  
Level 31, 1 Farrer Place  
Sydney NSW 2000

24 September 2012

Dear Attorney

As required by section 83(1) of the *Victims Support and Rehabilitation Act 1996*, I submit a report on the work of the Tribunal and Compensation Assessors for the twelve months ended 30 June 2012.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'B. A. Lulham'.

B. A. Lulham  
**Chairperson**



## CONTENTS

<b>LIST OF FIGURES AND TABLES</b> .....	6
<b>OVERVIEW</b> .....	7
Staffing .....	7
Independent assessment of the Victims Compensation Scheme .....	7
Summary of important statistics .....	8
<b>VICTIMS SUPPORT AND REHABILITATION ACT 1996</b> .....	9
Compensation Assessors .....	9
Applications .....	9
Lapsed and withdrawn claims .....	10
Number of claims .....	10
Applications to file applications for statutory compensation out of time .....	12
Indigenous claims .....	13
Unrepresented applicants/appellants .....	14
Determinations by Assessors .....	15
Dismissal rates .....	18
Budgetary considerations .....	19
Family victims .....	19
Compensable injury of sexual assault .....	20
Compensable injury of domestic violence .....	20
Compensable injuries of chronic psychological or psychiatric disorder category 1 (moderately disabling) or category 2 (severely disabling) .....	21
Victims Assistance Scheme (VAS) – Statutory compensation for expenses .....	21
Convicted inmates .....	22
Review of determinations for statutory compensation .....	22
Appeals to the Tribunal against determinations of Assessors .....	22
Appeals from the Tribunal .....	23
Status of appeals other than Division 6 (of the Act) appeals .....	23
Subpoenas .....	23
Approved Counselling Scheme .....	24
Client satisfaction survey .....	25
<b>REVENUE</b> .....	26
Restitution recovery .....	26
Restitution debtor management .....	27
Set off of awards against restitution (contras) .....	28
Arrangements with the Director .....	28
Hearings before the Tribunal .....	29
No response orders .....	29

<b>SPECIAL EVENTS</b> .....	30
<b>RECOMMENDATIONS</b> .....	32
<b>ACKNOWLEDGEMENTS</b> .....	33
<b>FIGURES</b>	
1a: Number of compensation applications received, 2007/08 to 2011/12 .....	11
1b: Number of compensation applications received, by month, 2007/08 to 2011/12.....	11
1c: Number of compensation applications received from primary victims, by gender and age of applicant at time of act of violence, 2011/12 .....	11
2: Primary victims 18 years and under at time of incident (sexual assault) and age claim lodged, 2010/11 and 2011/12 .....	12
3a: Number of Indigenous claims received as a percentage of all claims received, 2007/08 to 2011/12.....	13
3b: Summary of offences claimed by Indigenous victims in compensation claims lodged, 2009/10 to 2011/12.....	13
4a: Percentage of compensation claims lodged with legal representation, 2007/08 to 2011/12.....	14
4b Percentage of dismissal rates for legally represented and unrepresented claims, 2007/08 to 2011/12.....	15
5a: Average payment in Assessor determinations, 2007/08 to 2011/12 .....	16
5b: Percentage of claims awarded, by amount, 2010/11 and 2011/12.....	16
5c: Percentage of compensation claims dismissed by Assessors, 2007/08 to 2011/12.....	16
5d: Percentage of offences claimed in compensation claims lodged, 2010/11 and 2011/12 .....	17
5e: Percentage of offences claimed in counselling and compensation claims lodged, 2011/12.....	17
6a: Number of initial counselling applications received from primary and secondary victims, 2007/08 to 2011/12.....	24
6b: Number of counselling applications received from primary victims, by gender and age of applicant at time of act of violence, 2011/12 .....	24
7: Percentage of payment options utilised, 2007/08 to 2011/12.....	28
<b>TABLES</b>	
1: Summary of compensation applications, 2010/11 and 2011/12 .....	9
2: Compensation claims lodged, leave matters, 2011/12 .....	12
3: Summary of reasons for dismissal, by percentage, 2011/12 .....	18
4: Five-year summary of compensation claims received and determined .....	19
5: Summary of appeals, 2010/11 and 2011/12.....	23

## OVERVIEW

The Victims Compensation Tribunal (the Tribunal) was established under the *Victims Compensation Act 1987* and continues under the *Victims Support and Rehabilitation Act 1996*. The Tribunal operates out of Levels 1 and 4 at Justice Precinct Offices, 160 Marsden Street, Parramatta.

Callovers are held before the Registrar. Appeals and restitution hearings are heard before a Tribunal Member on Level 1 (which also houses the Appeals Registry and the Policy and Service Delivery Section). Assessors, the Compensation Registry, Restitution Registry, Accounts, and Administration operate from Level 4. The building provides conference rooms and other ancillary accommodation.

Pursuant to the Act only Magistrates are eligible to be appointed as members of the Tribunal. During the period under review the Chairperson, His Honour Magistrate B.A. Lulham together with Their Honours Magistrates J.O. Crawford and A.D. Moore, exercised powers of the Tribunal. All members hold office on a part time basis. His Honour A.D. Moore ceased duties at the Tribunal on 7 March 2012 to take up other appointments. He provided very valuable service to the Tribunal during his stay.

This report covers the period of the financial year 1 July 2011 to 30 June 2012. I intend to use the term “the year” when referring to that period.

### Staffing

Staff numbers increased slightly during the year from 84 to 87 positions. Employee-related expenses decreased from \$6.78m to \$6.51m in the year under review.

Operational expenses have increased during the year from \$1.99m to \$2.79m. The increase is attributed to the following:

- ♦ DVD production
- ♦ PricewaterhouseCoopers Review consultancy
- ♦ Agency staff and contractors now included in operational expenses whereas previously included in employee related expenses

Ms Mahashini Krishna was permanently appointed as Registrar on 7 February 2012. I congratulate Ms Krishna on her appointment. She is an outstanding lawyer and administrator and has provided outstanding assistance and advice to the Tribunal.

### Independent assessment of the Victims Compensation Scheme

The NSW Attorney General, The Honourable Greg Smith SC MP announced on 11 August 2011 that the Government has ordered an independent assessment of the Victims Compensation Scheme with a view to delivering faster and more effective financial support to victims of violent crime. The Attorney announced that the NSW Government would engage independent experts to;

- (i) develop a profile of victims eligible for compensation,
- (ii) examine alternate ways to provide support and rehabilitation services to victims,
- (iii) conduct a comparative assessment of compensation schemes in other jurisdictions, and
- (iv) consider the value and effectiveness of restitution processes.

Subsequently, PricewaterhouseCoopers was appointed to undertake the review, which is now completed and recommendations were forwarded to the Attorney General in July 2012. At the time of the preparation of this report I am not aware of the recommendations made by PricewaterhouseCoopers.

## Summary of important statistics

- ♦ Applications for statutory compensation received during the year totalled 7,263.
- ♦ Assessors determined a total of 5,729 claims for compensation.
- ♦ A total of \$63m (statutory compensation awarded by Assessors and Tribunal Members on appeal, professional costs and disbursements and Approved Counselling) was paid.
- ♦ Pending compensation claims have increased from 21,610 to 21,911.
- ♦ The number of appeals to the Tribunal totalled 667 and 719 were determined. There were 202 appeals pending at the close of the financial year.
- ♦ Under the Approved Counselling Scheme, 5,967 applications for initial counselling were received during the year. There were 77,286 counselling hours approved for victims of crime in initial and further applications for counselling. Payments of \$3.39m were made to Approved Counsellors.
- ♦ A total of \$4.12m was collected from convicted offenders during the year slightly up from the previous year.
- ♦ Electronic payment options are available for defendants who are liable to pay restitution. 5,500 debtors had taken up this option by 30 June 2012.

## VICTIMS SUPPORT AND REHABILITATION ACT 1996

### Compensation Assessors

During the year under review the following Compensation Assessors determined claims for statutory compensation and under delegation from the Director, applications for leave to file claims out of time – Messrs De Mayo, Hipwell, Holt, Tilley, Ting, Walker and Mses. Baker, Bell, Gupta, Humphreys, Krishna, Madison and Srikanth. Ms Krishna is the Registrar, Mr Ting is the Senior Advocate and Ms Srikanth is the Legal Officer of Victims Services.

Compensation Assessors deal with applications for statutory compensation without conducting a hearing (section 27). An act of violence is the gateway to awards of statutory compensation and if established, awards for compensable injuries that are set out in a table in Schedule 1 of the Act are made. Clause 8 of Schedule 1 is designed to cover those injuries not specifically mentioned in the Table.

The standard amount of compensation for such compensable injury is the amount, or an amount within the range of amounts, specified in the Table. The Act compensates the three most serious compensable injuries:

- (a) the full standard amount for the most serious injury
- (b) ten per cent of the standard amount for the second most serious injury and
- (c) five per cent of the standard amount for the third most serious injury.

Notwithstanding the finding of an act of violence and any compensable injury, section 30 of the Act provides that the amount of compensation payable may be reduced or no award made in certain circumstances. Section 24 provides that certain persons are ineligible to receive statutory compensation.

### Applications

**Table 1: Summary of compensation applications, 2010/11 and 2011/12**

	<b>2010/11</b>	<b>2011/12</b>
Received	8,854	7,263
Pending	21,610	21,911
Awards	2,935	3,297
Dismissals	2,038	2,432
Withdrawn (s26A)		251
Lapsed (s26B)		851
<b>Total determinations</b>	<b>4,973</b>	<b>5,729</b>
<b>Total money paid</b>	<b>\$63.2m*</b>	<b>\$63.0m*</b>

\* Including awards, costs, disbursements and Appeal awards, VAS claims and Approved Counselling.

## Lapsed and withdrawn claims

The implementation of section 26A and section 26B of the Act was reflected in the year under review. In 2011/12, 251 claims were withdrawn and 851 claims were lapsed.

Section 26A allows for an applicant for statutory compensation to withdraw his or her application at any time prior to the claim being determined, by providing a written notice to the Director.

The lapsing of claims under section 26B of the Act, states that *“If an applicant for statutory compensation has not made any contact with the Director for 6 months, the Director may give notice to the applicant stating that if the applicant does not contact the Director by the date and in the manner specified in the notice (being a date that is not less than 6 months after the Director gives the notice), the application will lapse.”*

This has allowed Victims Services to administratively finalise these claims to assist in reducing the number of pending claims.

I note though that the withdrawal or lapsing of an application for statutory compensation under these sections does not prevent the applicant from making another application for statutory compensation, although leave provisions will apply.

## Number of claims

Last year I reported that the number of applications for statutory compensation lodged during that year decreased by approximately four per cent to 8,854. For the year under review 7,263 applications for compensation were received, representing a decrease of approximately eighteen per cent over the previous year.

There has been a decrease of just over 2,000 in the number of claims lodged in the past two years. I consider that the decrease in the number of claims lodged is at least partly related to the reduction in fees payable to solicitors as a result of the 2010 amendments to the Act. I am satisfied that potential applicants are finding it more difficult to access solicitors prepared to handle claims under the Act. I refer to the comments I have made subsequently under the heading “Unrepresented applicants/appellants” regarding the increased number of applications or appeals being lodged by unrepresented applicants and appellants.

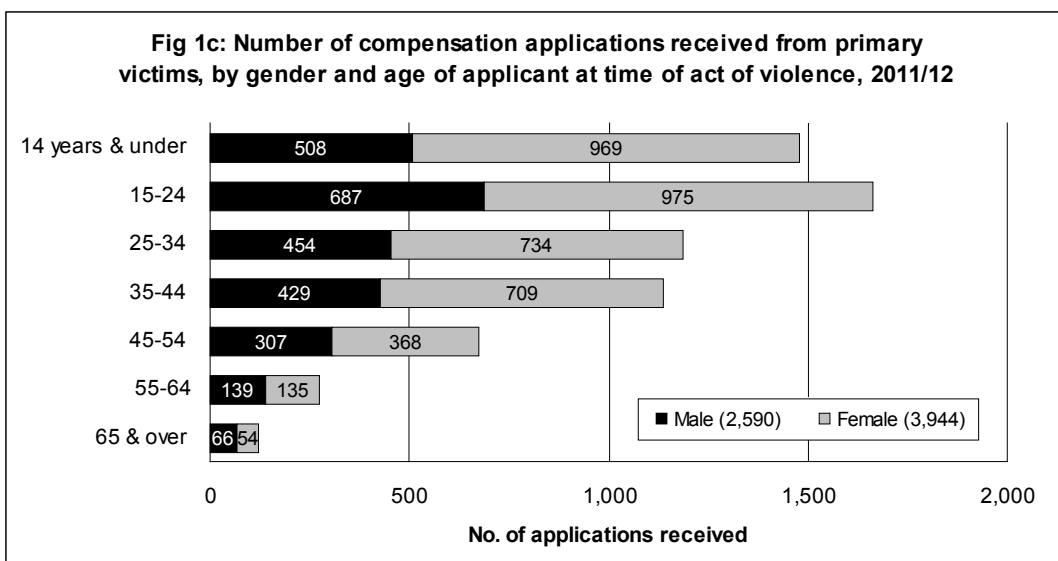
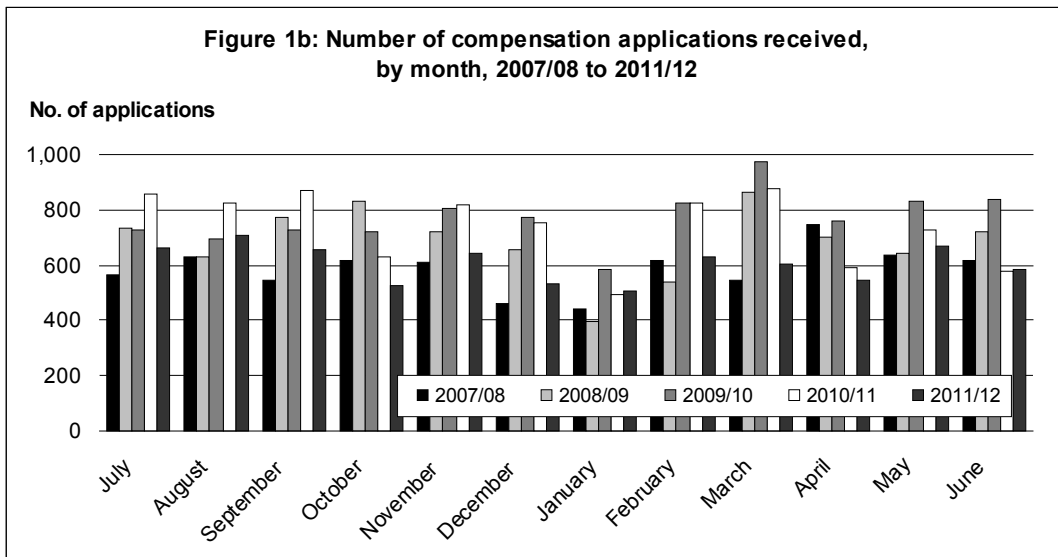
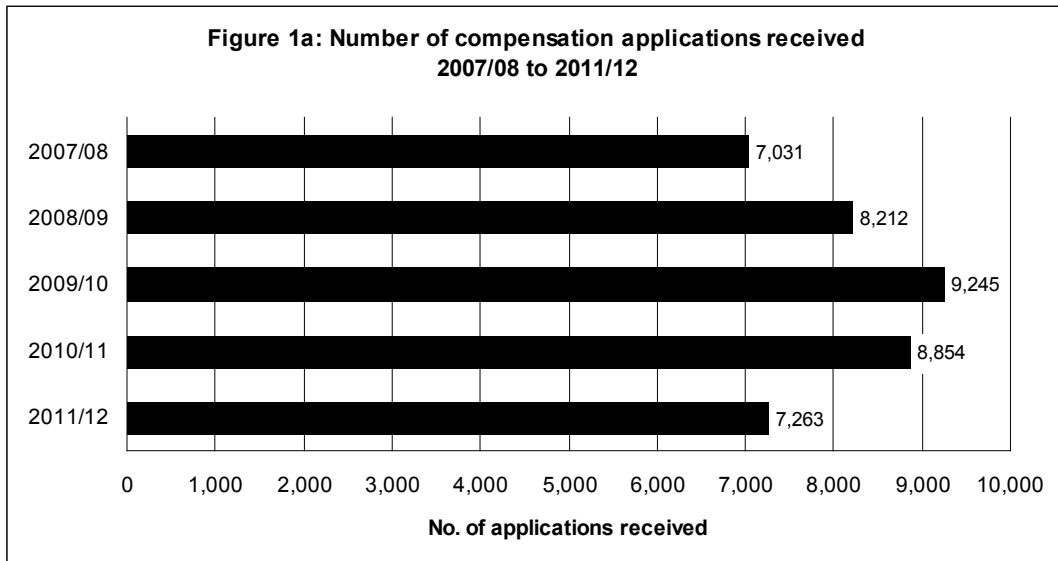
The figures below indicate the following:

Figure 1a shows the number of compensation applications received, 2007/08 to 2011/12.

Figure 1b shows the number of compensation applications received on a monthly basis, 2007/08 to 2011/12.

Figure 1c shows the number of compensation applications received from primary victims by gender and age of the applicant at time of the act of violence, 2011/12. Claims by females continue to outnumber those by males.

As the figures show, the number of applications received this year was 7,263 while the number of determinations was 5,729. The number pending (as set out in Table 1) has also slightly increased, from 21,610 to 21,911.



### Applications for statutory compensation lodged out of time

Section 26 provides that an application for statutory compensation must be duly lodged within two years after the relevant act of violence occurred or in the case of a family victim, within two years after the death of the primary victim. The Director has discretion to accept applications that are lodged out of time. The section provides that in the case of sexual assault, domestic violence or child abuse, leave should be granted unless the Director is satisfied that there is no good reason to do so. In all other cases leave should not be given unless the applicant establishes that there is good reason to do so.

During the year, 2,437 claims were lodged out of time as against 2,956 in the previous year and 3,263 in 2009/10.

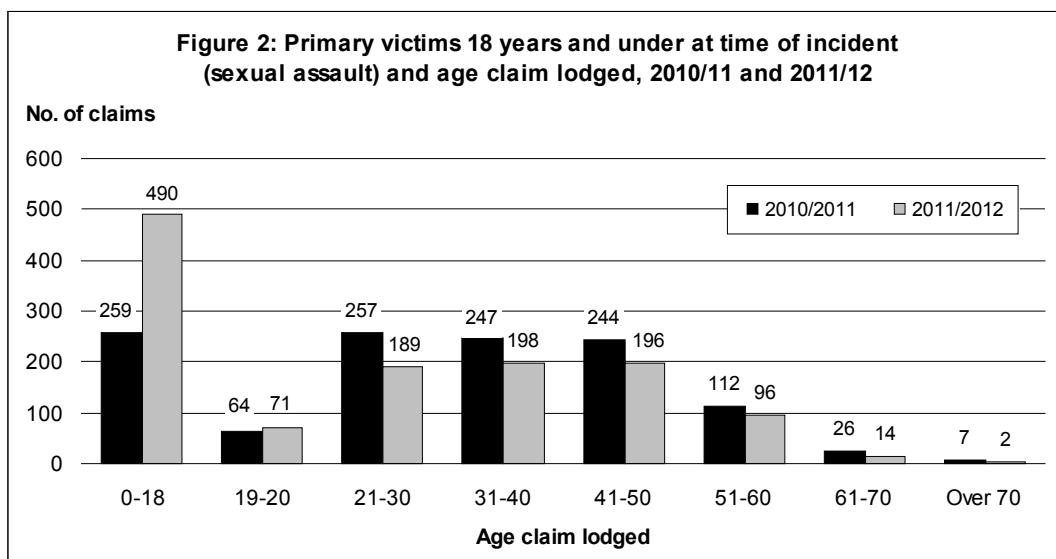
Table 2 sets out the number of late applications filed, the result and the offence alleged. The total number of sexual assault claims lodged out of time was 1,284.

**Table 2: Compensation claims lodged, leave matters, 2011/12**

	<i>Granted</i>	<i>Refused</i>	<i>Deferred</i>	<i>Decision pending</i>	<i>Total</i>
Sexual Assault	1,254	10	14	6	1,284
Domestic Violence	786	6	8	8	808
Assault	120	32	16	44	212
Robbery	10	9	2	14	35
Homicide	7	17	1	5	30
Home Invasion	10	2	0	8	20
Other	26	15	0	7	48
<b>Total</b>	<b>2,213</b>	<b>91</b>	<b>41</b>	<b>92</b>	<b>2,437*</b>

\* 34 per cent of claims lodged.

Figure 2 shows the number of claims (sexual assault) lodged by primary victims 18 years and under, by age at time of lodgement of the claim, 2010/11 and 2011/12.



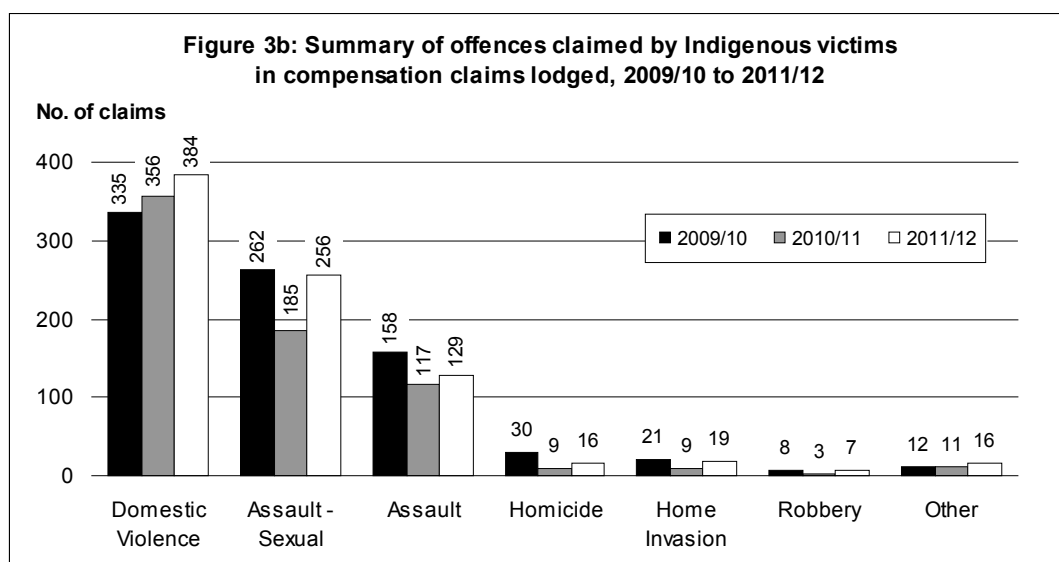
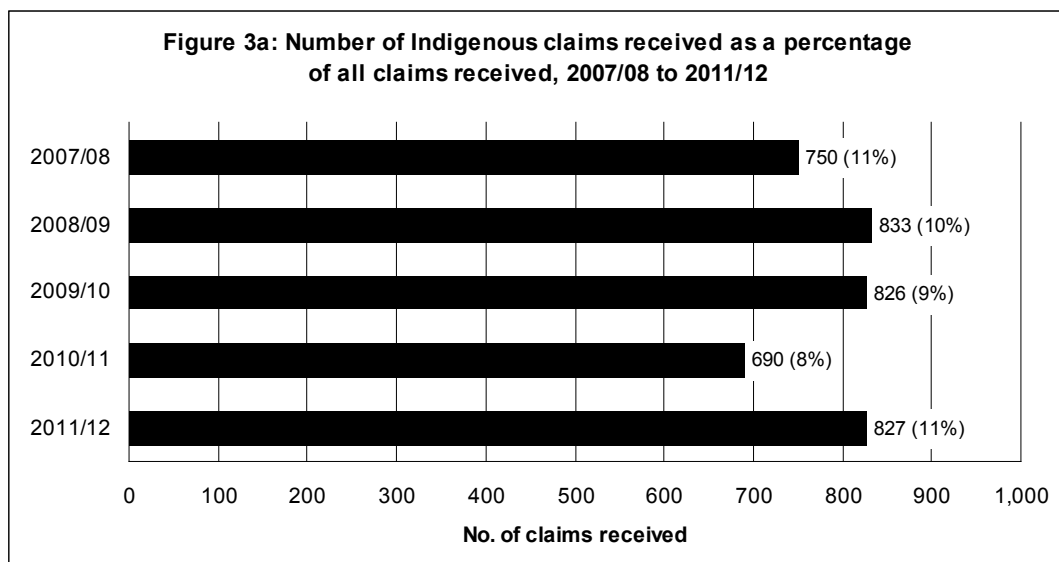
The number of claims lodged in 2011/12 where the victim was aged 18 years and under at the time of the alleged offence but aged between 41 and 90 years at the time of lodgement of the claim, was 308. There were 389 similar claims lodged in the previous year. Those historical sexual assault claims give rise to difficulties both for the applicant and the Assessor/Tribunal dealing with them because of the time lapse. Family members of homicide victims lodged 30 leave applications in 2011/12 with some of them going back to homicides that occurred as long as 1975.

## Indigenous claims

There is a special focus on Indigenous issues and priorities in the NSW Government State Plan.

Figure 3a shows the number of Indigenous claims received over the past five years as a percentage of all claims received and the total number of claims received from Indigenous persons over the same period. That information is obtained from applicants who identify that they are Indigenous in the application form.

Figure 3b shows the offences giving rise to applications for statutory compensation. The most common offences giving rise to applications are domestic violence, sexual assault and assault in that order.



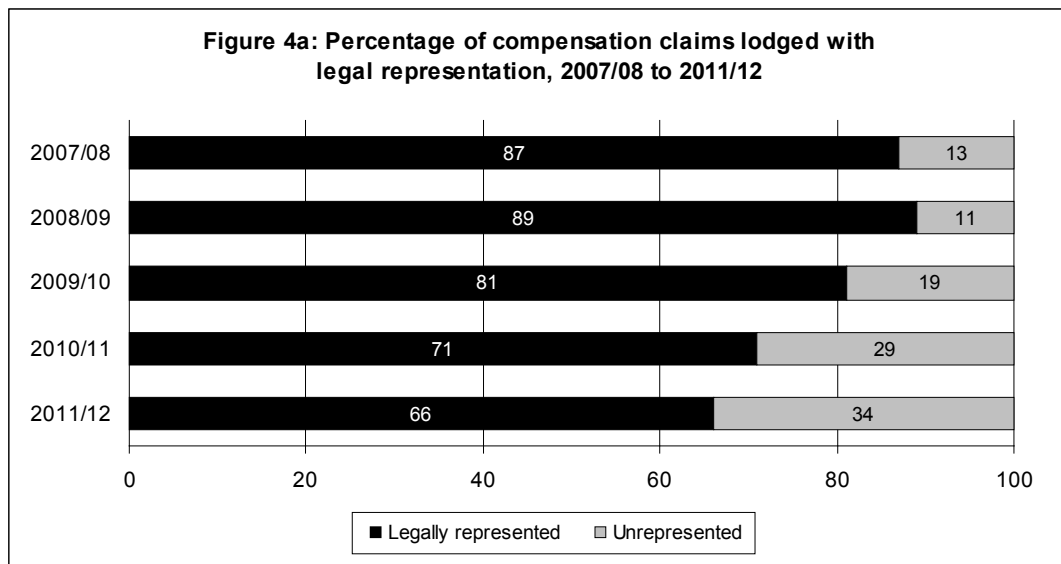
### Unrepresented applicants/appellants

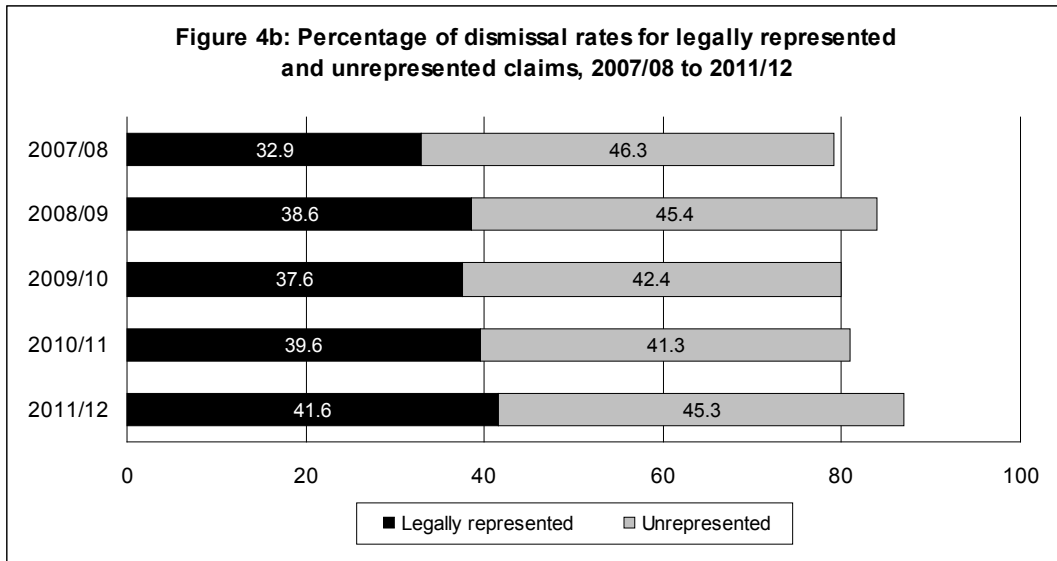
The proportion of unrepresented applicants lodging applications for statutory compensation increased from 29 per cent in 2010/11 to 34 per cent in the year under review. Victims Services is closely monitoring this trend. It may well be due to a reduction in the number of legal firms prepared to do victims compensation matters. The reduction in legal fees provided for in the 2010 amendments to the Act has made the work less financially attractive. There is also some evidence that some legal firms are being more selective in commencing claims, leaving applicants with claims with less chance of success having to bring such claims without legal representation. The question of the funding of appropriate legal assistance to applicants and appellants has been an important matter for consideration and recommendation by the independent assessment review.

There continues to be an increasing number of unrepresented applicants appealing to the Tribunal against the Assessor’s determination. In some cases they are legally represented to the time of the Assessor’s determination but in the subsequent appeal are unrepresented. It is clear in many claims that the appellants are unsatisfied, sometimes with some justification but often without good reason, with the work done by legal advisors in the application before the Assessor. It would appear that the reduction in the fees payable on a successful appeal may be a factor with solicitors giving more careful advice as to the prospect of a successful appeal.

Figure 4a shows the percentage of compensation claims lodged with legal representation, 2007/08 to 2011/12.

Figure 4b shows the percentage of dismissal rates for legally represented and unrepresented claims, 2007/08 to 2011/12. The percentages in this figure are calculated within each category.





## Determinations by Assessors

The number of applications determined by Compensation Assessors during the year increased from 4,973 to 5,729.

It is pleasing to note that the number of determinations finalised during the year increased by 756 – a compliment to the consistently hard work performed by the Assessors.

Figure 5a shows the average payment in Assessor determinations, 2007/08 to 2011/12.

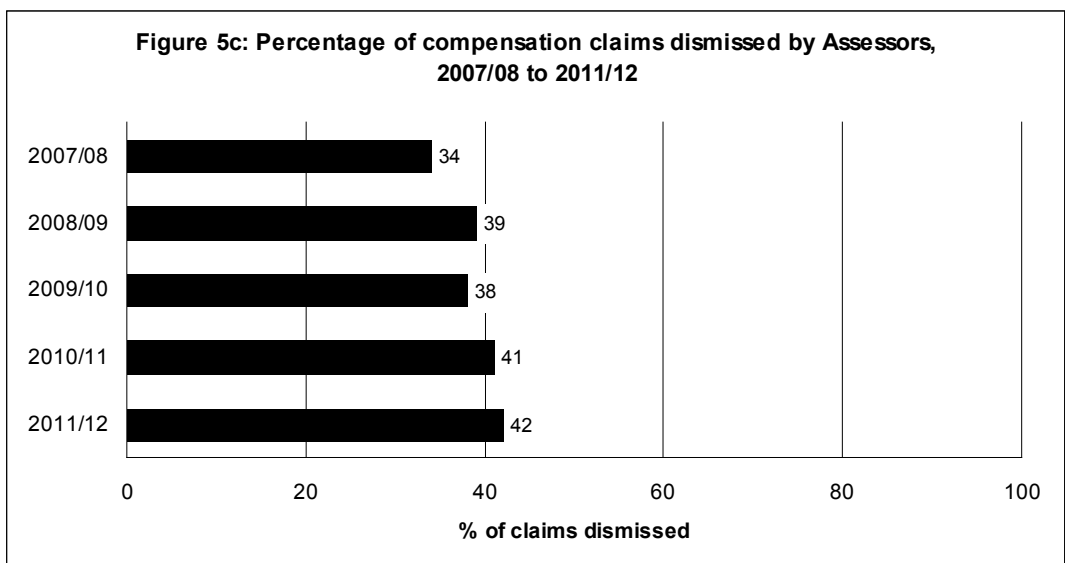
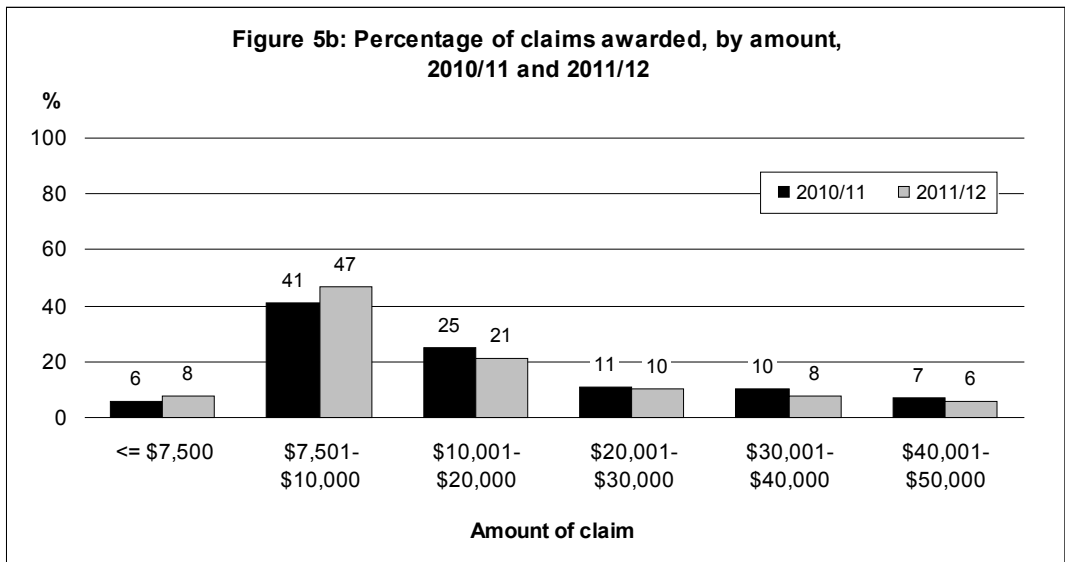
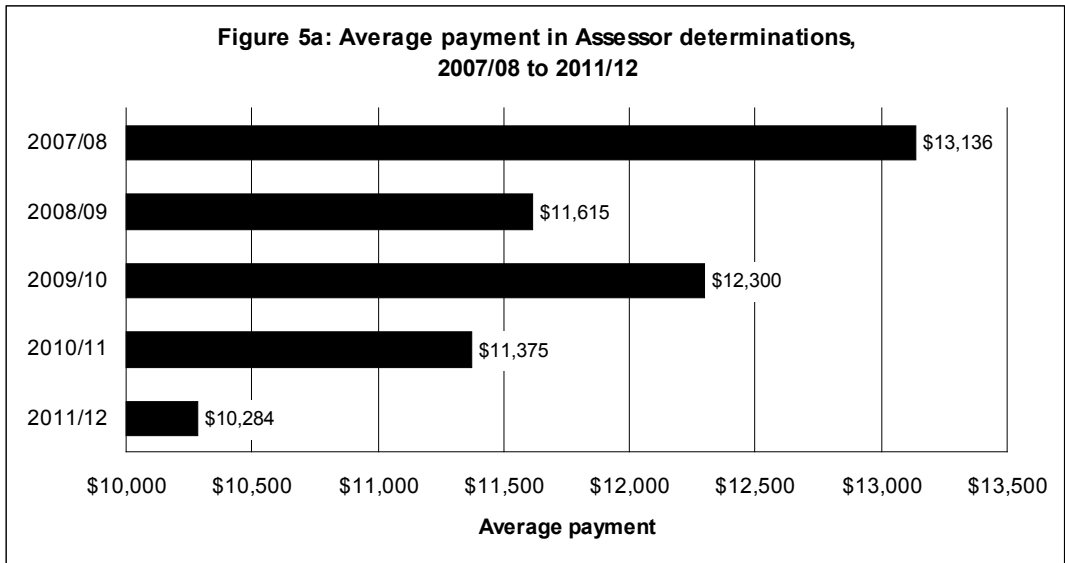
Figure 5b shows the percentage of claims awarded by amount, 2010/11 and 2011/12.

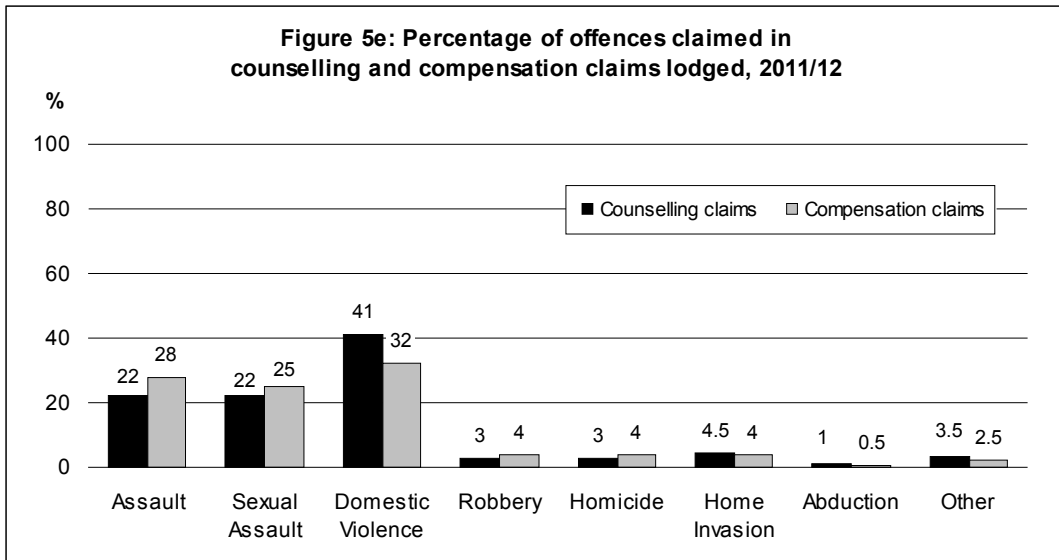
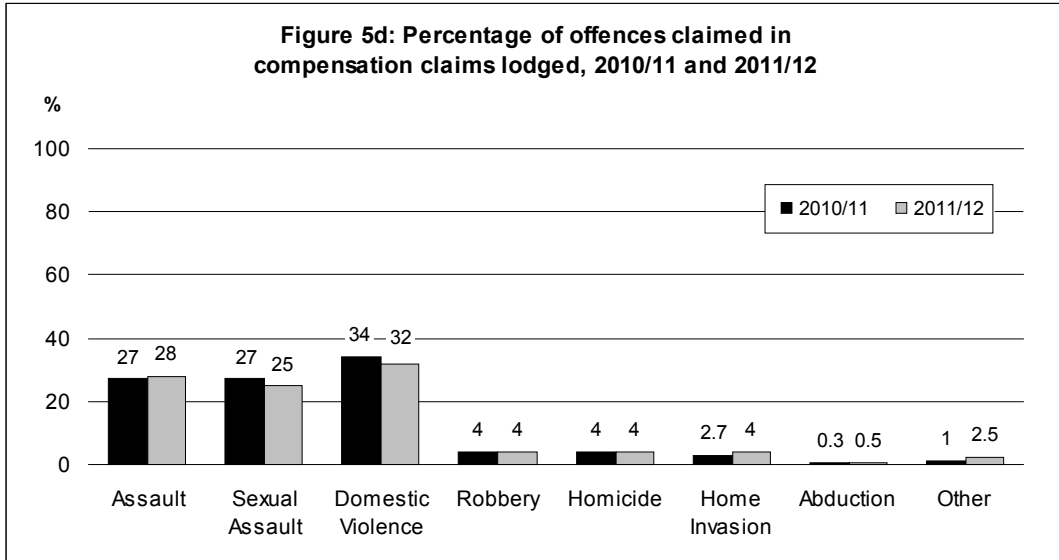
Figure 5c shows the percentage of claims dismissed by Assessors, 2007/08 to 2011/12.

Figure 5d shows the percentage of offences alleged in compensation claims lodged, 2010/11 and 2011/12.

Figure 5e shows a comparison of the percentage of offences alleged in counselling and compensation claims lodged, 2011/12.

Figures 5d and 5e highlight that domestic violence, assaults and sexual assaults are the most prevalent range of offences for which statutory compensation is claimed. In counselling claims, the prevalent offences relate to domestic violence, sexual assaults and assaults.





## Dismissal rates

In the year under review, 2,432 claims were dismissed by Assessors. This represents 42 per cent of claims determined, a slight increase on the previous year (see Figure 5c). The increased rate of dismissal in the year under review coincided with a considerable increase in multiple claims by applicants where claims were not well founded and poorly prepared.

Appeals are generally dealt with on the evidence that was before the Assessor. However, section 38(3) of the Act provides that leave to receive further evidence and material may be given on appeals to the Tribunal if special grounds exist. Generally Tribunal Members take a more beneficial approach to the legislation. Over time Assessors have reacted positively to Tribunal decisions.

The major reasons for dismissal of applications related to the failure of the victim to establish an act of violence; or to establish a compensable injury; or that the amount of statutory compensation for the established compensable injury, and any deduction pursuant to section 30, did not meet the threshold of \$7,500. However, due to a lower number of claims being based on assaults, other than assaults in the nature of domestic violence, sexual assaults or armed robbery, section 30 issues have become less relevant. As a result fewer claims are being dismissed for issues arising under section 30 of the Act.

**Table 3: Summary of reasons for dismissal, by percentage, 2011/12**

<i>Reason</i>	<i>claims dismissed (%)</i>
No act of violence	43.5
No compensable injury	25.0
Below threshold	9.3
Other	4.9
Related acts	4.5
Death or claim withdrawn	2.7
Not an eligible victim	2.5
S30 – Assistance to police and contributory behaviour	2.2
Secondary victim and maximum award paid to primary	1.6
Received other entitlements	1.6
S23 – A previous claim awarded	1.2
Award to dependent family member	1.0
<b>Total</b>	<b>100.0</b>

## Budgetary considerations

The following table details the number of claims lodged and the number of claims outstanding from year ending 30 June 2008 to 30 June 2012.

**Table 4: Five-year summary of compensation claims received and determined**

<i>Year ending</i>	<i>Received</i>	<i>Determined</i>	<i>Outstanding</i>
30 June 2008	7,031	4,013	10,241
30 June 2009	8,212	4,893	13,328
30 June 2010	9,245	4,374	18,030
30 June 2011	8,854	4,973	21,610
30 June 2012	7,263	5,729	21,911

In last year’s report I commented that I considered that the finalisation of about 4,900 applications for compensation was the optimum level of completion of applications achievable on the existing budget. To the credit of all staff and especially the Assessors, 5,729 applications were finalised in the year under review. It is an excellent result which will be difficult to maintain on the existing budget this year.

The time between lodgement and determination of a claim has extended from 25 months to 31 months as at 30 June 2012. The delay is obviously disappointing and can be detrimental to applicants. The delay can also cause additional expense as, because of the delay, further up to date medical reports and additional submissions may be required from the applicants. It follows that if a real effort is to be made to reduce the delay and the number of outstanding claims, a considerable increase in budget allocation will be necessary to cover both the increase in funds available for compensation and also the increase in staff.

I am informed that the estimated liability for the 21,911 outstanding claims as at 30 June 2012 is \$225.4m. Based on the same formula used in previous years, this figure is less than the estimate given in 2011 for fewer claims. This is due to the amount for average payments being lower for the year under review. No doubt, these matters have been the subject of much investigation and many recommendations in the independent assessment by PricewaterhouseCoopers.

## Family victims

The Tribunal received 311 claims from family members in relation to 140 deceased victims during the year.

Leave was refused in 25 claims. Total payments, including interim payments of \$682,473 for funerals, amounted to \$3.28m. Sixty-seven claims were dismissed. Most dismissals arose because the claimant was not dependant on the deceased at the time of the death, whereas another applicant or applicants were. Dependent claimants succeed to the exclusion of all other claimants. In some matters claimants were unable to establish that they were a family victim and in a small group of matters the death was ruled to be accidental or occurred in unknown/unclear circumstances. A total of 165 applications for counselling by family members were received and 2,826 hours of counselling approved.

## Compensable injury of sexual assault

During the year Compensation Assessors determined 1,301 claims where sexual assault was alleged as the offence.

The range for the compensable injuries of sexual assault is:

Sexual assault category 1 – \$7,500 - \$10,000

Sexual assault category 2 – \$10,000 - \$25,000

Sexual assault category 3 – \$25,000 - \$50,000

A number of applicants claiming the compensable injury of sexual assault also claimed the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling (where kidnapping related to the sexual assault) or a category 2 disorder that is severely disabling. An award can be made for one of these compensable injuries, as a discrete injury having regard to section 11 of the Act, in lieu of a sexual assault category, if such award will result in a higher payment to the applicant.

Awards were made in 772 cases as follows:

- ♦ Sexual assault category 1 (127 awards)
- ♦ Sexual assault category 2 (162 awards)
- ♦ Sexual assault category 3 (482 awards)
- ♦ Psychological or psychiatric disorder category 1 (0 award)
- ♦ Psychological or psychiatric disorder category 2 (1 award)

It is clear that for the vast majority of sexual assault claimants, the offence-based injury of sexual assault category 1, category 2, or category 3 is more beneficial to their successful claim, than a psychological injury relying on the evidence of an Authorised Report Writer (ARW).

Of the total number of awards for statutory compensation made during the year, 23 per cent related to victims of sexual assault.

## Compensable injury of domestic violence

Domestic violence was alleged as the offence in 1,911 claims determined. There has been a steady rise in the number of claims lodged for the offence of domestic violence.

Like victims of sexual assault, victims of domestic violence may claim the offence-based injury of domestic violence, or in the alternative physical injuries, or the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling (in the case of kidnapping) or category 2 disorder that is severely disabling.

Awards were made in 1,348 cases as follows:

- ♦ Compensable injury of domestic violence (1,248 awards)
- ♦ Psychological or psychiatric disorder category 1 (11 awards)
- ♦ Psychological or psychiatric disorder category 2 (35 awards)
- ♦ Physical injuries (54 awards)

Of the total number of awards for statutory compensation made during the year, 41 per cent were for victims who established domestic violence as the act of violence.

## **Compensable injuries of chronic psychological or psychiatric disorder category 1 (moderately disabling) or category 2 (severely disabling)**

Victims seeking to claim the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling or category 2 that is severely disabling must provide a report from an Authorised Report Writer (ARW) approved by the Director. Under clause 5 of Schedule 1 of the Act, category 1 disorder is only available where the act of violence has apparently occurred in the course of the commission of the offences of armed robbery, abduction or kidnapping.

The nominated injury may be changed at any time prior to determination by the Assessor and it may be that a different compensable injury is awarded – see earlier for remarks on claims for sexual assault and domestic violence.

Of the 5,729 claims for statutory compensation determined during the year, 2,996 claims (52%) were accompanied by an ARW report. In those 2,996 claims accompanied by an ARW report, the compensable injury of a chronic psychological or psychiatric disorder category 1 was awarded in 246 claims and category 2 was awarded in 122 claims. Authorised Report Writer reports were filed in claims where other compensable injuries such as sexual assault and domestic violence were awarded. The expense incurred for ARW reports in the year under review was \$2,047,616.

## **Victims Assistance Scheme (VAS) – Statutory compensation for expenses**

The Victims Assistance Scheme (VAS) was introduced on 16 February 2007. The purpose of the Scheme was to reimburse victims of crime not eligible for statutory compensation, for certain specified expenses. The threshold for claimed expenses must reach \$200 and payments are capped at \$1,500. The Scheme has been improved immeasurably by the amendments in the 2010 Act. The Scheme continues to cover expenses that were previously prescribed but now extends to all actual expenses incurred by the victim of an act of violence. This includes medical aids such as dentures, prostheses and hearing aids. The \$500 limit for certain expenses has been removed. The Scheme extends to victims of an act of violence that occurred on and after 16 February 2007. The claim must be lodged within two years – there is no provision for late claims and applicants must establish they are primary victims of an act of violence that resulted in at least one of the compensable injuries in the table to succeed in a claim. Thus injured victims can recover actual expenses even though the standard amount for the compensable injury is less than \$7,500 and therefore statutory compensation is not payable.

Because of the requirement to establish an act of violence, information is sought from the NSW Police Force. It is necessary to file some medical evidence to determine whether or not a compensable injury is established. Section 30 (reasons for not making an award or reducing amount of compensation payable) applies to the Scheme.

A total of \$73,525 was paid out during the year in relation to 90 claims. This included 31 payments for dental expenses and 32 payments for ambulance.

Whilst the maximum recoverable under the Scheme is \$1,500, dental expenses frequently exceed that sum. The maximum award of \$1,500 was paid in relation to 18 claims for dental expenses. A number of claims were dismissed because no compensable injury was nominated or established, which is a requirement under the Scheme.

## Convicted inmates

Section 24(4) provides that convicted inmates are not eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was a convicted inmate within the meaning of the Act. However, section 24(5) provides that the Tribunal may make an award if the Tribunal is satisfied that special circumstances exist including if the convicted inmate is seriously and permanently injured as a result of the act of violence.

During the year the Tribunal dealt with nine applications by convicted inmates. Statutory compensation was awarded in five claims and four claims were dismissed. In the previous year the Tribunal dealt with 14 applications and made an award in six claims and dismissed eight claims.

In those cases where an award of statutory compensation was made the Tribunal considered that the victims had been seriously and permanently injured. Where an award was made and the applicant was indebted to the Crown (being a convicted offender in claims where an award had been made to a victim) the determination for restitution was set off against the award for compensation pursuant to section 31. Of the five claims awarded to convicted inmates, in one matter the total amount of the award was deducted pursuant to section 31.

## Review of determinations for statutory compensation

Section 37(2) provides that if the Chairperson of the Tribunal considers that the Tribunal should review an application for statutory compensation that has been determined by a Compensation Assessor, the Director is to refer the application to the Tribunal for re-determination.

In the year under review the Chairperson considered that the Tribunal should review 23 matters. The review mechanism is generally used where there is an administrative error and may result in an increase or variation of the Assessor’s determination.

## Appeals to the Tribunal against determinations of Assessors

The Act provides for an appeal from a Compensation Assessor to the Tribunal. During the year 667 appeals were lodged with the Registry, a slight increase on the 635 appeals lodged in the previous year. Eighty per cent of those appeals were against dismissals of the claims by Assessors, sixteen per cent against quantum and the balance of four per cent against the Assessor under delegation refusing leave to lodge applications out of time.

The Tribunal determined 719 appeals. Of the appeals determined, approximately 41 per cent were successful. The Tribunal made an award in 245 matters and remitted 44 matters to a Compensation Assessor for re-determination. Included in those 719 appeals were 27 appeals against refusal to grant leave to file applications for statutory compensation out of time. Of the appeals against refusal to grant leave, seven appeals were allowed and leave was given. In appeals against the refusal to grant leave, appellants are able to file further evidence for the delay as of right.

Appeals are listed for call over within two to three weeks of lodgement. The average time for an appeal to be finalised during the year from lodgement to determination was three months. In June 2012 the Tribunal members were generally dealing with appeals lodged in April and May 2012, which, in my view is within the optimum period. The number of appeals pending at 30 June 2012 was 202, a decrease of 52 on the figure of 254 outstanding at 30 June 2011.

**Table 5: Summary of appeals, 2010/11 and 2011/12**

	<b>2010/11</b>	<b>2011/12</b>
Appeals lodged	635	667
Appeals determined	735	719
Pending	254	202

## Appeals from the Tribunal

### *District Court*

Pursuant to section 39 (Division 6) an applicant for statutory compensation may appeal to the District Court on a question of law arising in any determination of the application by the Tribunal. Pursuant to section 41 the Compensation Fund Corporation (the Fund) is the respondent to any appeal under Division 6.

During the year 17 new appeals were filed in the District Court of New South Wales under Division 6 of the Act against Tribunal determinations.

Twenty appeals were finalised in the District Court including four matters which were commenced in the previous year. As at 30 June 2012, one matter remains to be heard in the District Court. Sixteen of the finalised matters were settled by consent. The Fund was successful in two appeals. The Fund was unsuccessful in two appeals, with one of these appeals now before the Court of Appeal.

## Status of appeals other than Division 6 (of the Act) appeals

### *Supreme Court*

During the year two matters were filed relating to Tribunal decisions in the Supreme Court. One of these matters was filed pursuant to section 69 of the *Supreme Court Act 1970* and was settled by consent. The other was an appeal instituted under section 55 of the *Victims Support and Rehabilitation Act*, and as at 30 June 2012 remains outstanding.

### *Court of Appeal*

As at 30 June 2012 the Fund had lodged an appeal against the decision of Levy SC DCJ in *Lynch v Victims Compensation Fund Corporation* [2012] NSWDC 17. That matter has been heard and judgment has been reserved.

Victims Services Registrar Ms Krishna has appeared as the solicitor on record. The Fund has been represented at the hearing of the appeals by Mr Ting, the Senior Advocate.

## Subpoenas

Seventy subpoenas were served on the Director during the year. Of this total, nine related to proceedings in the criminal divisions of the Supreme, District or Local Court, where production was successfully opposed pursuant to section 84.

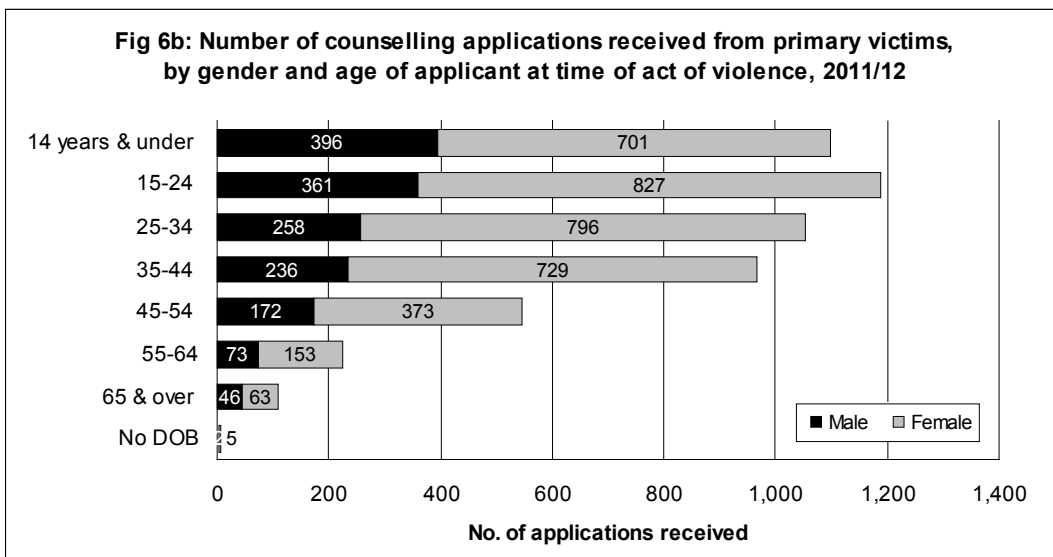
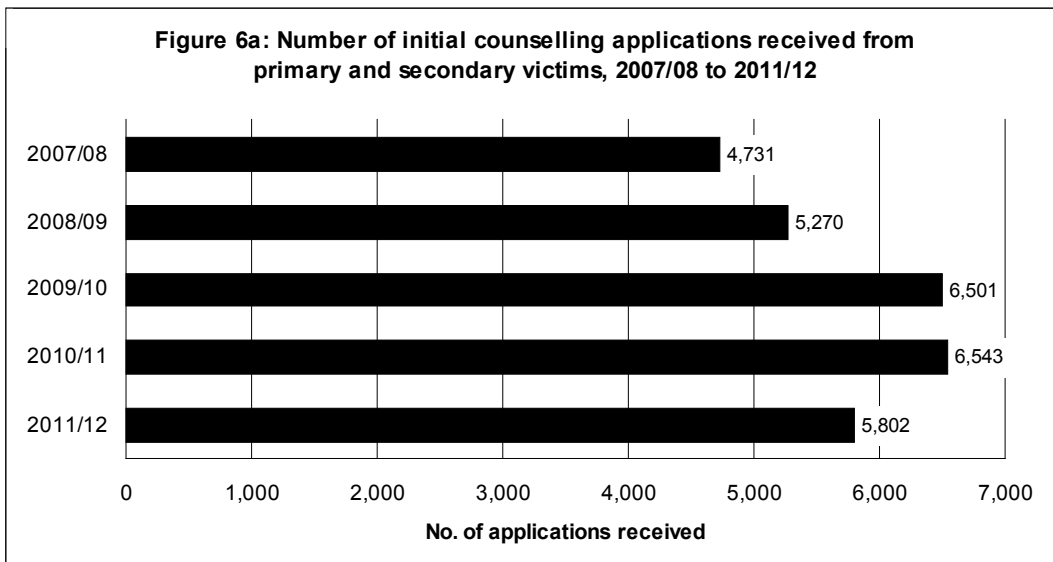
### Approved Counselling Scheme

The Scheme was established under the 1996 Act. During the year 5,967 applications for initial counselling were received from 5,802 primary or secondary victims and 165 from family victims. The 2010 amendments to the Act brought about significant beneficial changes to the Approved Counselling Scheme. The Director, under section 21(3) can now approve counselling and can delegate that function to approved staff. The approval of counselling no longer requires a determination by a Compensation Assessor. The initial hours approved for counselling have been increased from two to 10 hours with a preliminary report required from the Approved Counsellor after the first two hours of counselling. Counselling may be authorised for a total of 22 hours and the number of hours can be further increased if exceptional circumstances are established.

During the year 77,286 counselling hours were approved for victims of crime in initial and further applications for counselling. This has increased from 2010/11, when 74,232 hours were approved.

Figure 6a shows the number of initial counselling applications received from primary and secondary victims, 2007/08 to 2011/12.

Figure 6b shows the number of counselling applications received from primary victims, by gender and age of applicant at time of act of violence, 2011/12.



## Client satisfaction survey

As part of the quality assurance methods that Victims Services has developed regarding the Approved Counselling Scheme, victims who access the Scheme are routinely sent a brief survey that asks them to report on how they found their counselling experience.

During the year under review 298 responses were received which were mostly extremely positive:

- ♦ 97 per cent of respondents either agreed or very much agreed to the proposition;  
*“My counsellor was helpful and supportive”.*
- ♦ 91 per cent of respondents either agreed or very much agreed to the proposition;  
*“My counsellor was flexible in appointment times I was offered”.*
- ♦ 94 per cent of respondents either agreed or very much agreed to the proposition;  
*“I found counselling worthwhile and it has helped me cope better”.*

## REVENUE

Revenue comes from three sources:

- ♦ Restitution from defendants
- ♦ Court levies
- ♦ Other revenue (proceeds of crime/confiscation)

In the year under review, revenue totalled \$12.84m as against \$13.35m for the previous year. The revenue was received as follows:

- ♦ \$4.12m was recovered from convicted offenders as against \$4.08m in the previous year.
- ♦ Court levies amounted to \$7.43m as against \$7.95m for the previous year.
- ♦ Other revenue totalled \$1.29m as against \$1.32m for the previous year.

During the year the compensation levy payable pursuant to section 79(1)(a) of the *Victims Support and Rehabilitation Act 1996* (the Act) for indictable matters was \$153 and for other matters pursuant to section 79(1)(b) of the Act was \$67.

The levy payable from 1 July 2011 will be adjusted annually on the basis of increases in the CPI (all groups index) for Sydney.

The 2010 amendments to the *Victims Support and Rehabilitation Act 1996* extended the victims compensation levy to cover all offences (except for classes of offences prescribed by regulation).

The *Criminal Assets Recovery Amendment (Unexplained Wealth) Act 2010* gave the NSW Crime Commission power to confiscate wealth from suspected criminals, or their families and associates, if they cannot prove that they obtained the assets legitimately. Fifty per cent of the proceeds obtained under this regime will be directed into the Victims Compensation Fund.

### Restitution recovery

The Act provides that the Director may make a provisional order for restitution where a person has been convicted of a relevant offence. A relevant offence includes an offence arising from substantially the same facts as those constituting the act of violence in respect of which an award of statutory compensation was made.

Restitution action may commence after an award of compensation has been made. However, as the victim has up to three months to appeal the Assessor’s decision, restitution action is not usually commenced until a period of five months has elapsed since the award date.

General work pressures on staff have resulted in some delay in commencing recovery action under the Act, in the reporting period. At the end of the period under review recovery action was commenced approximately thirteen months after the award date. This reflects an increase of three months when compared with the period of ten months during the previous year.

Restitution action may only be taken where an offender has been convicted:

- (a) of an offence arising from substantially the same facts as those constituting the act of violence in respect of which an award of statutory compensation was made or;
- (b) any other offence if an offence referred to in paragraph (a) was taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*.

Restitution may only be pursued against convicted offenders. Conviction includes an order made under section 10 of the *Crimes (Sentencing Procedure) Act 1999* and (except in Part 4 relating to court-awarded compensation) an order made under section 33(1)(b)-(g) of the *Children (Criminal Proceedings) Act 1987*.

Statutory compensation may be paid to victims of an act of violence in circumstances where there is no identifiable offender or where the charge against the alleged offender is dismissed. In those cases where the offender is either unidentified or criminal proceedings have resulted in acquittal or dismissal, payments of statutory compensation cannot be the subject of restitution action. Restitution action is possible in approximately 48 per cent of cases in which awards of statutory compensation are made.

Previous reports have referred to the following difficult and challenging issues in pursuing restitution from convicted offenders –

- (a) The majority come from low socio-economic environments that generally preclude the accumulation of assets and most seem to be unemployed and/or unemployable.
- (b) Many receive prison sentences for the offence(s) that led to the award of statutory compensation (or for other offences), some for lengthy periods of time. On release they are often precluded from employment and have little ability to pay.
- (c) In many circumstances the award has been made years after the commission of the underlying offence and the offender is difficult to locate.

Notwithstanding all those problems, the amount recovered during the year from convicted offenders totalled \$4.12m compared with \$4.08m recovered in the previous year. During the year 1,291 provisional orders valued at approximately \$23.2m were made by the Director. The fact that, despite the difficult economic climate experienced during the year under review, increased recoveries were made can be attributed to a continuation of the more persistent and proactive approach to debtor management.

## **Restitution debtor management**

Over the years a number of payment options have been introduced. These include direct debit from a financial institution account, deduction from Centrelink social security payments through Centrepay, direct payments by the offender into the Department’s bank account using a provided deposit book and electronic payments made over the internet (EFT).

In June 2011, further methods of payment were introduced including payments at an Australian Post Office using a provided PayWay payment card by cash, BPAY, or EFT from a financial institution account and payment online using credit cards.

As at 30 June 2012 approximately 5,500 offenders were using one of the new payment options which do not require the payment of fees. Previously many offenders paid using money orders costing \$6.95 per payment. Payment of the outstanding amounts by the new methods has considerably lessened the amount of cash, cheques and money orders received by Victims Services and provides a much more efficient method of collection. As at 30 June 2012, less than four percent of the payments made were by cash, cheque or money order.

Defaulter letters are regularly sent to debtors who have not complied with arrangements with the Director or orders made by the Tribunal.

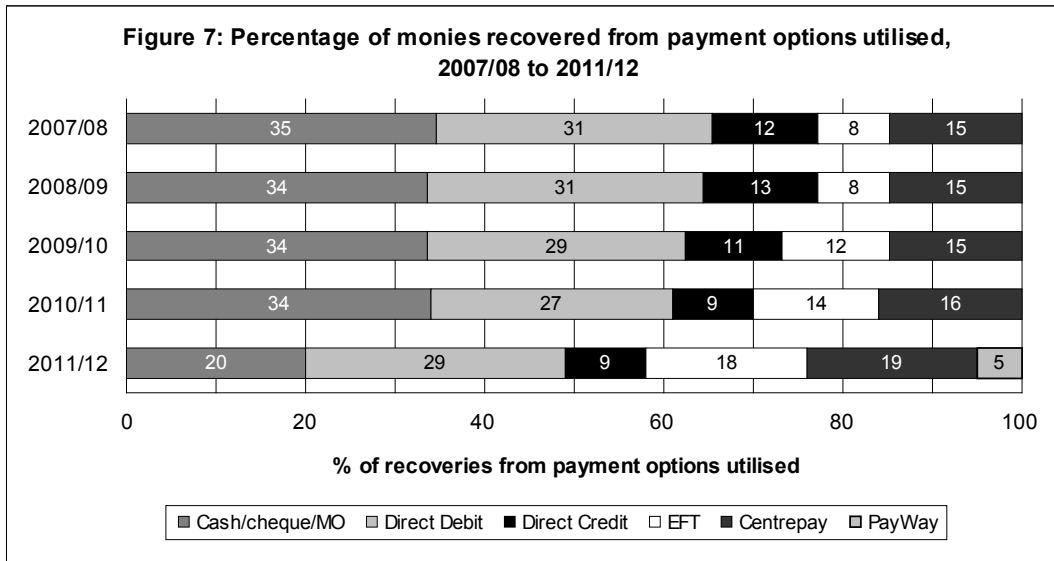


Figure 7 shows the distribution of the monies recovered from payment options utilised from 2007/08 to 2011/12.

### Set off of awards against restitution (contras)

Section 31 of the Act provides that a determination for restitution against a convicted offender may be set off against an award of compensation to the same offender. Since 2007/08, an average of \$451,096 has been set off in this manner. The amount set off is included in the total amount of restitution revenue that is reported each year. In 2011/12, \$496,398 was set off under section 31.

### Arrangements with the Director

Section 50 of the Act provides that the Director and the defendant may enter into an arrangement with respect to payment under a provisional/confirmed order. The section provides that such an arrangement may relate to the time for payment or to a reduction in the total amount payable under the order, or both.

During the year 236 arrangements amounting to approximately \$2.56m were entered into against provisional orders. A further 314 arrangements amounting to \$2.63m were entered into against confirmed orders made by the Tribunal. The amount agreed upon to be paid represented an average of 56 per cent of the amount provisionally ordered and payment generally is by monthly instalments.

## Hearings before the Tribunal

Approximately 2,343 matters were listed for hearing or confirmation by the Tribunal during the year. Orders resulting in approximately \$14.9m to be paid were made. The amount ordered to be paid represented an average of 80 per cent of the amount provisionally ordered. The orders made by the Tribunal generally required the amounts to be paid by monthly instalments.

Where a defendant has filed an objection to a provisional order, the matter is listed for hearing before a Tribunal Member. There was an appearance of defendants or their representative in approximately 22 per cent of these matters.

The Tribunal, in making orders for restitution, is required to take into account the financial means of the defendant and such other matters as in the opinion of the Tribunal are relevant to the determination.

Approximately 60 per cent of defendants who attend hearings, or provide formal written submissions, provide evidence that their main source of income is by way of social security benefits. As a result the vast majority of orders made by the Tribunal in cases where there is an appearance require payment by way of monthly instalments.

There is a continued need for security provided by the Sheriff’s Office when dealing with convicted offenders in restitution proceedings. The very nature of victims compensation and restitution creates strong emotional responses in offenders at the hearing.

## No response orders

When a convicted offender fails to respond to a provisional order, the Tribunal may confirm the order. The Tribunal made 591 such orders in the year under review.

## SPECIAL EVENTS

### Victims of Crime Clearinghouse

The Victims of Crime Clearinghouse website was launched in February 2012.

The Clearinghouse is an online database that contains summaries of significant research in relation to victims of crime both in NSW and around the world. It is a one-stop shop for research into victims of crime, containing more than 280 reports, conference papers and journal articles, divided into categories including domestic violence, sexual assault, elder abuse and victims’ rights. It also contains some of the latest information on conferences and other professional networks.

The Clearinghouse is a central point of reference that will help guide government policy and service provision. It is a resource for anyone providing frontline services to victims of crime, including psychologists, social workers, police and legal practitioners.

For more details, please refer to the website: [www.victimsclearinghouse.nsw.gov.au](http://www.victimsclearinghouse.nsw.gov.au)

### Counselling to inmates

Victims Services and Corrective Services NSW are currently running a joint pilot of providing counselling to inmates. The pilot was initiated to meet a gap in service delivery to inmates in correctional centres who are also victims of crime.

Counselling is provided by Approved Counsellors who provide therapeutic services in the correctional centres. Inmates can apply and those who are eligible for counselling under the Approved Counselling Scheme join a pool of inmates who can access counselling while in custody.

The pilot began in November 2011 at Dillwynia Correctional Centre and expanded in 2012 to include Wellington Correctional Centre. The trial will run at each location for 12 months. To date there have been 30 referrals to the Dillwynia pilot and 34 referrals to the Wellington pilot. Following the trial the pilot will be assessed and consideration given to providing the counselling services on a permanent basis.

### Collaborate website for Approved Counsellors and Authorised Report Writers

In April 2012, Victims Services launched a members-only website for Approved Counsellors and Authorised Report Writers through Collaborate NSW, to support enhanced service delivery to victims of crime.

The website aims to assist in better connection with practitioners by distributing information, providing links to resources and current research affecting victims of crime, information about upcoming professional development opportunities and also Victims Services guidelines, templates and information.

The site also promotes communication between Approved Counsellors, Authorised Report Writers and Victims Services via a discussion forum. The site currently has 114 members.

### Seminar – “Subpoenas in sexual assault matters”

It was identified that responding to subpoenas is a significant and challenging issue for Approved Counsellors. In December 2011, Victims Services facilitated and hosted a seminar on responding to subpoenas, presented by the Sexual Assault Communications Privilege Unit (Legal Aid) and the National Pro Bono Partner for Blake Dawson.

This seminar increased knowledge and awareness of the legal system for practitioners, which will assist them in providing a better quality service to victims of crime going through the court process. Over 50 people attended the seminar, including Approved Counsellors, Authorised Report Writers and Victims Services staff.

## Victims Services Outreach

Victims Services facilitated a successful Community Outreach program in May 2012. Forums were held in Moree, Armidale and Tamworth. This program was a joint initiative with NSW Police Force aimed at providing community information to victims of crime and local service providers. These forums were also used to recruit Approved Counsellors from the respective local areas.

In November 2011, in conjunction with Binaal Billa Family Violence Prevention Legal Service, Victims Services ran a trial forum in Forbes for local counsellors who potentially could become Approved Counsellors. The forum provided information about Victims Services and included a professional development session. It was an opportunity for Victims Services to have direct contact with local counsellors. This forum resulted in counsellors joining the Approved Counselling Scheme and increased knowledge of Victims Services in the Central West of NSW.

## Aboriginal Access – Community Engagement

Victims Services continues to provide information to Aboriginal victims of crime. The Aboriginal Project Officer attended six community events in the last financial year:

October 2011 –

*Education Centre Against Violence (ECAV): Strong Aboriginal Women at Bowraville.*

November 2011 –

*Binaal Billa Family Violence Prevention Legal Service Forbes.*

November 2011 –

*Aboriginal Community Justice Group Forum at Dubbo.*

December 2011 –

*AbSec - Change for Children Conference (Penrith)*

January 2012 –

*Yabun Festival at Broadway*

May 2012 –

*Cooperative Legal Service Delivery (CLSD) at Broken Hill.*

## Law Week 2012

Themed ‘Law and justice in your community’ in 2012, Law Week is an annual event that aims to increase public awareness about the law and the legal system, and to educate the community about the legal services that are available to them. National Law Week ran from Monday 14 May to Sunday 20 May 2012 and there were associated events running across the state during this period. The program caters to people of all ages and backgrounds, in regional and metropolitan areas, with most of the events free of charge and open to the public.

The NSW Department of Attorney General and Justice expanded the range of Law Week activities in Western Sydney this year, hosting “Community Legal Information Days” in Parramatta and Blacktown.

Victims Services staff participated in Law Week events at Parramatta, Martin Place and Blacktown. These events provided an opportunity for people who have limited contact with the legal system, or may not know about the range of services available to them, to gain information from government and non-government legal service providers.

## RECOMMENDATIONS

In view of the fact that the independent assessment by PricewaterhouseCoopers has been completed and recommendations have been made to the Attorney General, it seems inappropriate for me to make recommendations to Government without being aware of the recommendations made by PricewaterhouseCoopers. I do not therefore propose to make any recommendations to Government in this report. I have no doubt that the recommendations which I made in previous reports have been taken into account in the independent assessment by PricewaterhouseCoopers.

## ACKNOWLEDGEMENTS

I gratefully acknowledge the assistance of the staff of Victims Services to victims of crime and to the public generally. I acknowledge and thank the Director, Ms Mandy Young for her leadership, direction and support during the year. I acknowledge and appreciate the continued support and cooperation of the Chief Magistrate of the Local Court, His Honour Judge Henson. I particularly thank the staff in the appeals section. Ms Colleen Frazer is an extremely competent and conscientious manager of appeals. I thank her for her outstanding contribution. I also acknowledge the excellent support provided by her assistant, Mr Suresh Vichur. Again, I acknowledge and thank Ms Louise Lenard, Project Officer, Victims Services and Ms Carol Renotte, Data Reporting and Policy Officer, Victims Services for their expertise and support in the preparation of this report. During the period under review Ms Mahashini Krishna was appointed the Registrar of Victims Services. I have already commented on her outstanding work. She has done an excellent job. Mr Matthew Ting continues to be an excellent Advocate for the Fund. He provides excellent advice to Victims Services and is invariably complimented by District Court Judges for his assistance to them in the conduct of matters before the Court. Ms Parama Srikanth, Legal Officer, has looked after the difficult recovery work of Victims Services in a most commendable manner. I acknowledge the dedication and skill of the Compensation Assessors and I thank them for their contribution. I have singled out the members of staff with whom the Tribunal Members have most contact and upon whom we particularly rely. I acknowledge, however, the very considerable contribution made by all members of staff and I appreciate and thank all of them for their contribution to the efficient and effective administration of Victims Services. Finally, I thank my Magisterial colleagues and Tribunal Members, Their Honours Crawford and Moore for their dedication, loyalty and friendship.





