

Chairperson's Report

Victims Compensation Tribunal

2001 / 2002

ISSN 1444-609X

TABLE OF CONTENTS

| | |
|---|----|
| OVERVIEW | 3 |
| Staff Numbers and Operating Expenses | 3 |
| Key Facts | 3 |
| VICTIMS SUPPORT AND REHABILITATION ACT 1996 | 4 |
| Determinations | 5 |
| Pending Claims | 7 |
| Appeals To The Tribunal Against The Determination Of Assessors | 8 |
| Oral Hearings | 12 |
| Appeals from The Tribunal To The District Court on Point Of Law | 13 |
| Approved Counselling Scheme | 14 |
| Authorised Report Writers – Quality Management Project | 16 |
| Website | 16 |
| VICTIMS COMPENSATION ACT 1987 | 17 |
| CONVICTED INMATES | 17 |
| RESTITUTION | 18 |
| Provisional Orders | 18 |
| Arrangements with Director | 18 |
| Hearings before the Tribunal | 19 |
| No response orders | 19 |
| Registration of charge on land | 19 |
| Restraining Orders | 20 |
| REVIEW OF THE ACT | 21 |
| PRIORITIES FOR 2002/2003 | 22 |
| ACKNOWLEDGEMENTS | 22 |

OVERVIEW

The Victims Compensation Tribunal is located on levels 4, 5 and 6 at 299 Elizabeth Street, Sydney. It is a discrete and specialist Tribunal whose functions and powers are set out in the Victims Support and Rehabilitation Act 1996.

During the period under review the following persons held position as Tribunal Members: Magistrates Walker, Grant (in the absence of Magistrate Walker), Gilmore, Cleary and Brahe as Chairperson.

Staff Numbers and Operating Expenses

Staff employed at the Tribunal was as in the previous year, namely 83 persons. Employee related expenses rose from \$3.80 million to \$4.05 million. The estimate for next year is \$3.62 million.

Operational expenses fell from \$3.22 million to \$3.08 million. Next year expenses are estimated to rise to \$3.18 million.

Key Facts

Under the approved counselling scheme 6,552 applications both for an initial 2 hours and further counselling were received. Approximately 20,000 counselling hours were approved at a cost of over \$1.9 million. Since January 2002 application for an initial 2 hours counselling can be made on line and almost 100 applications have been made in that way.

The number of pending claims for statutory compensation has been reduced from almost 18,000 in June 2000 to 8,097 in June 2002.

In 2001/2002 the Tribunal received 6,204 applications for statutory compensation and 10,958 claims for compensation were determined in the year.

Including total awards, professional costs and counselling payments, \$88.09 million was paid out during the year.

The Victims of Crime website has received an increasing number of hits. It has been enhanced with further information for people with disabilities and the elderly as well as for victims of road trauma.

Three new rural coordinators were appointed to increase access to services and entitlements to victims of crime in rural and regional New South Wales, covering the North East, South East and Far West regions of New South Wales.

\$3.5 million was recovered from convicted offenders with 2,938 provisional orders issued to convicted offenders.

VICTIMS SUPPORT AND REHABILITATION ACT 1996

Compensation assessors determine applications under this Act. During the period under review those persons have been Messrs. Crossland, Hipwell, Keays-Byrne, De Mayo, Blair, Baron, Hosking and Ms Humphreys, Ms Madison and Ms Mobbs.

Applications:

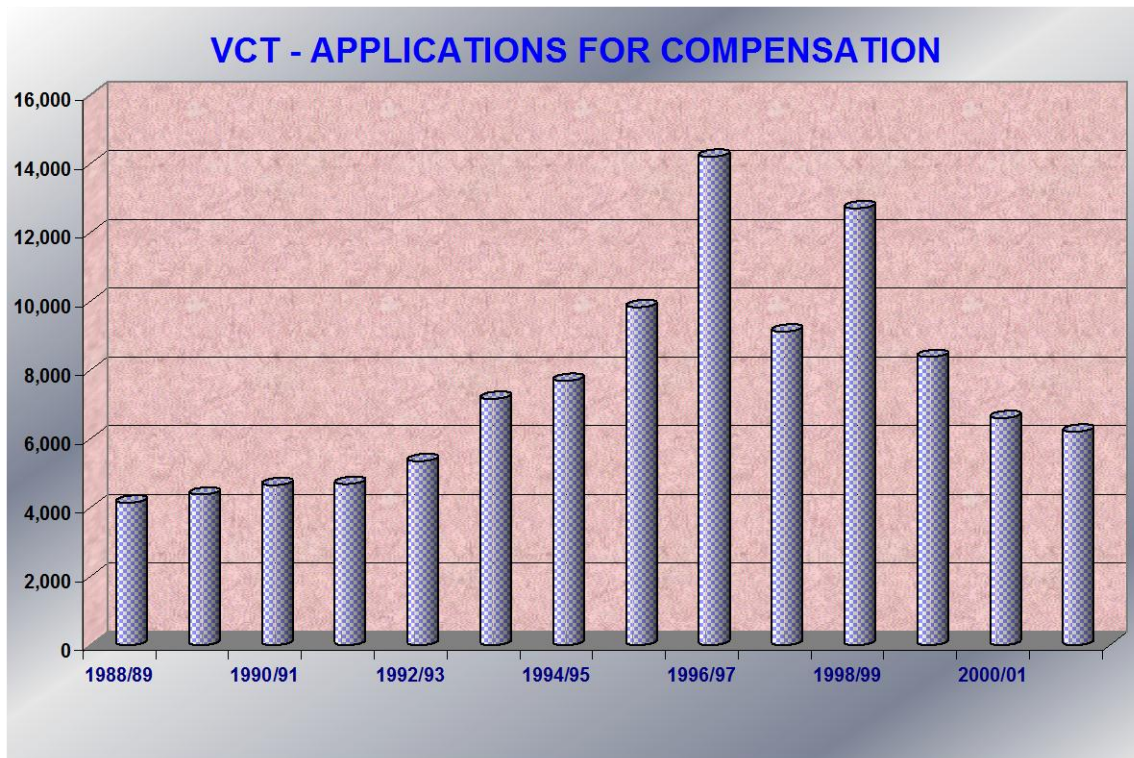
| | 2000/2001 | 2001/2002 |
|----------------|-----------------|-----------------|
| Received | 6600 | 6204 |
| Pending | 13129 | 8097 |
| Determinations | 10833 | 10958 |
| Awards made | 5381 | 5237 |
| Dismissals | 5452 | 5721 |
| Total awards | \$83.94 million | \$85.74 million |
| Counselling | \$1.65 million | \$1.91 million |

The fall in the number of applications received is due to amendments to the Act, which commenced on 31 May 2000. These amendments restricted the compensable injury of chronic psychological/psychiatric disorder category 1 that is moderately disabling to claims arising out of the offences of abduction, armed robbery and kidnapping.

A further amendment that took effect from 14 July 2000 raised the threshold for awards for compensable injuries from \$2,400 to \$7,500.

It is estimated that 6,000 applications for statutory compensation will be received in the year 2002/03.

A graph showing the number of applications received from 1988 when the Victims Compensation Act 1987 commenced to the year ended 30 June 2002 follows.



The spikes in the number of applications received in 1996/97 and 1998/99 are linked to the changes in the legislation foreshadowed by the Government at those times.

Determinations

Of the 10,958 determinations made during the year, 1,129 were made in respect of applications which had been lodged prior to the amendment which took effect on and from 7 April 1999; 5,249 were made in respect of applications which had been lodged between 8 April 1999 and 30 May 2000 and 4,580 in respect of applications lodged since that time.

It is estimated that 8,000 determinations will be made next year and awards will be made in half the claims. It is expected that award payments will total \$60.10 million in the forthcoming year.

I must make reference, as I have in the past, to what appears to be a disproportionate rate of dismissals of claims. The major reasons for the dismissal rate are:

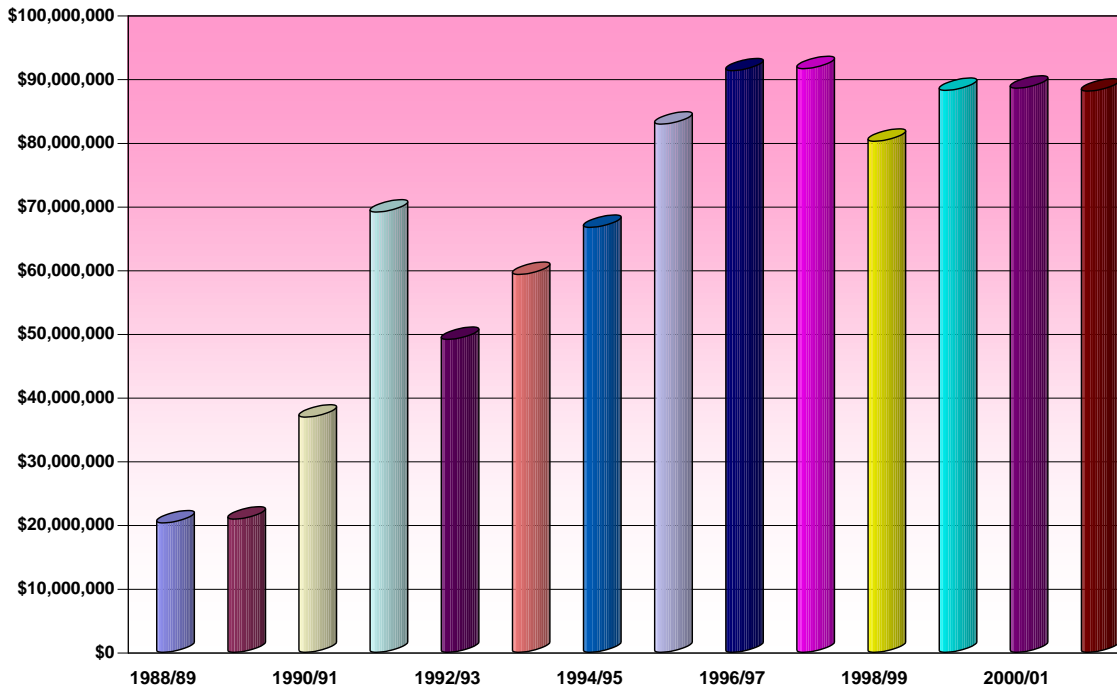
- (1) failure to establish an act of violence;
- (2) failure to establish a compensable injury;
- (3) failure of any compensable injury established to reach the threshold of \$7,500.

The following graphs show

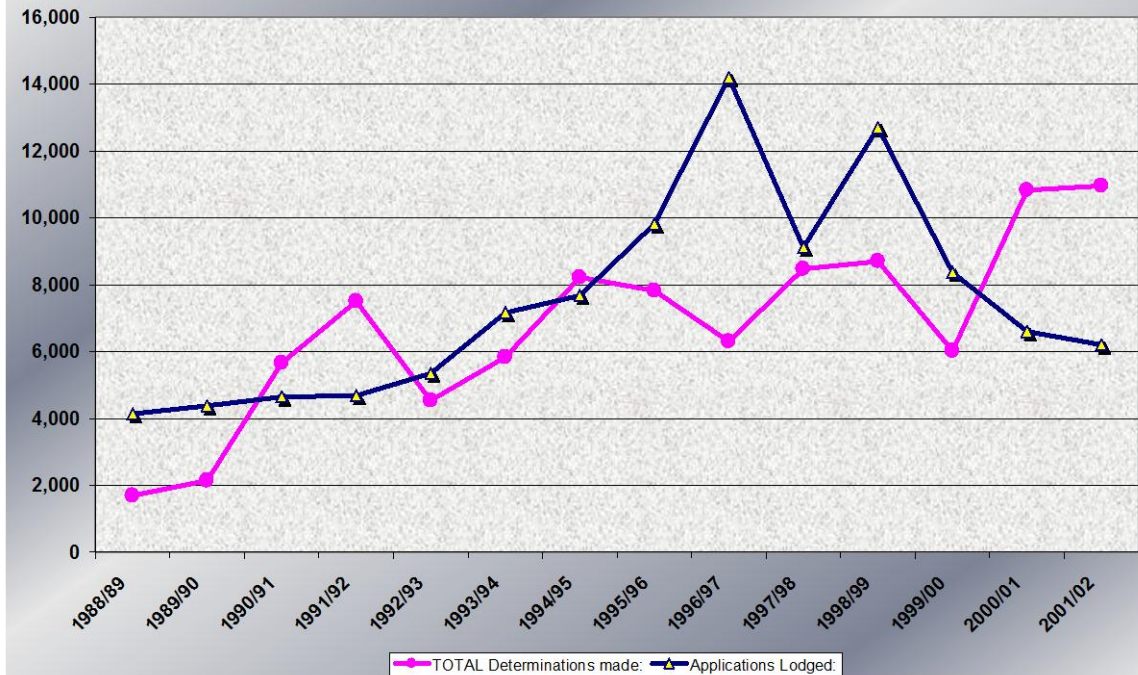
- (a) total compensation paid since the introduction of the Victims Compensation scheme in 1988 to the financial year ended June 2002; and
- (b) the ratio of applications lodged against determinations made for the same period.

**Chairperson's Report
2001 -2002**

COMPENSATION PAID



**Victims Compensation Tribunal -
Applications Lodged Vs Determinations Made**



Chairperson's Report 2001 -2002

From 1995/96 to the present time the annual payment has exceeded \$80million. The peaks in 1996/97 and 1997/98 were in part due to the finalisation of claims under the 1987 Act where common law principles in awarding compensation applied.

Pending Claims

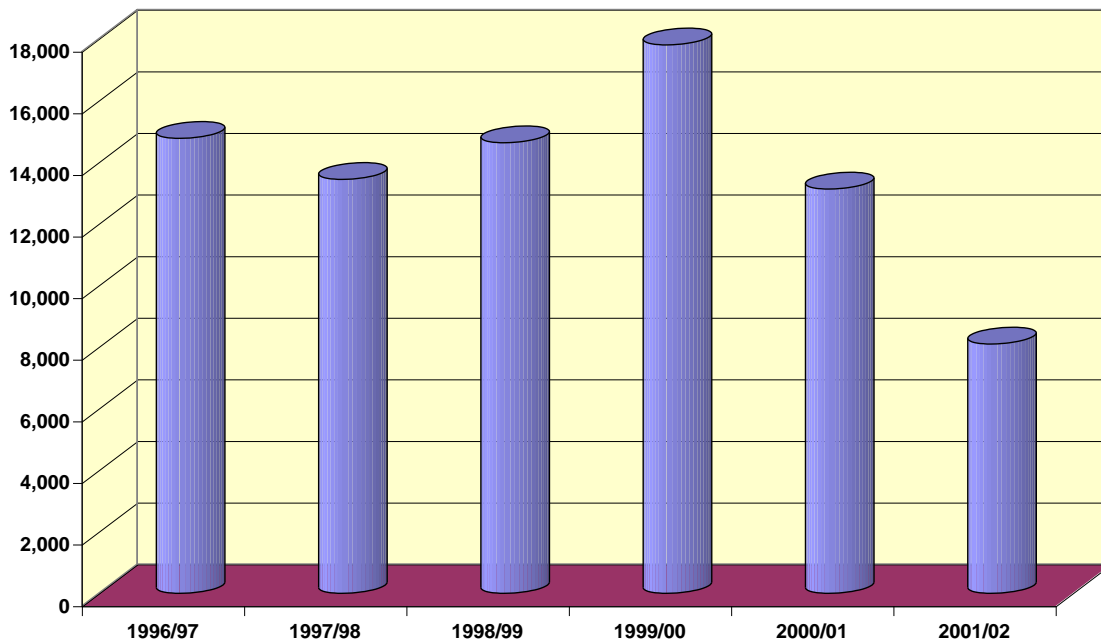
The very significant reduction in pending claims arose from the changes to the Act and the appointment of additional assessors particularly the appointment of the duty assessor who determined whether or not applications fell within the provisions of the amending Acts.

Of the pending claims, 447 applications were lodged prior to 7 April 1999. It is thought that the majority of these claims will involve a determination of the compensable injury of "shock". Of the current claims pending, 1,376 were lodged between 8 April and 30 May 2000 and 6,274 have been lodged since 30 May 2000.

It is anticipated that by June 2003 there will be less than 6,000 claims awaiting determination.

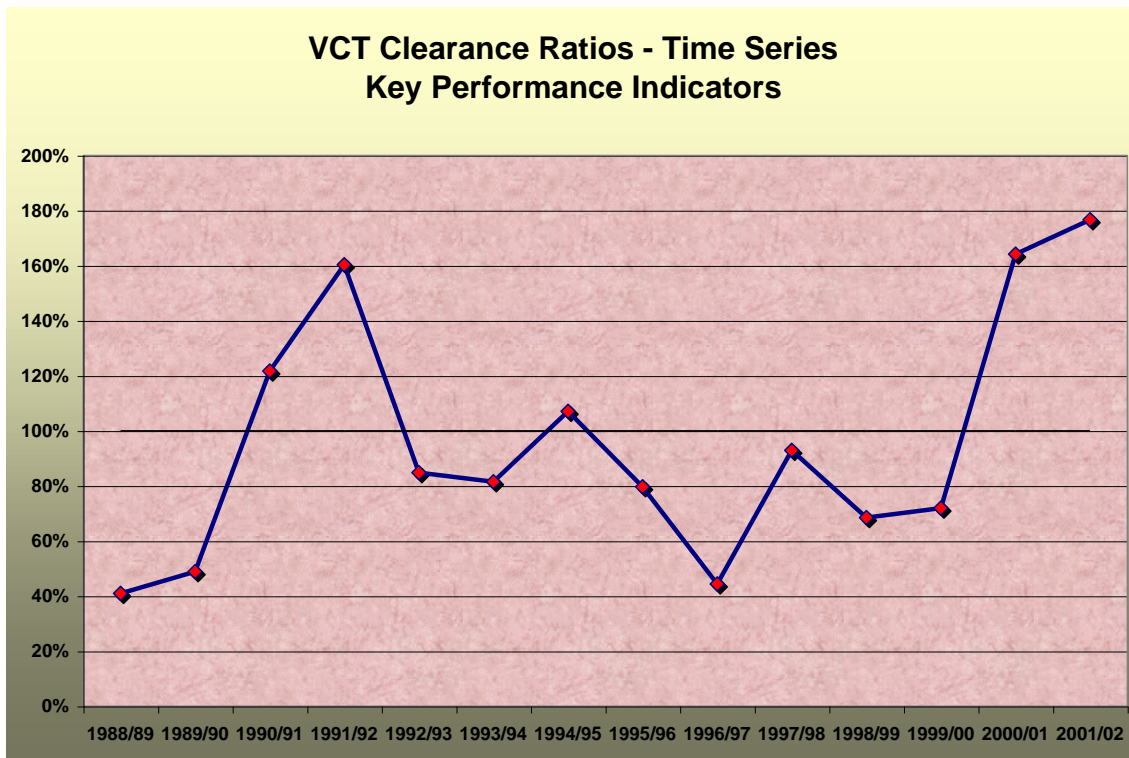
The table below sets out pending claims since the commencement of the 1996 legislation. The reduction is quite substantial. The pending claims peaked in the year 1999/2000 at 17,806. This was due not only to the backlog which existed at that time but also to the claims lodged as a result of changes effected by the Government in May 2000. The decline in pending claims since that time is very significant – brought about by the appointment of additional assessors and a number of other temporary staff positions in the compensation teams.

VCT - PENDING CLAIMS



**Chairperson's Report
2001 -2002**

The following table sets out clearance ratios since 1996 to 2001/02.



Appeals To The Tribunal Against The Determination Of Assessors

A person aggrieved by a determination of a compensation assessor may appeal to the Tribunal. In the year 2001/02 1,643 appeals were lodged compared with 1,476 in the preceding 12 months.

Of the 1,643 appeals lodged, 1,302 were against dismissal by the assessor, 251 on the basis that a different compensable injury and/or different amount should have been awarded, and 90 against the refusal to grant leave to permit an application for statutory compensation to be lodged out of time.

| | 2000/2001 | 2001/2002 |
|--------------------|-----------|-----------|
| Appeals lodged | 1,476 | 1,643* |
| Appeals determined | 899 | 1,450 |
| Pending | 804 | 957 |

*includes 90 appeals against refusal to grant leave

Chairperson's Report 2001 -2002

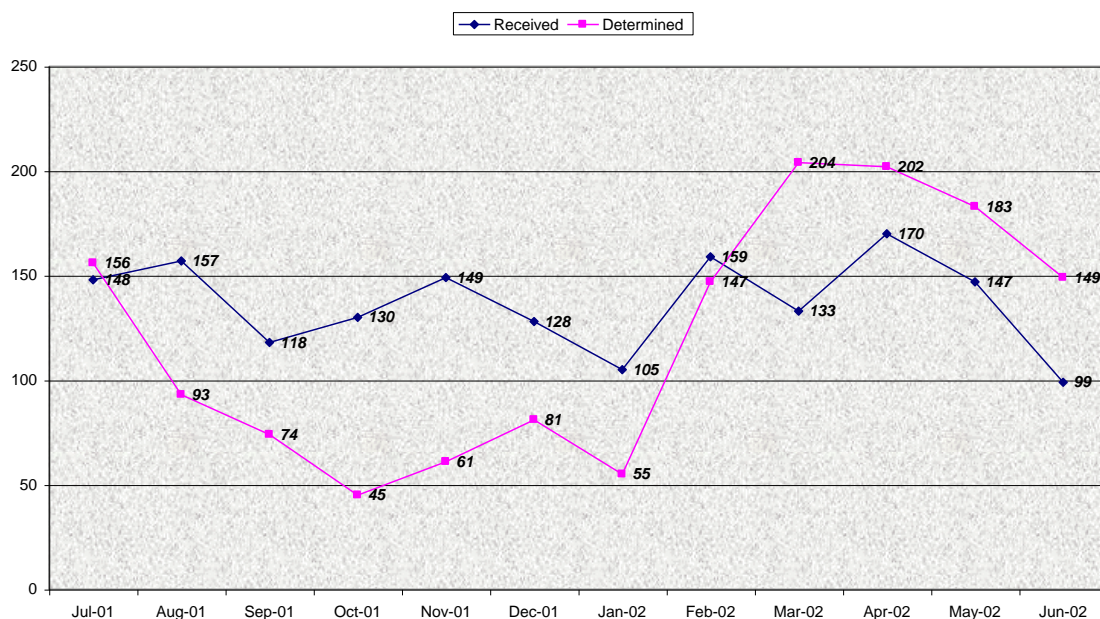
| | 2000/2001 | 2001/2002 |
|-----------------------------|-----------|-----------|
| Appeal determinations | | |
| Allowed | 221 | 457 |
| Dismissed | 531 | 754 |
| Withdrawn | 21 | 38 |
| Remitted to assessor | | 105 |
| Leave appeals – Leave given | 48 | 47 |
| Refused | 78 | 49 |

It is expected that about 1200 appeals will be lodged in the coming year.

The following graphs set out:

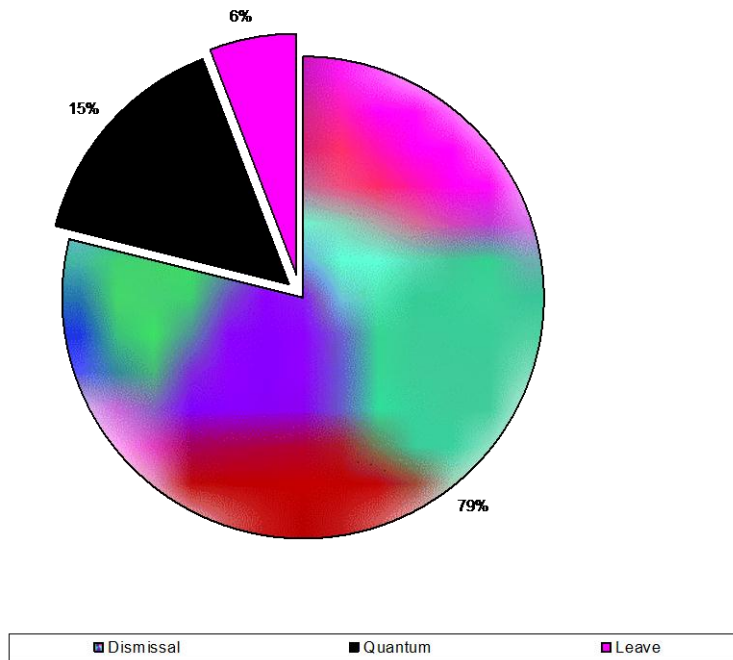
1. Appeals received and determined 2001 – 2002;
2. Nature of the appeal lodged over the same period;
3. Appeal results; and
4. Leave appeal results.

Appeals Received & Determined 2001 to 2002

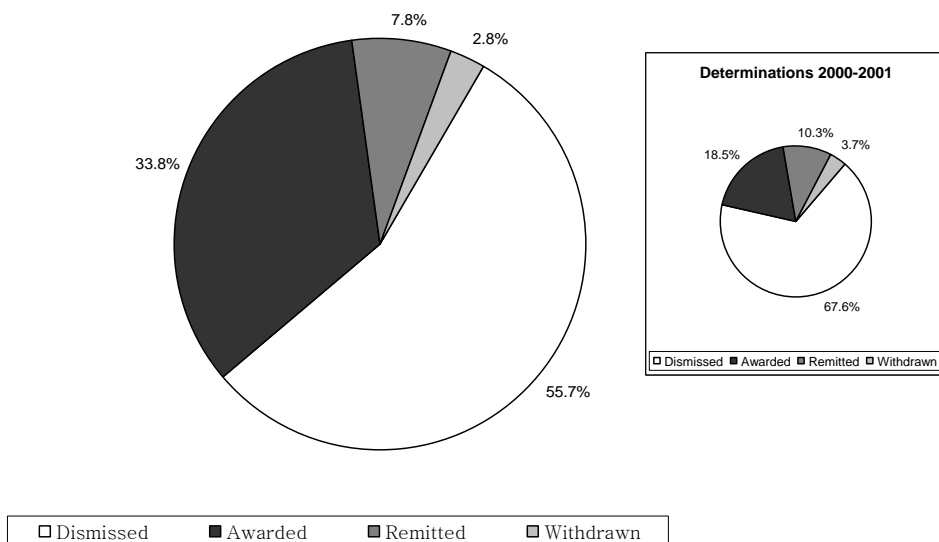


Chairperson's Report 2001 -2002

Type of Tribunal Appeals Received 2001 to 2002

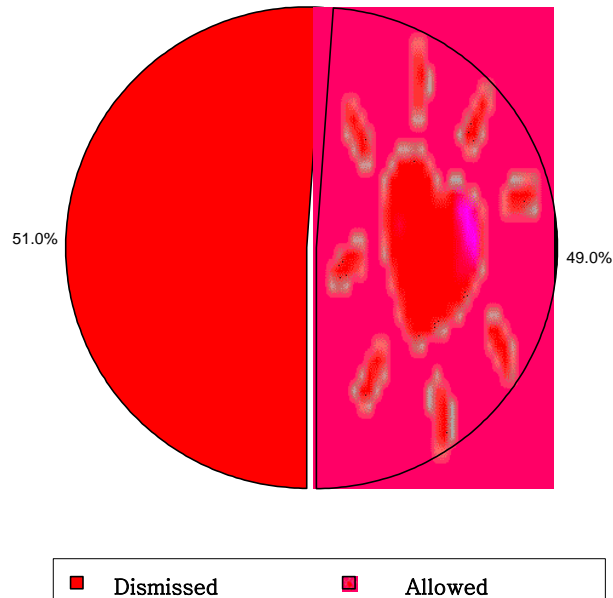


Appeal Results for Determinations July 2001 to June 2002



Chairperson's Report 2001 -2002

Appeal Results for Leave July 2001 to June 2002



One can see that from February-March 2002, for the first time since July 2001, appeals determined exceeded the number lodged. The bulk of appeals, 79%, is against dismissal of the application for statutory compensation.

I indicated in last year's report my concern at the number of appeals pending. As a result the Attorney General approved the appointment of Magistrate Cleary as a Tribunal Member for a period of 6 months to 30 June 2002. His appointment has been extended for a further 6 months. It is expected that 2,000 appeals will be determined in the year 2002/03.

Appeals pending include:

- (i) Appeals which have been registered and are waiting to be allocated a call-over date;
- (ii) Appeals listed for future call-overs; and
- (iii) Appeals listed for determination.

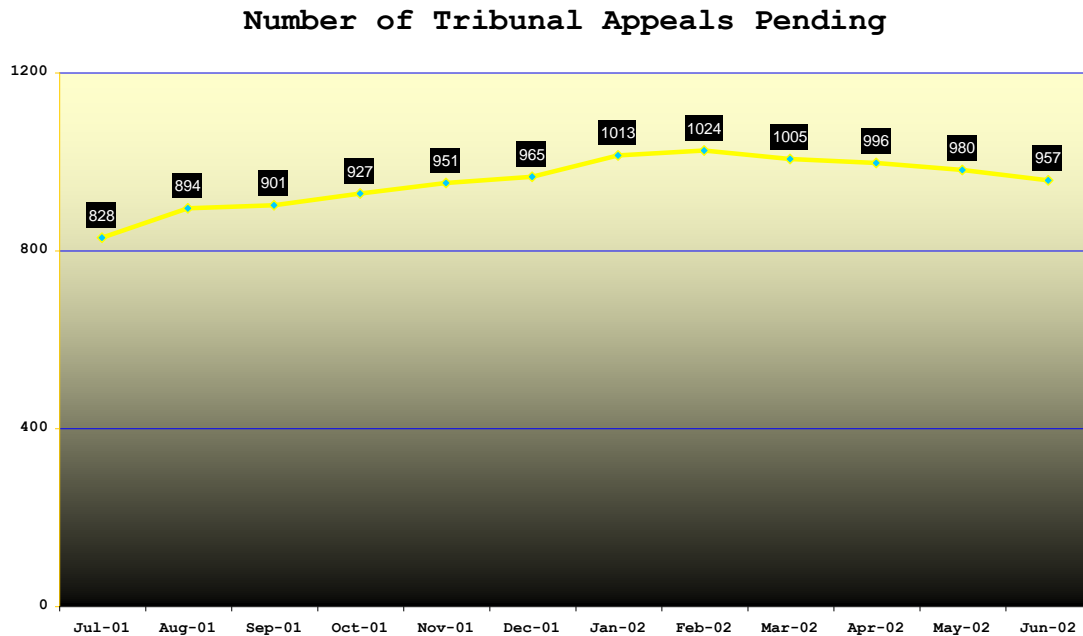
During the first half of the financial year there were approximately 360 appeals awaiting the allocation of a call-over date and this was taking 3 months from lodgement of the notice of appeal. The situation improved dramatically in the second half where there was only an average of 60 appeals awaiting the allocation of a call over date.

There are approximately 430 matters in the call-over list at any one time.

The average time for an appeal to be finalised from registration to determination is 6 months.

Chairperson's Report 2001 -2002

A graph of appeals pending follows showing a peak in January-February 2002 and gradual fall since that time.



Oral Hearings

The Tribunal continues to conduct oral hearings of appeals in appropriate cases. There were 24 appeals dealt with by way of an oral hearing. No country sittings were held during the period under review – all hearings were held in Sydney. Hearings are listed to November 2002.

A practice introduced in March 2002 requires an applicant desirous of introducing fresh material pursuant to section 38(3) to lodge that material a prescribed period before the hearing. A decision is then made as to the reception of material. This practice avoids the need for adjournment when additional material is sought to be admitted at the hearing.

**Chairperson's Report
2001 -2002**

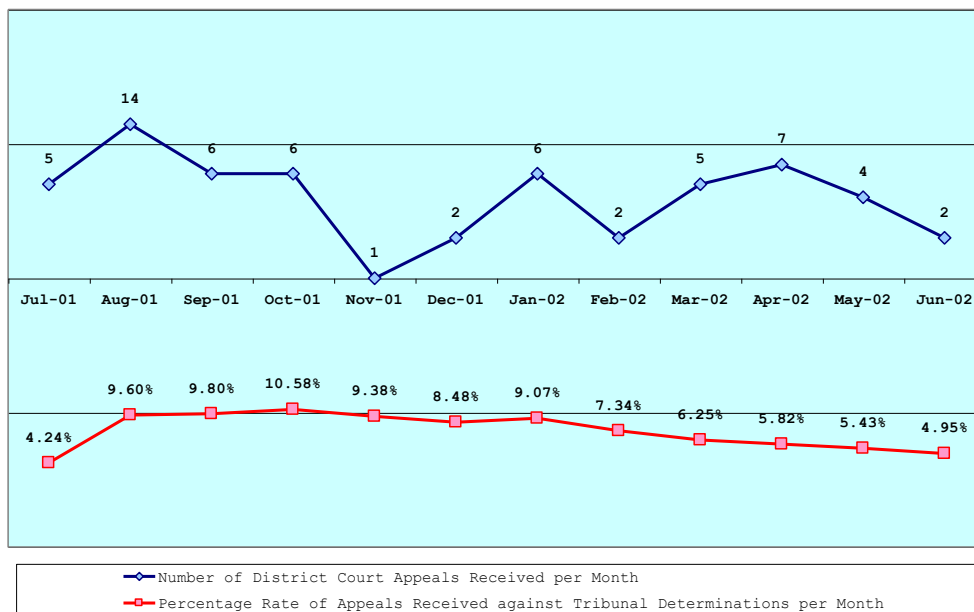
Appeals from The Tribunal To The District Court on Point Of Law

For the period under review 61 appeals were made to the District Court. The result in 44 of those appeals is:

| | |
|----------------------|----|
| Remitted to Tribunal | 18 |
| Dismissed | 19 |
| Remitted by consent | 3 |
| Discontinued | 4 |

A graph showing the appeals to the District Court from 2001 to 2002 follows. Since October 2001 there has been a decline in the percentage rate of appeals received against Tribunal determinations made in the same period.

District Court Appeals July 2001 to June 2002



The Fund appealed to the Court of Appeal against the decision of the District Court on the interpretation of clause 5 of schedule 1 as it related to the compensable injury of shock. The Court of Appeal decision VCFC v Scott Brown & Ors (2002) NSWCA 155 is now the subject of an application for leave to appeal to the High Court. Shock ceased to be a compensable injury as from 7 April 1999.

Approved Counselling Scheme

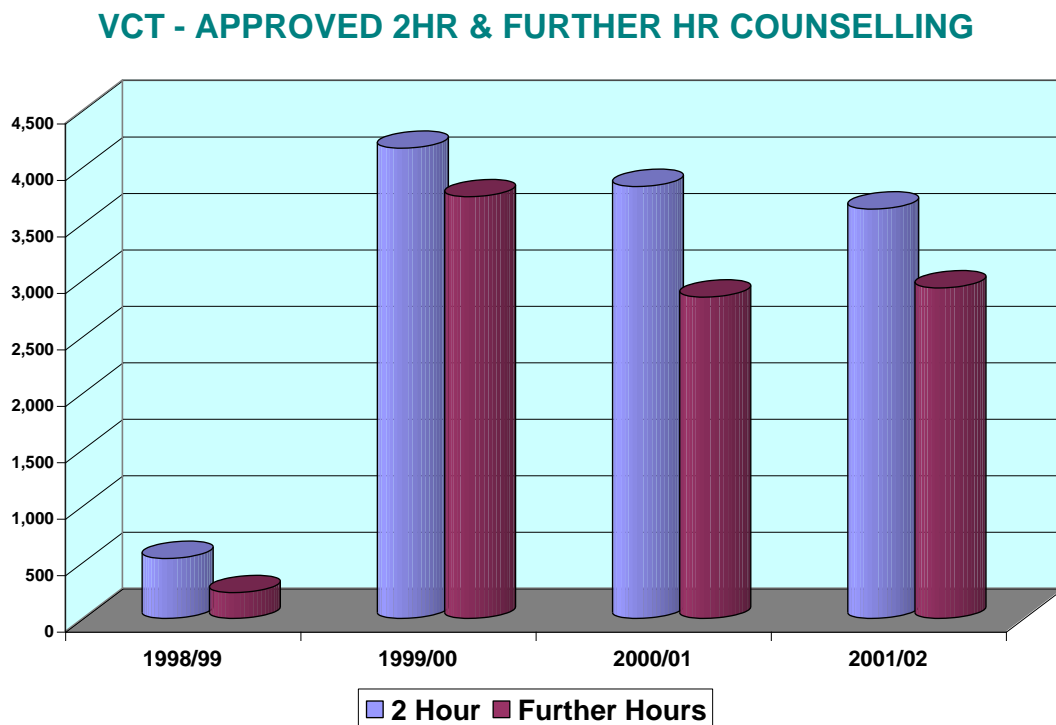
This Scheme was established under the 1996 Act to provide immediate intervention by way of counselling to eligible victims.

Applications for an initial 2 hours counselling totalled 3,625 compared with 3,825 in the previous year. Applications for further counselling totalled 2,927 as against 2,846.

Approximately 20,000 counselling hours were approved for victims of crime and over \$1.9 million paid for this service. Anticipated cost of the scheme next year is \$2 million.

Since January 2002 applications for the initial 2 hours counselling can be made on line and almost 100 applications have been made in this way.

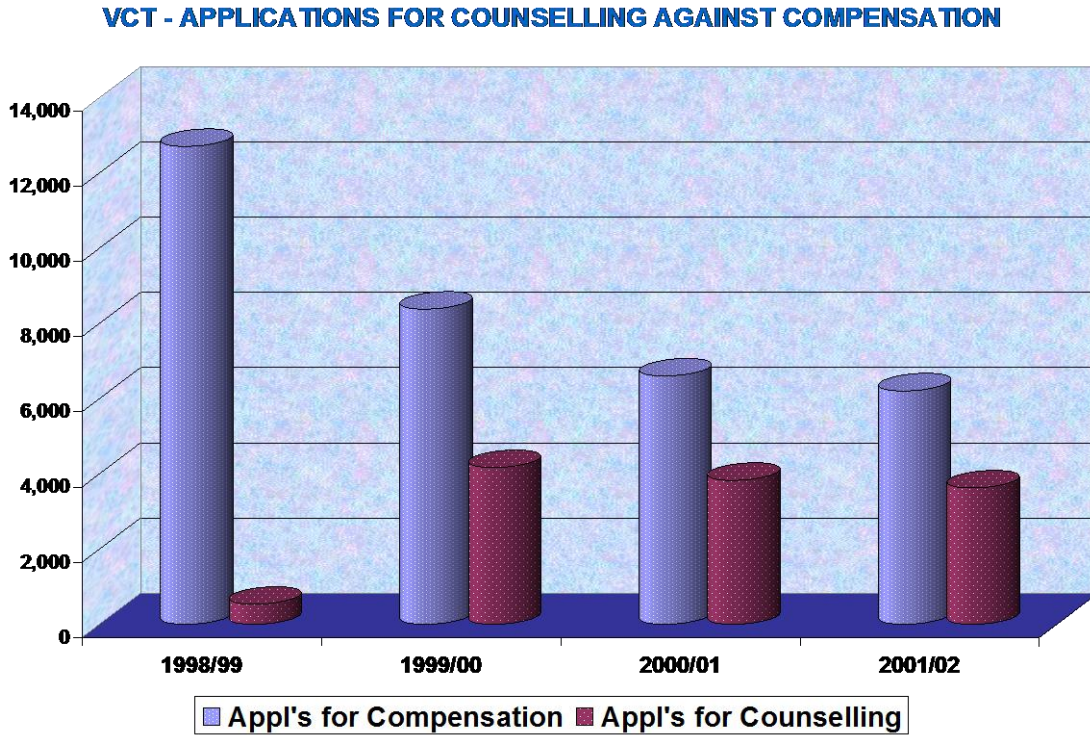
The following graph shows applications received for an initial 2 hours counselling as against requests made for follow-up counselling after that period.



The reason for the fall in the applications for the initial two hours counselling is unknown. Changes in legislation affecting applications for statutory compensation to which I have referred may have impacted on applications for counselling. The fall in further hour counselling applications from 1999/2000 to 2001/02 may be for the same reason. There was a slight increase in these applications from 2000/01 to 2001/02.

Chairperson's Report 2001 -2002

The next graph sets out applications for counselling as against applications for statutory compensation.



The growth in applications for counselling is readily seen from this graph - 531 applications in 1998/99 to 3,625 in the current year.

Notwithstanding the number of applications for counselling received, it is clear that many victims within the meaning of section 21 do not seek counselling and yet claim as a compensable injury a psychological/psychiatric disorder. The Government has moved over the years to concentrate on the rehabilitation of victims in lieu of handing over sums of money. This trend should continue. The Act is currently under review and it may be an appropriate time to reinforce the trend to rehabilitation rather than to lump sum payments.

Authorised Report Writers – Quality Management Project

Applicants claiming the compensable injuries of chronic psychological/psychiatric disorder category 1 moderately disabling or category 2 severely disabling in respect of applications lodged on and after 7 April 1999 must provide a written assessment from an Authorised Report Writer (ARW) clause 5 of Schedule 1.

Victims Services has established a quality management project in order to ensure that the reports provided meet the highest professional standards. The project focussed on the intent of the Scheme:

“The aim of the service to be provided by the Authorised Report writer will be an objective and balanced assessment of a victim's (applicant's) condition. The report must present evidence of the nature and extent of any disabilities with concrete, specific examples of how the disability has affected the applicant's day-to-day functioning. The report should refer to the victim's (applicant's) premorbid function and the relative contribution of the act of violence to the disorder and level of disability”.

The project includes the provision of feedback to ARW and by June 2002 41 ARWs, representing over 20% of active ARWs, had been provided with feedback regarding the quality of their report.

While the majority of the ARW reports are of a high standard the quality does vary. In the reports reviewed over 40% were referred to the Professional Advisory Panel for advice and further action where necessary. Payment to the ARW was deferred in 6 cases and contract to provide services terminated in two instances.

Website

To assist appellants in the preparation of appeals, information is available on the Victims Services website (www.lawlink.nsw.gov.au/vs). Transcripts of District Court and Supreme Court decisions on appeal under those courts under the 1996 legislation are available on Caselaw. There is a link from the Victims Services website to Caselaw (www.lawlink.nsw.gov.au/caselaw).

VICTIMS COMPENSATION ACT 1987

All claims under this Act have been determined and the Tribunal made no awards.

Notwithstanding that no matters were determined by the Tribunal 8 appeals were lodged in the District Court compared with 6 in the preceding year. Those appeals were obviously lodged well out of time and leave of the District Court would need to be obtained to proceed.

The court dealt with 12 appeals. There are 3 appeals pending. One is for multiple acts of violence and the remaining two matters are awaiting determination of workers compensation claims.

CONVICTED INMATES

Section 24 (4) of the Act provides that a person is not, except as provided by subsection (5) eligible to receive statutory compensation in respect of an act of violence if it occurred while the person was imprisoned as a convicted inmate within the meaning of the Crimes (Administration of Sentences) Act 1999 unless the person was imprisoned only because of the person's failure to pay a pecuniary penalty.

Subsection (5) provides an exception to ineligibility of convicted inmates if the Tribunal is satisfied that special circumstances justify an exception being made. The Tribunal may determine that special circumstances exist if the convicted inmate is seriously and permanently injured as a result of the act of violence concerned.

The Tribunal considered 26 claims by convicted inmates during the year. Awards were made in favour of two applicants because of special circumstances. The other twenty-four claims were dismissed.

In one of those matters dismissed, the applicant appealed to the District Court on a question of law. The appeal was dismissed – Ayoub v VCFC Mahoney DCJ 28 June 2002.

RESTITUTION

Provisional Orders

During the year 2,938 provisional orders valued at \$49million were made by the Director as against 3,544 valued at \$56million the previous year.

The fall in the number of orders issued was due in part to some staffing changes, which has now stabilised.

The amount recovered from convicted offenders amounted to \$3.5million, which is consistent with the amount received in the preceding year.

The budget target for the next financial year has again been set at that figure, however an increased level of recovery is anticipated from the delayed introduction of the Debtor Management System. The system is now scheduled to come on line by October 2002.

Arrangements with Director

During the year under review 521 arrangements amounting to \$6million were entered into between convicted offenders and the Director. The amount agreed upon represented an average of 69% of the amount of the provisional orders. The bulk of the amount will be paid by monthly instalments.

The most difficult matters to reach some arrangement with the convicted offenders are those where an award has been made to the victim for the former compensable injury of shock. The offenders have difficulty in accepting the elements of the injury and the award that follows – generally \$18,000 representing shock lasting over 28 weeks but not permanent.

The offenders are often charged with lower level offences resulting in very low criminal court penalties. The demand for payment of \$18,000 is considered by the offenders to be a far greater imposition than the order of the criminal court.

The arrangements made with the convicted offenders reflect the offender's financial circumstances. The Director considers that it more appropriate to make an arrangement within the offender's financial means rather than enforce an order to its full extent, which may impact very harshly upon him or her and his or her family.

Hearings before the Tribunal

Approximately 1,038 matters were listed before the Tribunal resulting in orders amounting to approximately \$7.9 million, representing an average of 49% of the amount provisionally ordered.

Where an objection to a provisional order has been made, matters are listed for Restitution Hearing. There was an appearance in approximately 55% of these matters. Often the convicted offender appears with a legal practitioner, member(s) of family or friend/acquaintance. Legal practitioners at times represent convicted offenders who do not appear at the hearing. Convicted offenders are legally represented in approximately 30% of matters.

The Tribunal, in making its orders, takes into account the offender's financial circumstances for the same reasons as the Director in making arrangements with convicted offenders.

No response orders

From 1993 until June 2000 provisional orders (or Notices to Show Cause issued under the 1987 Act) where there was no response from the convicted offender within 3 months from the month of issue were confirmed by the Tribunal and referred to the State Debt Recovery Office for enforcement action.

As a result of increased access to address information obtained from various agencies the level of these "no response" orders has steadily reduced over recent years.

At the end of June 2000 the SDRO closed its general recovery section and ceased providing a general debt recovery services to NSW Government agencies (including Victims Services). As a result, no response matters are now listed before the Tribunal in an endeavour to have a convicted offender, who may otherwise have ignored the provisional order, attend the hearing or consider an arrangement with the Director.

Registration of charge on land

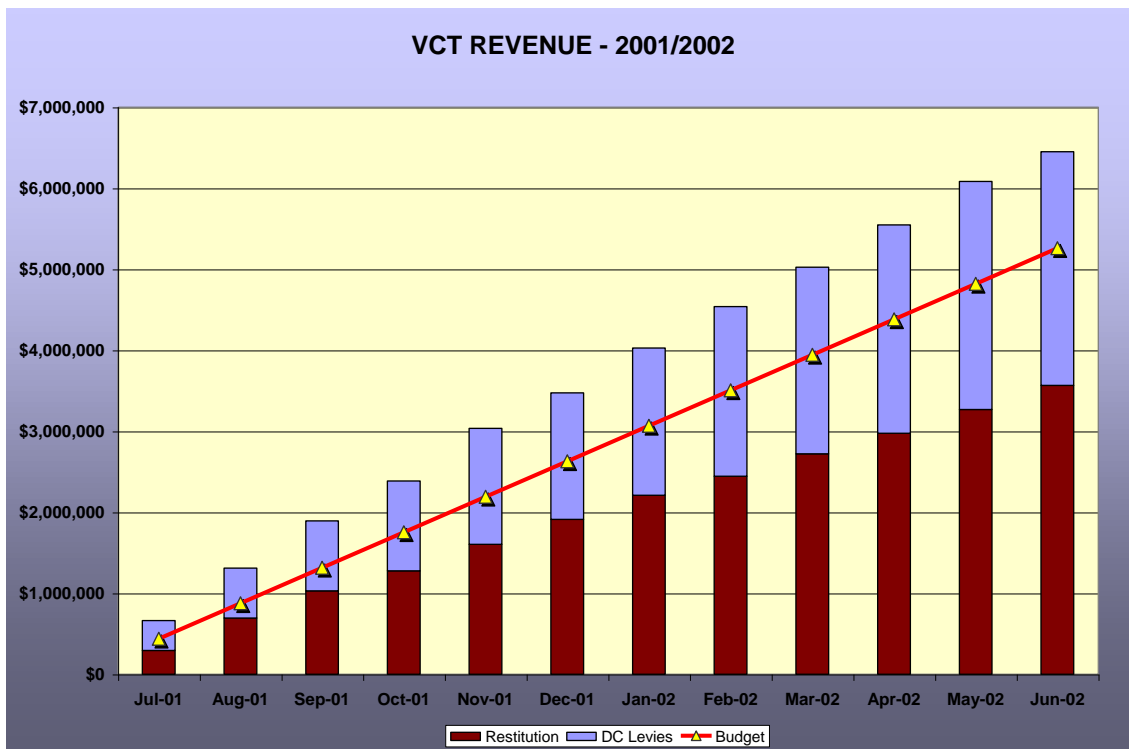
In the current financial year the Director has made 23 applications for registration of restitution orders bringing the total to 38 valued at \$1.1 million since the introduction of this provision. This action has resulted in the recovery of \$51,000 in the financial year.

Restraining Orders

The Act now empowers the Director to apply for a restraining order on the property of a person charged or convicted of an offence that involved an act of violence for which an award of compensation might be made.

Of the matters referred by either the NSW Police Service or the Director of Public Prosecutions, 29 were referred to the Crown Solicitors Office for investigation and in 10 of those matters restraining orders were made by the Supreme Court. As a result \$64,000 has been recovered during the financial year.

The following graph shows revenue for the year under review. There has been a steady, if undramatic, increase in amounts recovered at restitution. The increase in levies is quite significant.



REVIEW OF THE ACT

In accordance with the provisions of the legislation a review of the Act is being undertaken to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing these objectives. It is understood that the Minister has received a number of submissions.

I have already raised the question of rehabilitation of victims under "Approved Counselling".

The Schedule of Injuries should be reviewed to consider the appropriateness of the award for particular compensable injuries.

The issue of "injury" in section 5(1)(c) in respect of victims of sexual assault who are of tender years needs to be considered. Injury for the purpose of an act of violence (section 5(1)(c)) is defined in the Dictionary to the Act. In the case of children of tender years where there is no actual physical injury and no diagnosis of a psychological or psychiatric disorder, it may be appropriate to "deem" the victim, to have an injury for the purposes of section 5(1)(c) in order to establish an act of violence.

Another issue is the chronic psychological/psychiatric disorder category 2 that is severely disabling. Following amendments which took effect from 31 May 2000 a chronic disorder category 1 is available only in relation to an act of violence that has apparently occurred in the course of the commission of the offences of armed robbery, abduction and kidnapping.

The result has been applicants who may previously have claimed a category 1 disorder for acts of violence occurring in the course of the commission of various offences including assaults, assaults occasioning actual bodily harm are now claiming a category 2 disorder. Each application for statutory compensation nominating this disorder must be accompanied by a report from an ARW which costs the Tribunal \$550. The number of applicants succeeding in establishing a category 2 disorder in these circumstances is minimal. Consideration might be given to limiting the cases, which a category 2 disorder might be claimed to acts of violence that apparently occurred in the course of the commission of specified offences.

The issue of leave in historic claims of sexual assault needs to be addressed. Claims are received in respect of sexual assaults that allegedly occurred 20, 30, 40 years ago. Some limit should be placed on these types of claims.

PRIORITIES FOR 2002/2003

Develop strategies to decrease the time between lodgement and finalisation of applications for statutory compensation.

Reduce the number of pending appeals.

Appoint an Information Officer to assist victims of crime in lodging applications.

Develop a communication strategy targeting people from non-English speaking backgrounds who are victims of crime.

ACKNOWLEDGEMENTS

Once more may I thank the Tribunal Staff and my magisterial colleagues for their continued assistance and support. Because of a stabilisation of claims being lodged and a reduction in the number of claims awaiting determination the Tribunal and staff are now in a better position than ever before to continue the delivery of services to victims of crime of violence.