



Victims Compensation Tribunal New South Wales

Chairperson's Report
2008/2009



**Victims
Services**
Justice & Attorney General

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

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ISSN 1444-609X

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(VCT08/09 • 10/09)



**Victims Compensation
Tribunal**
of New South Wales

The Hon. John Hatzistergos, MLC
Attorney General and Minister for Justice
Level 36
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

27 October 2009

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 2009.

Yours faithfully

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

B. A. Lulham
Chairperson

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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. The Tribunal has settled in well at the spacious and well appointed facilities at Parramatta.

Callovers are held before the Registrar in a hearing room on ground level; appeals and restitution hearings are heard before a Tribunal Member on Level 1 (which also houses the relevant Restitution and Appeals Registries). Assessors, the Compensation Registry, Accounts, Victims of Crime Bureau 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, Magistrate C.R. Brahe together with Magistrates C.A. Gilmore and T.G. Cleary, and Magistrate B.A. Lulham as the incoming Chairperson, exercised powers of the Tribunal. All members hold office on a part time basis.

RETIREMENT OF CHAIRPERSON HIS HONOUR CECIL ROY BRAHE

His Honour Chairperson Cec Brahe retired as Chairperson of the Tribunal on 20th day of March 2009 and so ended a career of service, dedication and excellence in the law probably unequalled in the history of NSW. He commenced work with the Petty Sessions branch of the Attorney General’s Department of NSW in 1950. He therefore served that Department for some 59 years, in itself an extraordinary length of service.

His Honour was appointed a Stipendiary Magistrate in 1969. He served the people of NSW as a Magistrate for 40 years, another extraordinary achievement.

His Honour was first appointed Chairperson of the Tribunal in February 1991. On 19 November 1991 he was appointed Deputy Chief Magistrate but retained his position as Chairperson of the Tribunal.

In August 1992 His Honour resigned from the Tribunal and continued his full-time duties as a Deputy Chief Magistrate but importantly undertook a major project on behalf of the Parliament of this State in that during this period he worked on a review of the Victims Compensation Scheme in NSW which culminated in the release of the report “The Review of the Victims Compensation Act” (the Brahe Report) in March 1993. The Brahe Report formed the foundation of the current Victims Compensation Scheme and the replacement of the *Victims Compensation Act 1987* with the *Victims Compensation Act 1996* which was involved with the move to support rehabilitation into the current *Victims Support and Rehabilitation Act 1996*.

In October 1994, His Honour returned to the Tribunal as Chairperson and held that position until his retirement.

During his long career in addition to his work for victims of violent crime His Honour Mr Brahe held the positions of Director Local Courts, NSW Magistrate, Chairman of the Licensing Court and Liquor Administration Board and Deputy Chief Magistrate.

As Chairperson of the Tribunal His Honour championed victims compensation legislation for many years. Changes he advocated formed the basis for new legislation instrumental in improving access to justice for socially and economically disadvantaged people. The Brahe Report was pivotal in improving victims of crime legislation and the workings of the Tribunal.

His Honour brought a high level of compassion and understanding to his role of Chairperson of the Tribunal and applied these qualities in all his dealings with victims of crime.

The Hon. John Hatzistergos MLC, Attorney General and Minister for Justice wrote to His Honour on his retirement thanking him for his outstanding contribution to the administration of justice in NSW. The Attorney noted that His Honour had carried out his duties with compassion, dignity and the highest professionalism. He noted that His Honour will be sorely missed and difficult to replace.

On behalf of the Tribunal and each and every member of its staff I congratulate His Honour on his outstanding service. I thank him for the enormous contribution he has made to the Victims Compensation Tribunal and I wish him well in his richly deserved retirement.

APPOINTMENT OF NEW CHAIRPERSON

On 25 March 2009 I was appointed by the Hon. John Hatzistergos MLC, Attorney General and Minister for Justice as the new Chairperson of the Tribunal. I was admitted as a solicitor in 1965 and practiced as a solicitor in Goulburn from 1965 to 1992. On 31 August 1992 I was appointed a Magistrate. I presided as the Resident Magistrate for the Moree circuit for three years and for 18 months as the Resident Magistrate on the Broken Hill circuit. I presided at the Redfern Local Court for 12 months. Thereafter I presided at the Downing Centre. I was the Magistrate in charge of the Civil Section of that Court for the five years prior to my retirement on 14 March 2008. Upon my retirement as a full-time Magistrate I was appointed as Acting Magistrate and held that commission at the time of my appointment as Chairperson of the Tribunal.

I am enjoying the challenge of being Chairperson of the Tribunal. I agree wholeheartedly with the Attorney that the previous Chairperson is very difficult to replace.

STAFFING

Staff numbers remained constant during the year at 80 positions. Employee-related expenses increased from \$4.28 million to \$4.71 million in the year under review. Operational expenses increased from \$2.34 million to \$2.62 million.

Mr. John McAteer was appointed permanently as Registrar of the Tribunal on 22 July 2008 after one and a half years temporary appointment to that position. Registrar McAteer is a fine lawyer and administrator who has overseen the daily workings of the Tribunal in a most commendable and friendly manner.

The position of Director Victims Services remains unfilled. Ms Marianne Curtis continued as Acting Director until October 2008 when Ms Helen Kidston was appointed as permanent Director. Ms Kidston resigned in April 2008 and Ms Mandy Young is currently Acting Director.

SPECIAL EVENTS

Vietnamese Delegations

Two delegations of justice representatives from Vietnam visited Victims Services on 7 November 2008 and 1 December 2008 to hear of the support and services available in NSW, which included an introduction to the Victims of Crime Bureau, the Victims Advisory Board and Victims Compensation Tribunal.

The first was a group of judges from Vietnam, and the second group was made up of representatives from the Supreme People’s Prosecution Office (SPP). The SPP is responsible not only for criminal prosecutions, but overseeing law observance by ministries, government and judicial bodies, local authorities, officials and citizens. The office, which employs 12 000 prosecution officials, supervises courts, investigates and detains suspects, and handles cases of suspected corruption.

The visits were part of the Vietnam-Australia Human Rights Technical Cooperation Program, initiated between Australia and the Socialist Republic of Vietnam in 2005 by the Human Rights and Equal Opportunity Commission, now known as the Australian Human Rights Commission.

Vietnam’s first constitution in 1946 was among the first in the world to recognise gender equality. More recently, a chapter on human rights was introduced into the current Constitution. This has led to a different approach to the regulation of society, now seen as being based on laws rather than moral concepts. Protecting and promoting human rights is becoming a major focus for the legal system of Vietnam.

Visit by Queensland Justice Representatives

On Tuesday 31 March 2009 senior staff from the Queensland Department of Justice and Attorney-General (DJAG) visited Victims Services as part of their Australia-wide consultations with key stakeholders and victims support services to review different service delivery models and organisational structures. This was in preparation for Queensland DJAG setting up their own victims of crime support services.

DJAG staff met the Director and other staff to discuss Victims Services’ governance framework, the structure of the agency including the Tribunal and the Victims of Crime Bureau, the complaints handling policy, Compensation, interagency relationships, Victims Advisory Board, the Approved Counselling Scheme and the function of the Victims Support Line. Staff reported on activities, achievements and challenges within their respective areas and DJAG were able to establish links in support of their work towards setting up their new service which is due to go on line late 2009.

It was pleasing to note that in DJAG’s Victims of Crime Review Report, November 2008, it identified NSW as having best practice in the area of coordination of its Victims Services unit.

Approved Counsellors Conference 2009

The Approved Counsellors Conference was held on 28 March 2009 at Parramatta Justice Office. Eighty-three counsellors attended, travelling from across regional and rural NSW, metropolitan Sydney and from interstate and their feedback was highly positive.

The aim of the conference was to strengthen the existing partnership between the Approved Counsellors and Victims Services, acknowledging the contribution the counsellors make to the professionalism of the Scheme.

Dr Richard Bryant and Ms Robyn Lamb who are experts in their fields regarding therapy to people who have experienced trauma provided two excellent keynotes. A panel of Victims Services staff also addressed questions provided by Counsellors regarding operational aspects of the Scheme. Six afternoon workshops on a range of topics including working with Aboriginal Communities, working with Victims of Crime within an interagency context and a review of the ethical issues that counsellors need to consider when counselling vulnerable clients were offered with positive feedback from participants.

Information Forums

Victims Services has continued to provide information sessions and forums about the Charter of Victims Rights and services and entitlements for victims of crime across NSW to a range of service providers including Office of the Director of Public Prosecutions, NSW Police Force, Department of Corrective Services, sexual assault services, university students, volunteers, migrant resource centres, local courts, lawyers, school counsellors and non-government organisations. Victims Services continues to develop and distribute resources and provide information to assist and support victims.

SUMMARY OF IMPORTANT STATISTICS

- Applications for statutory compensation received during the review period totalled 8212.
- Assessors determined a total of 4893 claims for compensation.
- A total of \$60.28 million (statutory compensation awarded by Assessors and Tribunal Members on appeal, professional costs and disbursements) was paid.
- Pending claims have increased from 10 241 to 13 328.
- The number of appeals to the Tribunal totalled 684 and 657 were determined. There were 204 appeals pending at the close of the financial year.
- Under the Approved Counselling Scheme, 5716 applications for initial counselling were received in 2008/09. 48 083 counselling hours were approved for victims of crime for initial and further applications for counselling resulting in payment of \$2.66 million.
- Applications for initial counselling lodged on line continued to increase. In 2008/09, 2382 online applications were received compared to 2015 in 2007/08 and 1462 in 2006/07.
- A total of \$3.63 million was collected from convicted offenders during 2008/09 slightly up from the previous year.
- Electronic payment options are available for defendants who are liable to pay restitution. At the end of 2008/09 over 4200 debtors had taken up this option.

VICTIMS SUPPORT AND REHABILITATION ACT 1996

COMPENSATION ASSESSORS

During the period 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, Keays-Byrne, McAteer, Stephenson, Walker and Ms. Bell, Ms. Humphreys, Ms Krishna, Ms. Madison and Ms. Wong. Mr. McAteer is the Registrar, Ms. Krishna is the Legal Officer and Ms Wong the Senior Advocate.

Compensation Assessors deal with applications for statutory compensation without conducting a hearing into the claim – 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 applications, 2007/08 and 2008/09

	<i>2007/08</i>	<i>2008/09</i>
Received	7,031	8,212
Pending	10,241	13,328
Awards	2,630	2,985
Dismissals	1,383	1,908
Total determinations	4,013	4,893
Total money paid	\$61.00 million*	\$60.28 million*

* Including awards, costs, disbursements and Appeal awards.

INCREASING CLAIMS

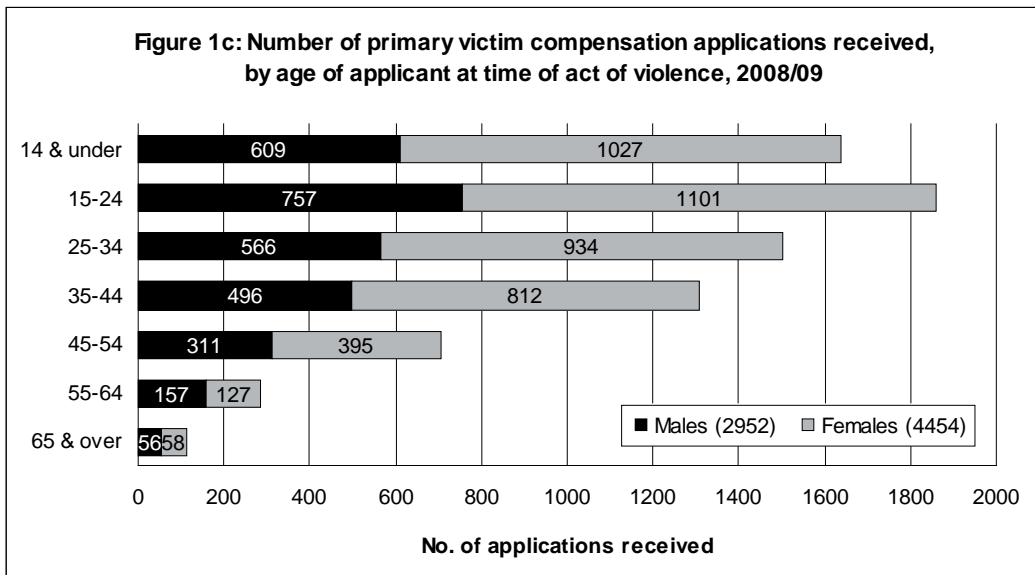
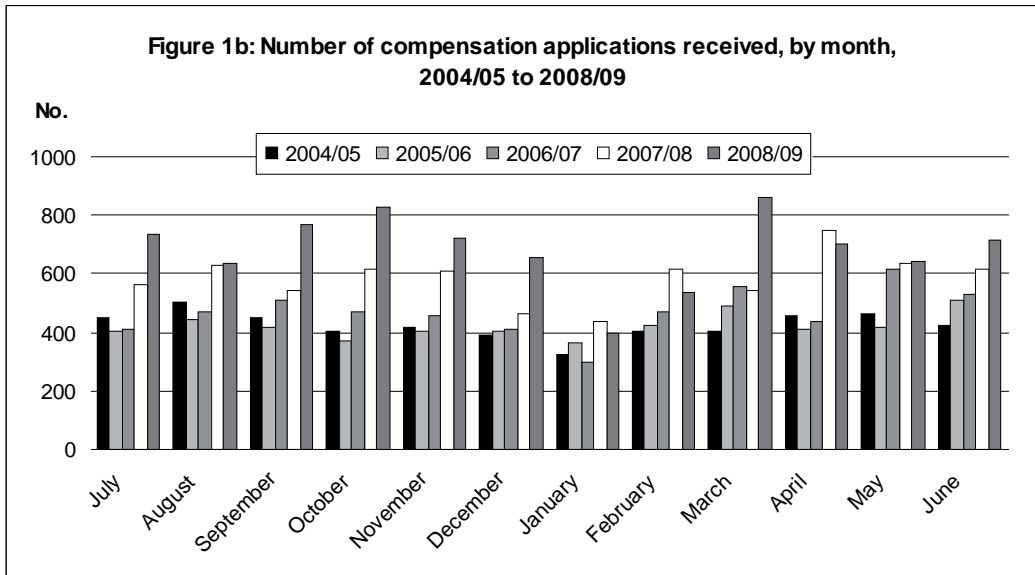
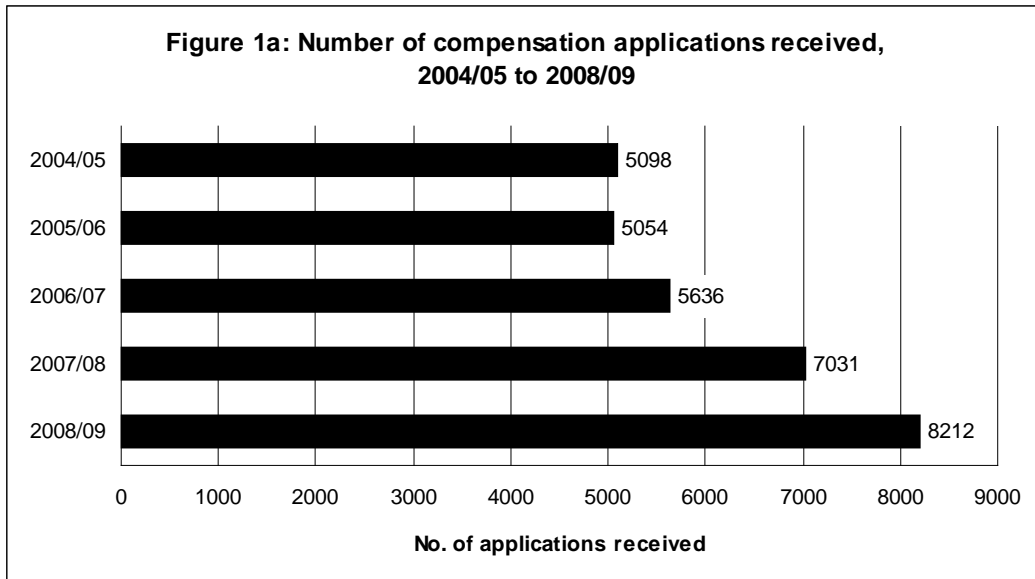
It was reported last year that the flow of applications for statutory compensation had shown an increase of approximately 25 per cent to 7031. For the year under review the applications received continued to increase – 8212, an increase of nearly 17 per cent over the previous year. It is interesting to note, however, from 1998/99 under the current legislation through to 2005/06 the lodgement rate had fallen from 12 702 in 1998/99 to 5054 in 2005/06.

Figure 1a shows the number of applications received, 2004/05 to 2008/09.

Figure 1b shows the number of applications received, on a monthly basis, 2004/05 to 2008/09.

Figure 1c shows the number of primary victim applications received, by age of the applicant at the time of the act of violence, 2008/09. Claims by females continue to outnumber those by males.

The increase has posed problems for Victims Services, and if the rate of lodgement continues, then those difficulties will escalate. However, it says much for the dedication and expertise of the Assessors and staff that they have increased considerably the number of determinations without increases in their numbers. Moreover, the increasing number of claims lodged has led to a significant backlog – pending claims increased from 10 241 to 13 328. This is more than double the pending claims in 2005/2006 which was 6246. The increase in the number of lodgements and the increase in pending claims require consideration of an increase in the budget in coming years.



There are various reasons for the increase in lodgement rates. Victims Services had been actively promoting victims entitlements to compensation through forums, information sessions, liaison with service providers, distribution of publications and promotion of the website.

Further, Victims Services is aware that more legal practitioners are holding themselves out as available to handle claims to the Tribunal. Indeed there are legal firms that specialise in this area. Some practitioners began specialising in Tribunal matters some years back and have now built up their practices to the extent that they have doubled the volume of matters they handle. There is some incentive to specialise as Assessors often make awards of legal costs regardless of the outcome of the claim. This aspect was commented on by my predecessor in the recommendations in last year’s report.

In June 2009, Assessors were generally dealing with claims lodged in December 2007. The time between lodgement and determination of 18 months is, in my view, just inside an acceptable optimum period.

At the same time, Tribunal members were generally dealing with appeals lodged in March-April 2009, which is very much within the optimum period. The continuance of that disposal rate does however place a very heavy workload on the three Tribunal members.

DISMISSAL RATE

In the year under review, 1908 claims were dismissed by Assessors (see Figure 4c). This represents 39 per cent of claims determined, a slight increase on the previous year but remains considerably lower than the 52 per cent dismissal rate in 2004/2005.

When looking at the last four years, the general fall in the dismissal rate is due to a number of factors including the rate of legal representation by applicants. Currently legal practitioners file 89 per cent of all claims (see Figure 3). It could be argued that claims are now being more appropriately brought and more professionally handled. Solicitors are filing stronger submissions on issues such as act of violence, the effects of contributory behaviour and the relationship of the parties where the compensable injury of domestic violence is claimed.

There also appears to be an improvement in the quality of medical evidence submitted in support of the claims. The Authorised Report Writer (ARW) reports together with appropriate submissions have seen an increase in the number of awards for the compensable injuries of a chronic psychological or psychiatric disorder Category 1 that is moderately disabling and a Category 2 disorder that is severely disabling.

Appeals are generally dealt with on the material that was before the Assessor. Section 38(3) provides that leave to receive further evidence and material may be given if special grounds exist. Generally Tribunal Members take a more beneficial approach to the legislation than that previously taken by some Assessors. Over time Assessors have reacted positively to Tribunal decisions. However, it is noted that during the second half of the reporting period the dismissal rate by Assessors began to increase again, with a commensurate rise in appeal lodgements.

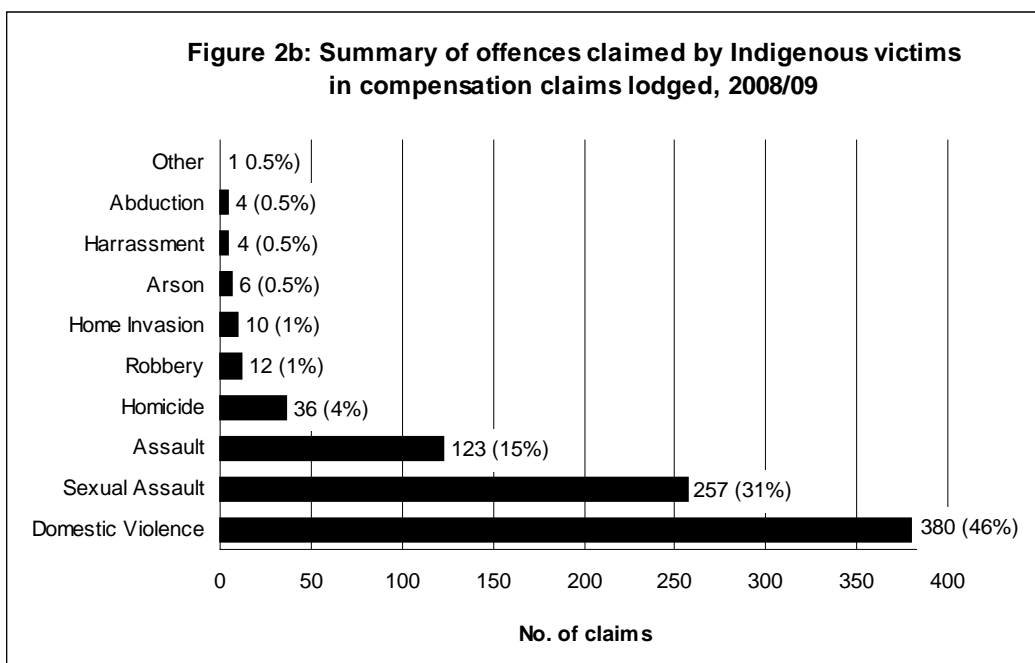
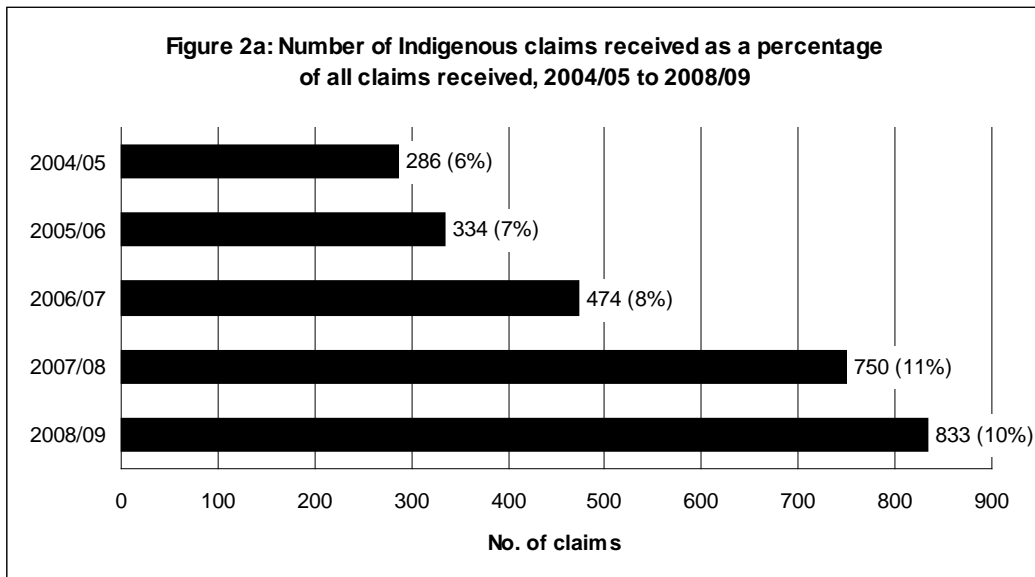
The major reasons for dismissal of applications related to the failure of the victim to establish an act of violence; or to establish a compensable injury; or that the amount of statutory compensation for the established compensable injury, and any deduction pursuant to section 30, did not meet the threshold of \$7500. However, due to a lower number of claims being based on assaults as a result of the impact of threshold issues, as opposed to assaults in the nature of domestic violence, sexual assaults or armed robbery, section 30 issues have become less relevant, thus a lessening of dismissals over the last five years.

INDIGENOUS CLAIMS

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

Figure 2a 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. The figure shows a steady rise in the number of claims from Indigenous victim applicants – 286 in 2004/05 to 833 in 2008/09 – 10 per cent of the total number of claims lodged.

Figure 2b 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. This is mirrored in offences in the broader community where the order is assault, sexual assault and domestic violence.



FAMILY VICTIMS

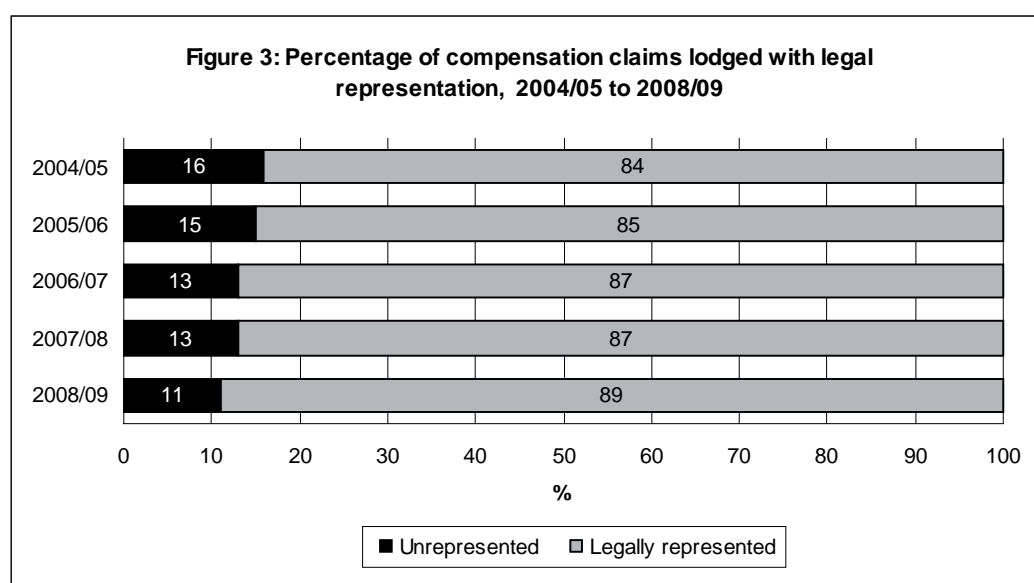
The Tribunal received 252 claims from family members in relation to 126 deceased victims. Leave was refused in eight claims. Total payments, including interim payments of \$477 950 for funerals, amounted to \$3.27 million. 57 claims were dismissed. A total of 223 applications for counselling by family members were received and 4388 hours approved.

UNREPRESENTED APPLICANTS/APPELLANTS

The decreasing trend for unrepresented applicants to lodge applications for statutory compensation has continued. The number of unrepresented applicants who lodged claims was 16 per cent in 2004/05 and was only 11 per cent for 2008/09.

Conversely 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. Reasons for applicants being unrepresented on appeal are not readily identifiable but may result from dissatisfaction with the services offered by a legal practitioner or the Tribunal exercising discretion not to award costs in unsuccessful appeals.

Figure 3 shows the legal representation of claims lodged, by percentage, 2004/05 to 2008/09.



VICTIMS ASSISTANCE SCHEME (VAS) – STATUTORY COMPENSATION FOR PRESCRIBED 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 cannot exceed \$1500. The expenses covered by the Scheme include ambulance services, dental services, physiotherapy, and domestic assistance during a victim’s recovery from the act of violence, cleaning of property, security measures and replacement of prescription glasses or contact lenses.

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.

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.

The Scheme commenced on 16 February 2007 and for the initial period ended 30 June 2007, 83 applications were received where the applicant indicated they are claiming VAS only or VAS and compensation.

In the year ended 30 June 2009, 1591 VAS claims were lodged. Of that number 33 applications only were in respect of expenses, four claimed expenses and counselling whilst the balance claimed expenses and statutory compensation. A total of \$33,459.31 was paid out during the year in relation to 40 claims.

The maximum recoverable under the Scheme is \$1500 yet dental expenses not infrequently exceed that sum. A number of claims were dismissed because no compensable injury was nominated or established – a requirement under the Scheme.

I consider that the intent of VAS is not being met by the Scheme as it currently operates because of the limit on expenses and the administrative problems. This was identified in last year’s report. At the time of writing, the Scheme has not been reviewed.

DETERMINATIONS BY ASSESSORS

The number of applications determined by Compensation Assessors increased from 4013 to 4893.

The average payment, which had been steadily increasing since 2003/04, decreased in the year under review. In 2008/09 the average payment was \$11 615, compared to \$13 136 in 2007/08.

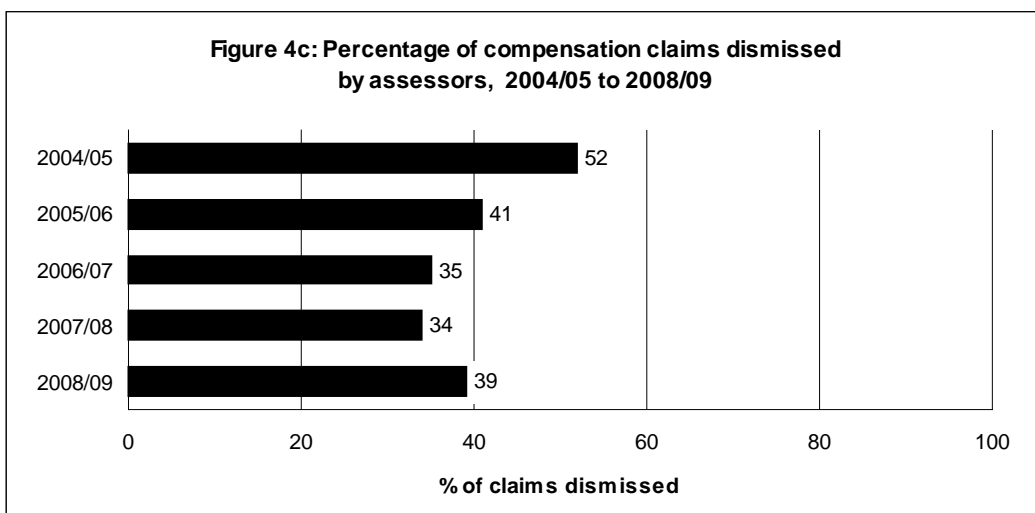
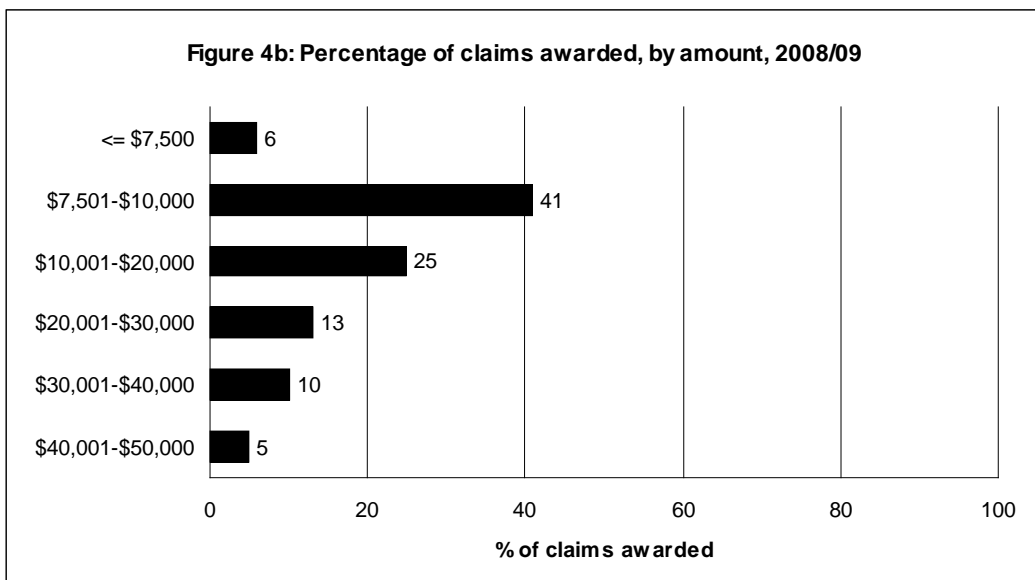
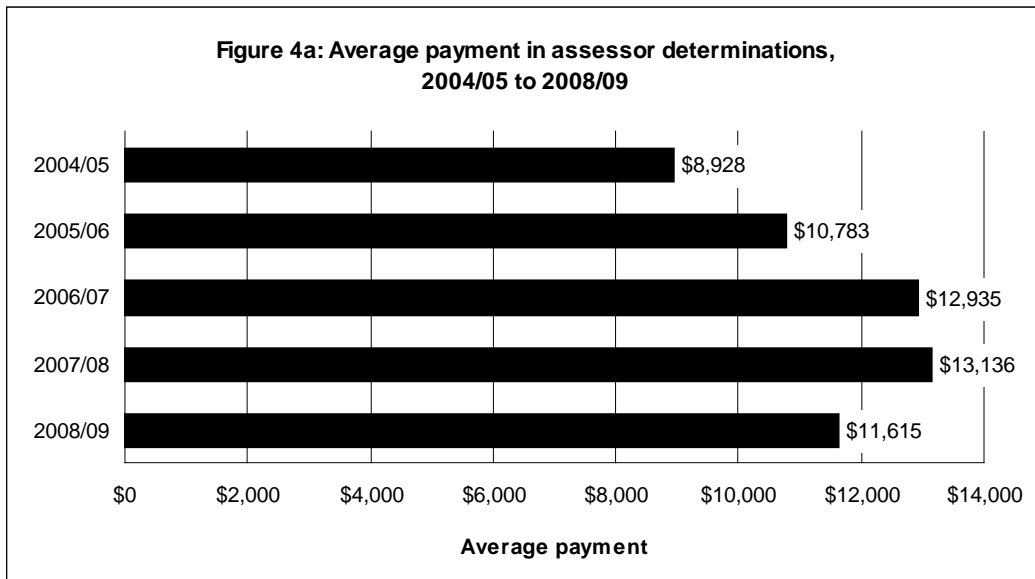
Figure 4a shows the average payment in Assessor determinations, 2004/05 to 2008/09.

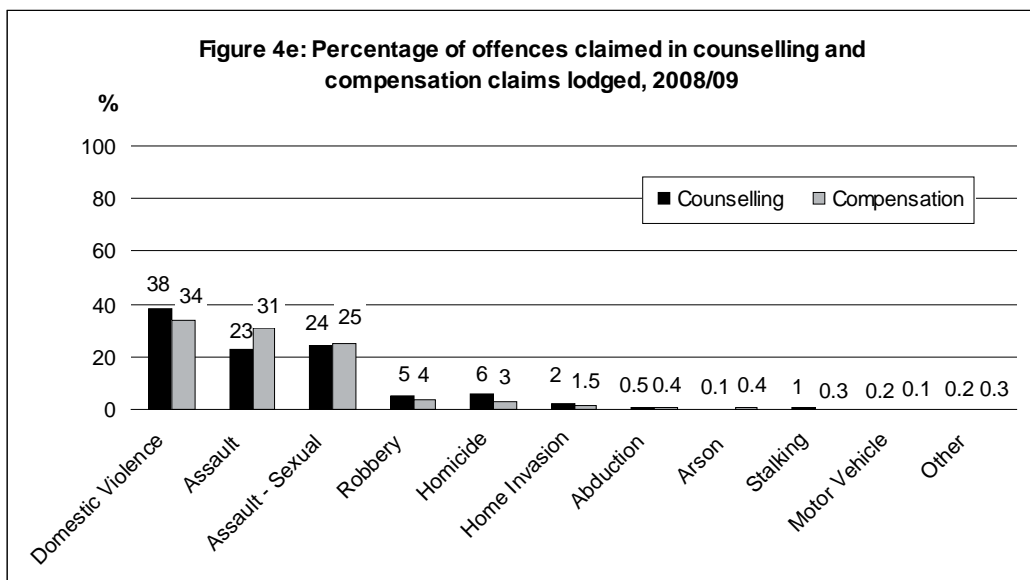
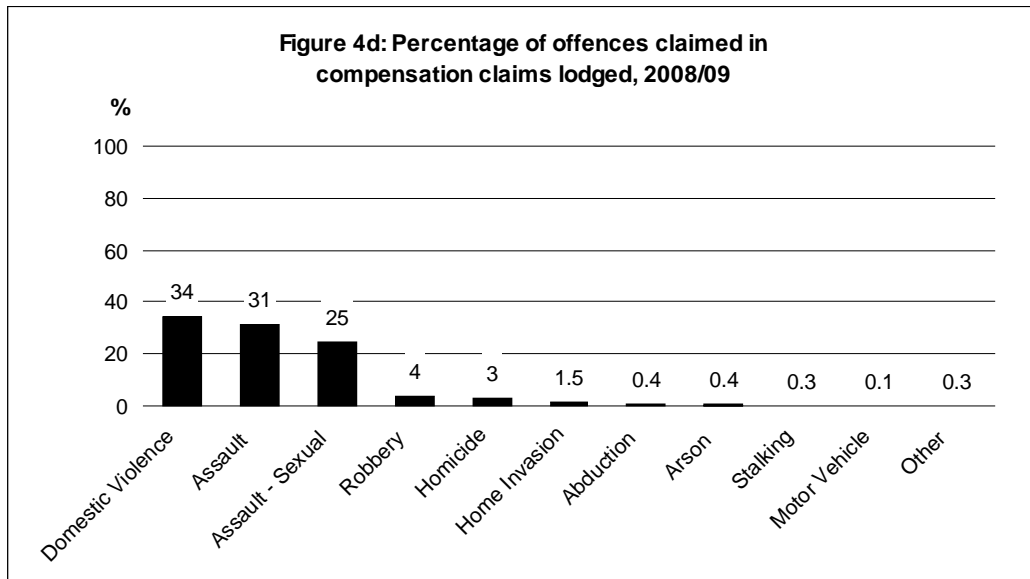
Figure 4b shows the percentage of claims awarded by amount, 2008/09.

Figure 4c shows the percentage of claims dismissed by Assessors, 2004/05 to 2008/09.

Figure 4d shows the percentage of offences claimed in compensation claims lodged, 2008/09. This figure highlights that domestic violence, assaults and sexual assaults are the most prevalent range offences for which statutory compensation is claimed. In counselling claims the prevalent offences relate to domestic violence, sexual assaults and assaults.

Figure 4e shows a comparison of the percentage of offences claimed in counselling and compensation claims lodged, 2008/09.





COMPENSABLE INJURY OF SEXUAL ASSAULT

In the year 2008/09, Compensation Assessors determined 1,272 claims where sexual assault was recorded as the offence. Awards were made in 917 cases. The various categories of compensable injuries of sexual assaults where awards were made are:

- Sexual assault category 1 – 179 awards
- Sexual assault category 2 – 227 awards
- Sexual assault category 3 – 488 awards

The range for the compensable injuries of sexual assaults is:

- Sexual assault category 1 – \$7500 – \$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 claim in the alternative the compensable injury of a chronic psychological or psychiatric disorder category 1 moderately disabling (where kidnapping is related to the sexual assault) or a category 2 disorder that is severely disabling. It is not uncommon for an award to be made for one of those compensable injuries in lieu of a sexual assault category because the award will result in a higher payment to the applicant.

The injury awarded in sexual assault claims included in lieu of the offence-based injury:

- Chronic psychological or psychiatric disorder category 1 (5 awards)
- Chronic psychological or psychiatric disorder category 2 (18 awards)

Of the total awards for statutory compensation made in the year under review 31 per cent related to victims of sexual assault.

COMPENSABLE INJURY OF DOMESTIC VIOLENCE

Awards for the compensable injury of domestic violence made by Compensation Assessors totalled 874. Domestic violence is recorded as the offence in 1158 claims determined. There has been a steady rise in the number of claims lodged where the applicant applies for statutory compensation for the compensable injury of domestic violence.

Like sexual assault victims, domestic violence victims may claim the offence-based compensable 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 for domestic violence victims as follows:

- Domestic violence injury (821 awards)
- Chronic psychological or psychiatric disorder category 1 that is moderately disabling injury (10)
- Chronic psychological or psychiatric disorder category 2 that is severely disabling injury (22)
- Physical injuries (21)

Of the total awards of statutory compensation made in 2008/09, 29 per cent were for victims of domestic violence (domestic violence incident).

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 a 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 4893 claims for statutory compensation determined in 2008/09, 2563 (52%) were accompanied by an ARW report. In those 2563 claims accompanied by an ARW report, the compensable injuries of a chronic psychological or psychiatric disorder category 1 or category 2 were awarded in 437 claims. ARW reports were filed in claims where other compensable injuries such as sexual assault and domestic violence were awarded. This practice was commented on in Recommendation 7 in last year’s report.

APPLICATIONS TO FILE APPLICATIONS FOR STATUTORY COMPENSATION 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. Notwithstanding, the Director may accept applications that are lodged out of time. 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.

At the commencement of the reporting period new procedures were implemented to manage pending leave matters to improve the quality of the applications.

During 2008/09, 2921 claims were lodged out of time as against 2272 in the previous year and 1527 in 2006/07.

Table 2 sets out the number filed, result and offence claimed. The total number of sexual assault claims lodged, 1396 included 972 claims where the applicant was a child – under 18 years – at the time of the sexual assault.

Table 2: Compensation claims lodged, leave matters, 2008/09

	<i>Granted</i>	<i>Refused</i>	<i>Deferred</i>	<i>Decision pending</i>	<i>Total</i>
Sexual Assault	1303	28	10	55	1396
Domestic Violence	1065	8	10	32	1115
Assault	163	77	12	21	273
Robbery	15	17	0	3	35
Family	13	8	2	35	58
Other	26	14	1	3	44
Total	2585	152	35	149	2921*

* 36 per cent of claims lodged.

Table 3 shows the age of the applicant at the time of lodgement of the claim and number of claims. What is of significance is the number of claims lodged by persons aged over 40 years in respect of sexual assaults as children. 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.

Table 3: Primary victims 18 years and under at time of incident (sexual assault), 2008/09

<i>Age when claim lodged</i>	<i>Number of claims</i>
0-18	302 (31%)
19-20	76 (8%)
21-30	158 (16%)
31-40	188 (19%)
41-50	141 (15%)
51-60	93 (10%)
61-70	14 (1%)
Total	972 (100%)

Family members of homicide victims lodged 58 leave applications in 2008/09 going back to homicides that occurred as long ago as 1965.

APPEALS TO THE TRIBUNAL AGAINST DETERMINATIONS OF ASSESSORS

The Act provides for an appeal from a Compensation Assessor to the Tribunal. During the year 684 appeals were lodged with the Registry. Of those 73 per cent were against dismissals of the claims by Assessors, 17 per cent against quantum and the balance of 10 per cent against the Assessor under delegation refusing leave to lodge applications out of time.

Of the 657 appeals determined approximately 46 per cent were successful where the Tribunal either made an award or remitted the matter to a Compensation Assessor. Included in those 657 appeals were 61 appeals against refusal to grant leave to file applications for statutory compensation out of time. Of that number 14 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 from lodgement to determination is three months.

Table 4: Summary of appeals, 2007/08 and 2008/09

	<i>2007/08</i>	<i>2008/09</i>
Appeals lodged	639	684
Appeals determined	563	657
Pending	177	204

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 seven 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.

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 or if the convicted inmate is seriously and permanently injured as a result of the act of violence.

For the 2008/09 financial year the Tribunal dealt with 13 applications by convicted inmates awarding statutory compensation in four claims and dismissing nine. In the previous year the Tribunal dealt with six applications and made an award in four claims dismissing two.

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.

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.

Between 1 July 2008 and 30 June 2009, 10 new appeals were filed in the District Court of New South Wales against Tribunal determinations under Division 6 of the Act. This compares to the 16 appeals lodged in the last financial year 1 July 2007 to 30 June 2008.

The status of all District Court Appeals over the above period is as follows:

- Eleven matters were heard and finalised in the District Court 1/7/2008 – 30/6/2009. As at 30 June 2009, four matters remain to be heard (or otherwise disposed of) in the District Court.
- Ten new appeals were filed in the District Court.
- There were eight matters where the Fund was successful and there were three matters where the Fund was unsuccessful.

STATUS OF APPEALS OTHER THAN DIVISION 6 (OF THE ACT) APPEALS

Supreme Court

Leave appeals: Under section 39 (4) of the Act, an appeal against the Tribunal’s decision to refuse leave (to apply for compensation out of time) under section 26 of the Act, is excluded from the statutory appeal under Division 6 of the Act. It is arguable as to whether the Fund is the Respondent in matters outside of Division 6. In these matters, the Fund, the Tribunal, and the Director, Victims Services are usually named as respondents/defendants.

One matter was finalised with the Supreme Court in respect of the Tribunal’s refusal to give leave to bring a claim out of time. The decision of the Tribunal to refuse leave was not disturbed by the Supreme Court.

As at 30 June 2009 there no pending leave appeals seeking prerogative relief before the Court.

Compensation appeals to the Supreme Court: An appeal was heard by the Supreme Court seeking prerogative relief setting aside the decision of the Victims Compensation Tribunal Member in a compensation appeal. That approach is contrary to the legislative appeal scheme quarantined to questions of law, as provided by section 39 of the *Victims Support and Rehabilitation Act 1996*. That appeal was heard during the previous reporting period with judgment being handed down in July 2008. The Fund successfully defended the appeal and the decision of the Tribunal was not disturbed by the Supreme Court.

An appeal was lodged to the Court seeking prerogative relief setting aside the decision of the Victims Compensation Tribunal Member in a compensation appeal, similar to the previous matter. That approach is contrary to the legislative appeal scheme quarantined to questions of law, as provided by section 39 of the *Victims Support and Rehabilitation Act 1996*. That appeal was not heard until after the reporting period with judgment reserved as at time of writing.

Recovery proceedings appeals: An appeal was lodged to the Supreme Court under section 55 of the Act in respect of a determination of the Victims Compensation Tribunal Magistrate in recovery proceedings where restitution was ordered to be paid by the perpetrator of the crime. That appeal was filed, and finalised by the Court (by consent) during the reporting period.

Court of Appeal

During the reporting period, no matters were lodged or heard by the Court of Appeal in respect of a Leave to Appeal application, arising from the decision of the District Court. However in one matter (where the Fund was successful in the District Court) the Appellant served a Notice of Intention to Appeal to the Court of Appeal on the Fund during the reporting period with that matter pending as at 30 June 2009.

In all Court appearances on behalf of the Fund, Tribunal and Victims Services (other than one matter briefed to the Crown Solicitor’s Office), during the reporting period Mr McAteer as the Fund Advocate/Solicitor has appeared as the Solicitor on record and before the Court. The only external costs incurred have been Agency Fees for Solicitors to appear at Call-Overs in regional Courts or to take judgments in regional Courts.

The appeals have been predominantly heard in the Sydney CBD during the period under review with one matter heard at Gosford, two in Wollongong and one matter in Orange.

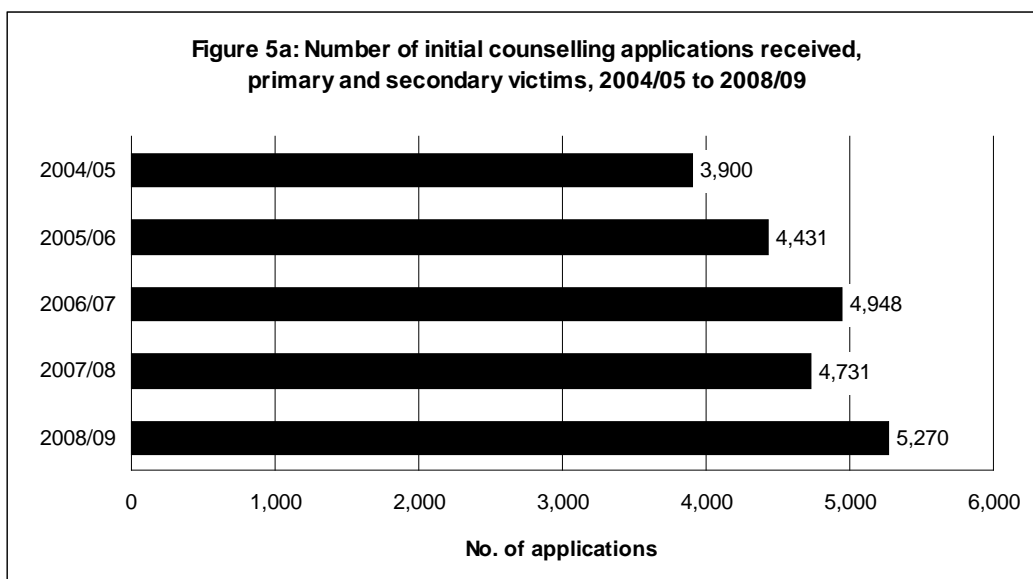
APPROVED COUNSELLING SCHEME

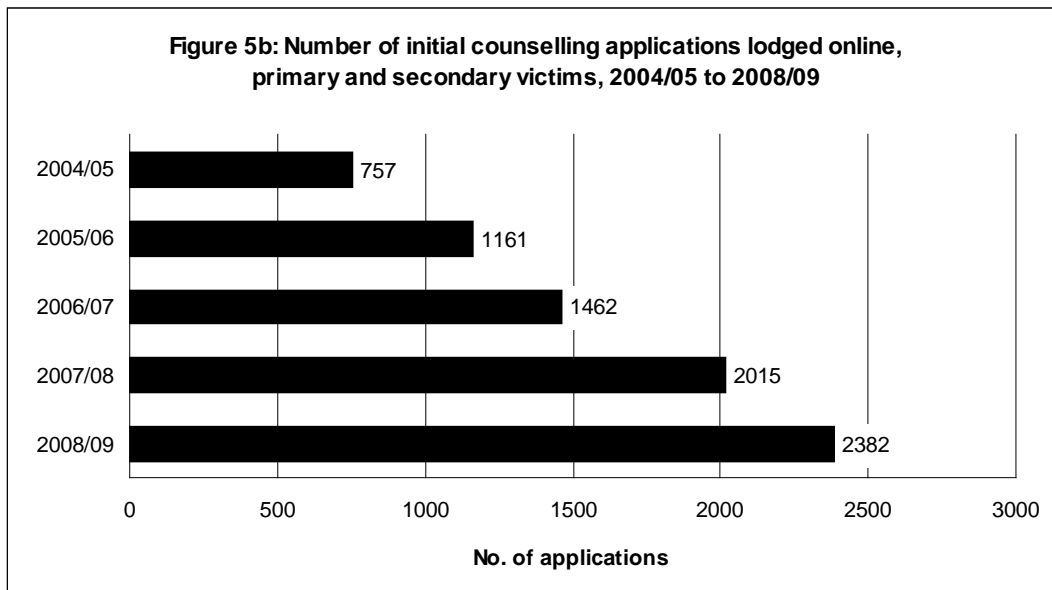
The Scheme was established under the 1996 Act. In 2008/09, 5493 applications for initial counselling were received including 5270 primary/secondary victims and 223 family victims.

As a result of amendments to the Act, effective from 22 December 2006, a person may be considered a victim for the purposes of initial 2 hours counselling if the Assessor is satisfied that counselling may assist in establishing whether or not the person is a victim.

Figure 5a shows the number of initial counselling applications received, primary/secondary victims, 2004/05 to 2008/09.

Figure 5b shows the number of initial counselling applications lodged online, primary/secondary victims, 2004/05 to 2008/09.





REVENUE

Revenue comes from three sources:

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

In the year under review, revenue totalled \$6.95 million as against \$6.46 million for the previous year: \$3.63 million was recovered from convicted offenders as against \$3.33 million the previous year. Court levies amounted to \$3.29 million as against \$2.84 million for the previous year and other revenue totalled \$0.03 million as against \$0.29 million.

The increase in compensation levies was as a result of the passing of the *State Revenue and Other Legislation Amendment (Budget Measures) Bill 2008* assented on 10 December 2008. The impact of the passing of the bill was to double the amounts of compensation levy currently payable by persons convicted of offences punishable by imprisonment and dealt with by certain courts and provide for those amounts to be adjusted annually on the basis of increases in the Consumer Price Index (All Groups Index) for Sydney. As a result of the above, the levy payable in section 79 (1) (a) of the *Victims Support and Rehabilitation Act 1996* increased from \$70 to \$140 and section 79 (1) (b) increased from \$30 to \$60.

PROVISIONAL ORDERS

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 an 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. At 30 June 2008 restitution action was being commenced approximately eight months after the date of the award. As at June 2009 this period was approximately 11 months.

During the year under review 1497 provisional orders valued at approximately \$26 million were made by the Director. 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 action is possible in approximately 50 per cent of cases where awards of statutory compensation are made.

RESTITUTION RECOVERY

The amount recovered from convicted offenders totalled \$3.63 million – an increase on the \$3.33 million recovered in the previous year.

Since the inception of the statutory scheme in 1988, more than \$45 million has been recovered from convicted offenders. In excess of \$31 million of this amount has been recovered since 2000.

The difficult economic climate experienced during the year under review and the flow on effects may have impacted on many people in the low socio-economic environment from which restitution defendants come. However, notwithstanding those difficulties, the recovery level has been restored to the level previously achieved. This achievement can be attributed to a continuation of the more proactive approach to debtor management and introduction of new payment options for restitution debtors which has seen recovery levels maintained at the average per year of more than \$3.5 million since 2000.

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, where the charge against the alleged offender is dismissed and where the offender is convicted. 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.

Previous reports have referred to the 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.

PAYMENT OPTIONS

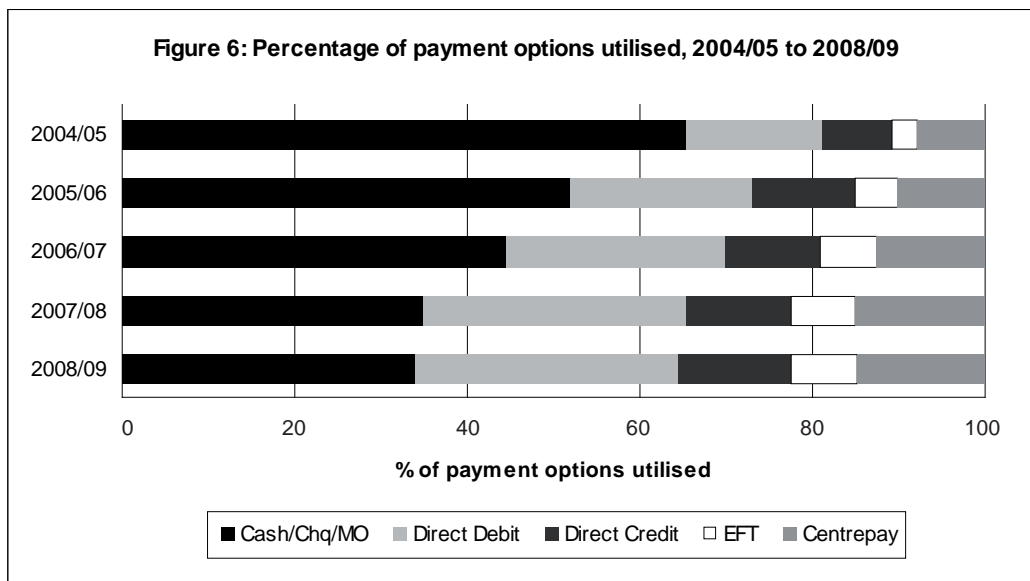
New payment options came into full effect in 2004 and include direct debit from a financial institution account, deduction from Centrelink social security payments through Centrepay, direct payment by the offender into the Department’s bank account using a provided deposit book, and electronic payments made over the Internet (EFT). As at 30 June 2009 approximately

4200 convicted offenders were using one of the new payment options. These options were set up without fees being payable by the debtor; this can save up to \$3.00 each month in fees associated with a purchase of a money order.

Since the payment options were introduced, there has been a significant reduction in the receipt of cash, cheques and money orders, as can be seen in the following figure:

Figure 6 shows the percentage of payment options utilised, 2004/05 to 2008/09.

In 2004/05, more than 65 per cent of receipts were made by cash, cheque or money order. This has reduced to 34 per cent in 2008/09. The remainder of receipts have come from direct debit (31%), Centrepay (15%), direct credit (13%) and EFT (8%). Tribunal staff will continue to encourage debtors to access the payment options.



SET OFF OF AWARDS AGAINST RESTITUTION (CONTRAS)

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 – section 31. Each year since 2003/04, an average of \$470 000 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 2008/09, \$592 474 was set off under section 31.

ARRANGEMENTS WITH THE DIRECTOR

The Act provides that the Director and the defendant may enter into an arrangement with respect to payment under a provisional/confirmed order – section 50. 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 237 arrangements amounting to approximately \$2.04 million were entered into against provisional orders. A further 173 arrangements amounting to \$1.31 million were entered into against confirmed orders made by the Tribunal. The amount agreed upon represented an average of 48 per cent of the amount provisionally ordered and payment generally is by monthly instalments.

Because of the difficulties in pursuing restitution for reasons previously reported it is far better to agree to an appropriate resolution of an offender’s financial liability to the Fund rather than take an uncompromising approach resulting in offenders defaulting on their obligation.

The offender, who usually acknowledges liability after service of a Provisional Order and seeks to settle the matter rather than become involved in a formal hearing, mainly initiates arrangements. The terms of the arrangement usually reflect both the financial circumstances of the offender and any mitigating circumstances including whether other convicted offenders were involved in the act of violence.

HEARINGS BEFORE THE TRIBUNAL

Approximately 2000 matters were listed for hearing or confirmation by the Tribunal during the year, resulting in orders amounting to approximately \$24 million; this represents an average of 83 per cent of the amount provisionally ordered. The majority of this amount will 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 23 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.

The Tribunal is bound in restitution matters under the 1987 Act by the decision of the Supreme Court in *Scott – O’Keefe J (2000) NSWSC 1148*. That decision considered section 45 of the 1987 Act. Section 51 of the current legislation broadly corresponds with section 45.

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 are for 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 because in the main the office is dealing with violent offenders who are often still under the terms of their sentence. Additionally, 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 1189 such orders in the year under review.

REGISTRATION OF CHARGE ON LAND

Amendments to the Act in 1999 enabled the Director, in appropriate circumstances, to apply to the Registrar General to register a restitution order in relation to any property of a convicted offender.

The Director has applied for the registration of orders valued at \$3.95 million against 172 offenders since the enactment of this provision. The action has resulted in the payment of approximately \$948 000.

There are limited opportunities for the Director to make such applications due to the small number of convicted offenders who are registered property owners. Where possible charges on land are pursued. Victims Services accesses NSW Department of Lands, Land and Property Information Database for this purpose.

RESTITUTION DEBTOR MANAGEMENT

Due to the complexity of restitution debtors, where a convicted offender may have multiple debts and may also be a co-offender, development of a computer system to manage, monitor and report of these debts has been a challenge. Continuing enhancements to Victims Services CARES workflow database system and its interface with the Department of Justice and Attorney General SUN financial system are providing ongoing improvements to the financial information necessary to determine a debtor’s compliance. Defaulter letters are regularly sent to debtors who have not complied with arrangements with the Director or orders made by the Tribunal.

REPAYMENTS

All awards of statutory compensation are paid pursuant to Standard Conditions of the Director (section 34). Where an applicant receives an award and also recovers money from any other sources in respect of matters arising out of the act of violence, the applicant is legally obligated to repay the award to the Fund. The Act is designed to prevent an applicant for statutory compensation from “double dipping”. Section 30(3) provides that in determining the amount of statutory compensation to award to a person, the Compensation Assessor must have regard to:

- (a) Any amount that has been paid to the person or that the person is entitled to be paid:
 - (i) by way of damages award in civil proceedings, or
 - (ii) under any other Act or law (including workers compensation), or
 - (iii) under any insurance or other agreement, and
- (b) Any other amount that has been received by the person or that (in the opinion of the assessor) is likely to be received by that person.

When any award is paid the notice of acceptance contains a clause that the applicant acknowledges repayment of the whole or any part of the amount of award where monies are received from other sources for the same act of violence.

Currently there are 170 matters where follow-up action is in hand. A significant number of repayments have been received and recently some matters have been cleared as the Director has obtained civil court outcomes. The Standard Conditions and the Act require an applicant to inform the Director of any future monies received in relation to the same act of violence, injuries, expenses and losses, however rarely do applicants advise the Director in accordance with their obligations. The Director becomes aware of these proceedings and subsequent awards, usually due to being served with a subpoena or in some instances because of media publicity or from defendants who lodge an objection to a Provisional Order. Where resources permit certain cases are investigated for repayment issues.

SUBPOENAS

Some 76 subpoenas were served on the Director during the year under review. Of this total, 12 related to proceedings in the criminal divisions of the Supreme, District or Local Court, where production was successfully opposed – pursuant to section 84.

RECOMMENDATIONS

Given my very short time in the position of Chairperson I consider it inappropriate for me to make any recommendations in this report. I have, however, carefully considered each of the Chairperson’s recommendations in the previous report for 2007/2008. I support each of those recommendations. The recommendation in relation to family victims is in my view especially important.

ACKNOWLEDGEMENTS

I gratefully acknowledge the assistance of the staff of Victims Services to victims of crime and the continuing valuable assistance provided to Tribunal members by Ms Samantha Lemusu and Mr Jhoven Latta. I especially acknowledge and thank Ms Louise Lenard Executive Officer Victims Services for her assistance and skill in the preparation of this report and the reports for the previous years. The Legal Officer/Solicitor for the Director, Ms Mahashini Krishna has continued to provide excellent professional service and advice in restitution matters. Ms Jennifer Wong has proved to be a very competent and efficient Legal Officer/Solicitor for the Fund. I particularly thank the Registrar Mr McAteer for his continued outstanding advocacy, leadership, advice and assistance. I am very indebted to my magisterial colleagues and Tribunal members Gilmore and Cleary. They have welcomed me with much patience, understanding and friendship. They are fine judicial officers.

