

# Chairperson's Report

## Victims Compensation Tribunal

2000 / 2001

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### OVERVIEW

The Victims Compensation Tribunal is located on levels 4, 5 and 6 of 299 Elizabeth Street, Sydney. It is a discrete and specialist Tribunal created by the Victims Compensation Act 1987 and continued by the *Victims Support and Rehabilitation Act 1996*.

As indicated in my report for last year, Tribunal Member Gabb proceeded on leave at the end of August 2000 prior to his retirement. His services as a member of the Tribunal following his appointment in 1993 have been invaluable. He was particularly involved in the early stages with the implementation of the 1996 legislation, being the sole Tribunal Member dealing with appeals from assessors.

Following Magistrate Gabb's proceeding on leave in August, the Chief Magistrate made the services of Magistrate Dillon available for a period of 3 months until 31 December 2000. Magistrate Walker was appointed as a Tribunal Member for a period of 3 years from March 2001. Magistrate Gilmore and Chairperson Brahe continued in their respective positions.

### ***Responding to Victims of Crime***

Under the Approved Counselling Scheme, approximately 20,000 counselling hours were approved for victims of crime.

During 2000/1 the Victims Support Line, which is a 24 hours service run in partnership with Mission Australia, received over 10,000 victim and victim related calls.

The Victims of Crime website, [www.lawlink.nsw.gov.au/voc](http://www.lawlink.nsw.gov.au/voc), was released on-line on 2 April 2001. The website was developed by the NSW Victims Advisory Board and the Victims of Crime Interagency and provides information about subjects such as court processes; counselling and support services; obtaining legal redress and compensation; domestic violence and sexual assault. The number of hits has steadily increased since the April launch.

A conference "*Responding to Victims of Crime: Thinking Outside the Square*" was held on 17 and 18 May 2001. Academics, service providers and support persons for victims of crime attended to exchange ideas and information.

### ***Practice Notes***

Four Practice Notes were developed by the Chairperson: Appeals to the District Court; Matters affecting the Quantum of Award; Recovery of Compensation from Offenders and Sexual Assault and Domestic Violence. The notes are accessible through the Victims Services website: [www.lawlink.nsw.gov.au/vs](http://www.lawlink.nsw.gov.au/vs) .

### ***Forums***

Following the Victims Compensation Amendment Act 2000 forums for solicitors, government and non government agencies were conducted by senior staff at Newcastle, Tamworth, Nowra, Tweed Heads, Coffs Harbour, Parramatta, Orange, Sydney and Albury. Information flyers were sent to solicitors and key agencies and the Victims Services website updated to provide all users with information about the changes.

### ***Electronic Filing of Documents***

A pilot project for the electronic filing of documents was initiated. The pilot concentrates on the 2 hour counselling form which was chosen because of the emphasis placed on early intervention for rehabilitation.

### ***Staff Numbers and Operating Expenses***

Staff employed at the Tribunal totalled 83 compared to 79 in the previous year. Employee related expenses of \$3.80 million fell from \$3.95 million whilst operational expenses increased from \$3.08 million to \$3.22 million.

## **ACHIEVEMENTS 2000/2001**

In 2000/2001 a total sum of \$88.54 million was paid in awards, costs and counselling - a small increase over the \$88.19 million paid in the previous year. The payment includes counselling of \$1.65 million compared with \$1.55 million in the previous year and \$2.95 million in respect of appeals to the District Court under the Victims Compensation Act 1987.

All 1987 Act applications have been determined. However there were a number of appeals pending in the District Court. At the end of the June 2001, 12 appeals remain to be determined. The payout of \$2.95 million for District Court awards compared with \$9.40 million in the previous year. The total payment under the 1987 Act for the previous year had been \$29.86 million - that figure includes awards made by the Tribunal and by the District Court on appeal.

Determination of applications by assessors during the year total 10,833 a substantial increase over the 5,015 applications determined in the previous year.

Pending applications at 13,129 showed a substantial fall from the previous year when 17,806 remained outstanding.

The increase in the determinations and the resultant fall in pending claims resulted from the appointment of additional assessors including the appointment of a duty assessor whose function it was to determine whether or not applications fell within the provisions of the Act which commenced on 31 May and 14 July 2000 - namely whether the claimed injury (injuries) reached the threshold of \$7,500 and whether the claim for chronic psychiatric/psychological disorder category 1 was properly made.

A total of \$83.94 million was paid out in respect of awards under the 1996 Act compared with \$56.78 million the previous year.

A total of \$3.53 million was recovered from offenders compared with \$3.26 million the previous year.

The sum of \$1.2 million was recovered from victims who had been paid statutory compensation but who had also received awards in civil suits.

## **VICTIMS SUPPORT AND REHABILITATION ACT 1996**

Applications under this Act are determined by compensation assessors. During the year under review those persons have been Messrs. Crossland, Hipwell, Keays-Byrne, De Mayo, Stewart, Blair, Baron, Wormald and Ms. Madison, Ms Humphreys and Ms Soutar.

Applications:

	1999/2000	2000/2001
Received	8376	6600
Pending	17806	13129
Determinations	5015	10833
Awards Made	3066	5381
Dismissals	1949	5452
Total awards	\$56.78 million	\$83.94 million
Counselling	\$1.55 million	\$1.65 million

As foreshadowed in last year's report the fall in the number of applications received is due to amendments to the Act passed by Parliament in 2000. Those amendments:

1. provided that the compensable injury of chronic psychological/psychiatric disorder Category 1, that is moderately disabling, applied only to claims arising from kidnapping, abduction or armed robbery, and
2. increased the threshold for award from \$2,400 to \$7,500.

The amendments commenced on 31<sup>st</sup> May and 14<sup>th</sup> July 2000 respectively.

The significant reduction in pending claims arose from the changes to the Act and the appointment of additional assessors and particularly the appointment of the duty assessor whose function it is to determine whether or not applications fall within these provisions.

Despite the increased number of determinations there was not a proportionate increase in the number of awards. In 2000/2001, 500 applications were dismissed by the duty assessor - almost all because the claimed injury/injuries did not reach the threshold of \$7,500. Overall, the large number of dismissals is due primarily to the inability of an applicant to establish a compensable injury - particularly that of shock.

### ***Appeals to the Tribunal Against the Determination of Assessors***

## **Chairpersons Report**

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In 2000/2001, 1,476 appeals to the Tribunal were lodged as against 814 the previous year.

The increase in the appeals lodged is due to the appointment of additional assessors to which I have already referred.

	1999/2000	2000/2001
Appeals lodged	814	1476
Appeals determined	775	899
Pending	198	804

Of the 899 appeals determined 773 were lodged in respect of determinations and 126 in respect of refusal to give leave to file applications out of time. In the previous year 275 appeals had been lodged against refused to give leave. The fall in the number of leave appeals is significant. The prime reason seems to be that following the amendments which took effect on 31 May and 14 July 2000, applications lodged out of time relate mainly to child abuse and sexual assault. The presumption is that leave to file the application out of time is granted unless the Director is satisfied that there is no good reason to do so [Section 26(3)(b)].

	1999/2000	2000/2001
Leave Appeals:		
Allowed		48
Refused		78
Determination Appeals:		
Allowed	217	221
Dismissed	558	531
Withdrawn		21

The number of appeals pending is a matter for concern. In my report for last year I had indicated that there were no delays in the disposal of appeals from assessor's determinations. However, as a result of the appointment of additional assessors resulting in a greater disposal of applications, the number of appeals has increased with a resulting delay in their disposal.

Appeals are listed into February 2002 which is unacceptable. An application for magisterial assistance has been made to reduce the arrears.

### ***Oral Hearings/Country Sittings***

The Tribunal continues to conduct oral hearings of appeals in Sydney and in country centres in appropriate cases. Sittings were held in Ballina and East Maitland in the year under review.

### ***Appeals from the Tribunal to the District Court on Point of Law***

During the year under review 47 appeals from Tribunal Decisions were lodged to the District Court on a point of law as against 51 for the previous year.

Of those 47 appeals the result is as follows:

Remitted	15
Dismissed	10
Withdrawn	4
Pending	18

As I indicated in the 1999/2000 report, the claimed error of law in the bulk of appeals has been on the issue of Section 38(3) the reception of fresh material. That issue had been the subject of the decision by the Court of Appeal in **VCFC v Hill** (2000) NSWCA 75. This decision has provided guidance as to the interpretation of “special circumstances” and fresh evidence in relation to appeals.

In the matter of **VCFC v Crowley** (2000) NSWCA 378 the Court dealt with the provisions of Section 39(3) and Clause 4 of Schedule 1 of the Act. The Court found that Clause 4 only arises if there is found to be a compensable injury and then applies to reduce the amount of compensation by the percentage of the pre existing condition. A finding by the Tribunal that there is no compensable injury could not be directly challenged in the District Court under Section 39.

The latter point was again taken to the Court of Appeal in the matter of **VCFC v Ainsworth** (2001) NSWCA 92. The Court held the reasoning leading to a determination of either category referred to in Section 39(3) is deemed not to involve any question of law even if its language would suggest otherwise or involve legal as distinct from factual analysis.

The court further held that Sub Section 3 does not state that every aspect of a determination concerning a claim for statutory compensation is incapable of giving rise to a competent appeal. Section 39 (3) does not address the causation issue as to whether a compensable injury was a direct result of an act of violence.

### ***Approved Counselling Scheme***

This Scheme was established under the 1996 Act to provide immediate intervention by way of counselling to eligible victims. Research has shown that early intervention in many cases reduces the impact of any trauma on victims of crime. Notwithstanding the introduction of the Scheme it is surprising that many appellants fail to take advantage of its services. The provision of Section 30(1)(d1) surely would have induced applicants in appropriate cases to apply for counselling.

Applications for initial 2 hours counselling sessions are processed within 48 hours of receipt. A trial of electronic filing of applications for counselling has been introduced and will be monitored to determine whether an interactive form should be developed.

In the year under review 20,000 counselling hours were approved at a cost of \$1.65 million in respect of 6600 applications compared with \$1.55 million the previous year.

### ***Authorised Report Writers – Quality Management Project***

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

The ARW scheme has continued to develop with procedures for applicants living interstate and overseas in place and a policy concerning applicants who are inmates of correctional centres. A number of quality mechanisms have been put in place to ensure the standard of reports produced by ARWs is maintained at a high standard. A random audit of ARW reports is conducted by the Professional Advisory Panel each year with feedback provided to individual ARWs.

## **VICTIMS COMPENSATION ACT 1987**

All claims under the Act have been determined and consequently no awards were made.

### ***Appeals to the District Court***

Under the 1987 Act, 6 appeals were lodged to the District Court as against 204 in the previous year. The reason for the small number of appeals lodged is because all the applications under the 1987 Act had been determined in the preceding year and disappointed applicants had a period of 1 month after determination within which to lodge appeals to the District Court or such further period as that Court allowed.

Awards and costs made in District Court totalled \$2.95 million as against \$9.40 million in the previous year.

There are 12 District Court appeals pending.

## **RESTITUTION**

The amount recovered from convicted offenders totalled \$3.53 million compared with \$3.26 million in the previous year.

Whilst the budget target for the next financial year has again been set at \$3.5 million it is expected that the effects of the introduction of the Debtor Management System (DMS) in the second half of this financial year will achieve an increased level of recovery.

The recovery of restitution continues to be difficult for a variety of known reasons which have been well publicised in past reports.

### ***Provisional Orders***

There were 3,544 provisional orders made by the Director during the financial year. This represents a 35% increase over 1999/2000 (2,616). The increase was achieved using the same staffing level but with revised processes and improved work performance. The budget target for the next financial year has been set at 5,000.

### ***Arrangements with Director***

Three hundred and twenty-three (323) arrangements amounting to \$3.8 million were entered into between defendants and the Director during the financial year. The amount agreed represented an average of 89% of the amount provisionally ordered. The majority of these funds will be paid by monthly instalments over future years.

### ***Hearings before the Tribunal***

Approximately 1,500 matters were listed for hearing before the Tribunal resulting in orders amounting to approximately \$7.5 million. This represented an average of 65% of the amount provisionally ordered.

### ***Debtor Management computer System (DMS)***

The Debtor Management System to which I referred in last year's report is continuing to be developed to ensure compliance with instalment orders and arrangements. It is scheduled to come on line by December 2001. The interface between the CARES workflow system and the Department's SUN financial system that provides the date

which the DMS will use to monitor compliance came into effect during this financial year.

### ***Enforcement of the Tribunal's Restitution Orders***

From 1993 until June 2000 provisional orders (or Notices to Show Cause issued under the Victims Compensation Act 1987) to which there was no response by defendants within 3 months from the date of issue were confirmed by the Tribunal and referred to the State Debt Recovery Office for enforcement action. No further follow up action was taken within Victims Services. These no response orders formed the bulk of the recovery action by the State Debt Recovery Office's general recovery section.

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

At the end of June 2000 the State Debt Recovery Office closed its general recovery section and ceased providing a general debt recovery service to the NSW Government agencies including Victims Services. This has resulted in the Tribunal having to review the future enforcement of no response orders.

Of the approximately 19,233 matters referred to the SDRO between 1993 and June 2000:

10,057 (52%) were closed almost immediately for a variety of reasons;  
In 2,428 cases (24%) the defendant responded to the Tribunal;  
In 4,231 cases (42%) whereabouts of the defendant is unknown;  
In 1,417 cases (14%) all possible action was taken without result;  
In 1,072 cases (11%) the defendant was bankrupt, had died, or recovery was not viable.

Of the remaining matters some enforcement action had been commenced by way of examination summons; writs of execution and garnishee.

In short only 10.5% of the total matters referred to the State Debt Recovery Office were able to have some form of enforcement action, resulting in payment of \$456,000.

### ***Registration of Charge on Land***

In this financial year the Director has made 2 applications for registration of restitution orders bringing the total to 9 since the introduction of the provision. This action has resulted in one full recovery of \$68,000. The Director has been asked to cancel 2 matters where the defendant is seeking to dispose of the property. In these cases the Director is seeking either full payment of the restitution debt outstanding or another form of security in substitution.

## ***Restraining Orders***

Since the introduction of this provision, the Director has reviewed over 100 matters referred by either the NSW Police Service or the Office of the Director of Public Prosecutions. Of these referrals, 29 matters have been referred to the Crown Solicitors Office for investigation and advice regarding applications for restraining orders and 10 of those matters have resulted in orders being made by the Supreme Court.

In one of those matters there appears to be a suggestion that property had been transferred under suspicious circumstances from a husband to his wife through consent orders filed with the Family Court on the “separation” of the parties. Anecdotal evidence suggested that they had not in fact separated.

In another matter property had been transferred by a brother to his sister for consideration of \$1 following his being charged with sexual assault.

## ***Civil Enforcements Registry***

### **Repayments by Victims**

The Act requires applicants who have been awarded statutory compensation to repay that award if they are successful in civil proceedings arising out of the same act of violence to which the application for statutory compensation relates (Sections 30 and 34). \$1.2 million was recovered from applicants.

### **Subpoenas**

A total of 332 subpoenas were served on the Tribunal calling for the production of applicant’s files - 255 in civil cases and 77 in criminal proceedings. In the civil proceedings the Tribunal files are generally produced.

In criminal proceedings the Tribunal opposes the production of the applicant’s file pursuant to Section 84. Of the 77 subpoenas in criminal proceedings only 6 were pursued to a hearing and generally the material was not ordered to be produced.

## **REVIEW OF THE ACT**

Section 92 provides that the Minister is to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

Along with determining whether the policy objectives remains, valid consideration should be given to the following matters:

- A review of the Table of Compensable Injuries.
- Consider the provisions of Section 5 having regard to the decisions of McGuire DCJ in the appeals of Bourke and Jenkins.
- Clarify whether “injury” as set out in Section 5(1)(c) is a requirement where a victim claims a sexual assault.
- Clarify the apparent conflict between Section 20 and Section 31.
- Consider further exclusions to statutory compensation pursuant to Section 24.
- Consider the provisions of Section 26 and particularly Section 26(3)(b).
- Section 31(1) provides for “reducing a proposed award” by the amount of the proposed determination for restitution. Query the position where the proposed determination for restitution exceeds the proposed award.
- Clarify whether or not Section 38(3) applies to appeals on leave.
- Query whether District Court should be deleted from Section 40.
- Consider a power to award medical expenses even though the compensable injury may not reach the threshold.
- Amend the restitutions provisions to cover the Reid situation as referred to in last year’s report.
- Provide a Scale of Costs in District Court appeals.

## **PRIORITIES FOR 2001/2002**

The principal concerns for the coming year are:

Finalisation of all compensation claims lodged prior to 7 April 1999 and

Reduction of pending claims for compensation to below 10,000.

## **CONCLUSION**

Once more may I thank my fellow Magistrates, the Director, Registrar and Tribunal staff for their dedication, assistance and support throughout the year.

Despite the sometimes rude and discourteous behaviour of applicants, convicted offenders and regrettably some members of the profession, the staff continue to provide a dedicated service and I express my appreciation to them for their work with victims of crime.