

Victims Compensation Tribunal
New South Wales

Chairperson's Report
2009/2010



Victims Services
Justice & Attorney General

Produced by
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(VCT09/10 • 11/10)



**Victims Compensation
Tribunal**
of New South Wales

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

29 November 2010

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 2010.

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.

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

Pursuant to the Act only magistrates are eligible to be appointed as members of the Tribunal. During the period under review the Chairperson, Magistrate B.A. Lulham together with Magistrates C.A. Gilmore and T.G. Cleary, and Magistrate J.O. Crawford, exercised powers of the Tribunal. All members hold office on a part time basis.

RETIREMENT OF TRIBUNAL MEMBERS, HIS HONOUR CHARLES AUGUSTINE GILMORE, AND HIS HONOUR THOMAS GEOFFREY CLEARY

2009 was a momentous year for the Tribunal as it saw the retirement of the three long-standing members of the Tribunal. His Honour Chairperson Cec Brahe retired as Chairperson of the Tribunal on 20 March 2009. He had served the New South Wales Department of Justice and Attorney General for 59 years, 19 years as an officer and 40 years as a Magistrate. His Honour Tribunal Member Charles Gilmore joined the Department in February 1954. At the time of his retirement from the Tribunal on 16 December 2009 he had served the Department for 56 years, 19 years as an officer and 37 years as a Magistrate. His Honour Gilmore continues to serve the people of New South Wales and the Department of Justice and Attorney General as a member of the Parole Board. His Honour Tribunal Member Geoff Cleary joined the Department on 27 April 1953. At the time of his retirement from the Tribunal on 2 January 2010 he had served the Department for 57 years, 17 years as an officer and 40 years as a Magistrate.

The three retiring Tribunal Members had a combined total of 172 years of service to the people of New South Wales and to the Department of Justice and Attorney General. His Honour Brahe was the Chairperson of the Tribunal for 17 years. Their Honour’s Gilmore and Cleary were each members of the Tribunal for 10 years. The retirement of the three members in the one year represented an enormous loss of experience, skill and wisdom which is sorely missed. I paid tribute to His Honour Brahe for his extraordinary service to the State in the Chairperson’s report for the financial year ending 30 June 2009.

His Honour Gilmore had an outstanding career as a Magistrate. He was Deputy Chief Magistrate from 1990 to 15 March 2000. He was Deputy to three Chief Magistrates. Her Honour Chief Magistrate Staunton commented at His Honour’s bench farewell on 15 March 2000 that;

“He is an outstanding lawyer whose judgments are always clear, elegantly expressed and rarely varied on appeal. His research skills are prodigious.”

He brought those skills to his duties at the Tribunal. His judgments were precise and succinct. He detested verbosity. Every appellant could well understand from his clear, concise language and logical reasoning why an appeal had succeeded or failed. His Honour can be very proud of his enormous contribution to the efficient and effective work of the Tribunal over 10 years.

His Honour Cleary presided as Magistrate in Charge at the Manly Local Court for many years. It was widely and properly regarded as one of the most efficient and best conducted Court in the state. Many of His Honour’s innovations and practices were adopted statewide. His Honour was revered for his prodigious work rate. His clarity of thought, superb expression and outstanding knowledge and application of the law set the standard for Magistrates throughout this state.

His Honour brought and applied all those skills and experience to his work at the Tribunal. His judgments are the essence of wise and considered discussion and finding of facts and the clear and correct application of the law.

They will serve as invaluable precedents for Tribunal Members for many years to come.

Their Honour’s Gilmore and Cleary can be justly proud of their enormous contribution to the administration of justice in this state. Appellants to the Tribunal have been very well served by these fine judicial officers. I thank them on behalf of the Tribunal and each and every member of staff and wish them well in their retirement.

APPOINTMENT OF HIS HONOUR JOHN ORMONDE CRAWFORD

His Honour John Ormonde Crawford was appointed a member of the Tribunal on the 12 January 2010.

His Honour comes to the Tribunal with a well deserved, distinguished reputation as a Magistrate. He joined the Department of Justice and Attorney General on 5 December 1960. He was appointed a Magistrate on 10 December 1979. He served as a Magistrate in the Children’s Court from 1984 to his retirement as a fulltime Magistrate on 12 October 2007. He was then appointed an Acting Magistrate.

His Honour enjoys legendary status as a researcher of the Law from all parts of the world. He brings much experience, wisdom and innovation to the Tribunal.

STAFFING

Staff numbers increased slightly during the year to 82 positions. Employee-related expenses also increased slightly from \$4.71 million to \$5.05 million in the year under review. Operational expenses fell slightly from \$2.62 million to \$2.50 million.

Ms Mandy Young was the acting Director, Victims Services during the year. I, and all the staff, were delighted when she was appointed permanently to that position on 6 September 2010.

SUMMARY OF IMPORTANT STATISTICS

- Applications for statutory compensation received during the review period totalled 9245.
- Assessors determined a total of 4374 claims for compensation.
- A total of \$60.3 million (statutory compensation awarded by Assessors and Tribunal Members on appeal, professional costs and disbursements) was paid.
- Pending compensation claims have increased from 13 328 to 18 030.
- The number of appeals to the Tribunal totalled 817 and 714 were determined. There were 307 appeals pending at the close of the financial year.
- Under the Approved Counselling Scheme, 6668 applications for initial counselling were received in 2009/10. 53 698 counselling hours were approved for victims of crime for initial and further applications for counselling. Payments of \$3.39 million were made to Approved Counsellors.
- Applications for initial counselling lodged online continued to increase. In 2009/10, 3408 online applications were received compared to 2382 in 2008/09, 2151 in 2007/08 and 1462 in 2006/07.
- A total of \$3.98 million was collected from convicted offenders during 2009/10 slightly up from the previous year.
- Electronic payment options are available for defendants who are liable to pay restitution. At the end of 2009/10 over 4656 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, Holt, Keays-Byrne, McAteer, Tilley, and Ms. Bell, Ms Gupta, Ms. Humphreys, Ms Krishna, Ms. Madison and Ms. Wong. Ms Krishna is the Acting Registrar, Ms Wong the Senior Advocate and Mr Holt is the Acting Legal Officer.

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, 2008/09 and 2009/10

	2008/09	2009/10
Received	8212	9245
Pending	13328	18030
Awards	2985	2709
Dismissals	1908	1665
Total determinations	4893	4374
Total money paid	\$60.28 million*	\$60.3 million*

* Including awards, costs, disbursements and Appeal awards and excluding VAS claims.

INCREASING CLAIMS

It was reported last year that the flow of applications for statutory compensation had shown an increase of approximately 17 per cent to 8212. For the year under review the applications received continued to increase – 9245, an increase of nearly 13 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, 2005/06 to 2009/10.

Figure 1b shows the number of applications received, on a monthly basis, 2005/06 to 2009/10.

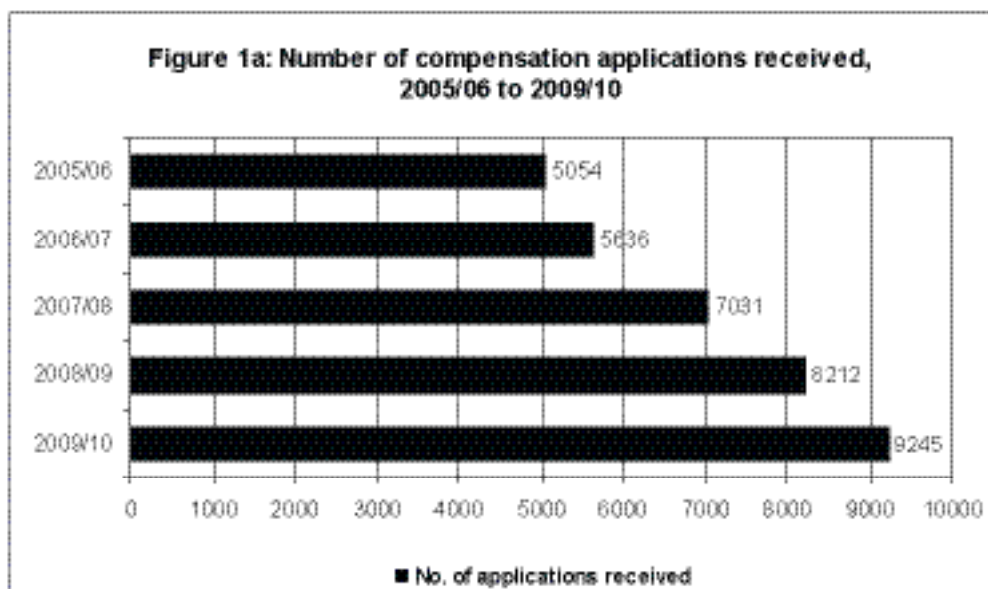
Figure 1c shows the number of primary victim applications received, by age of the applicant at the time of the act of violence, 2009/10. Claims by females continue to outnumber those by males.

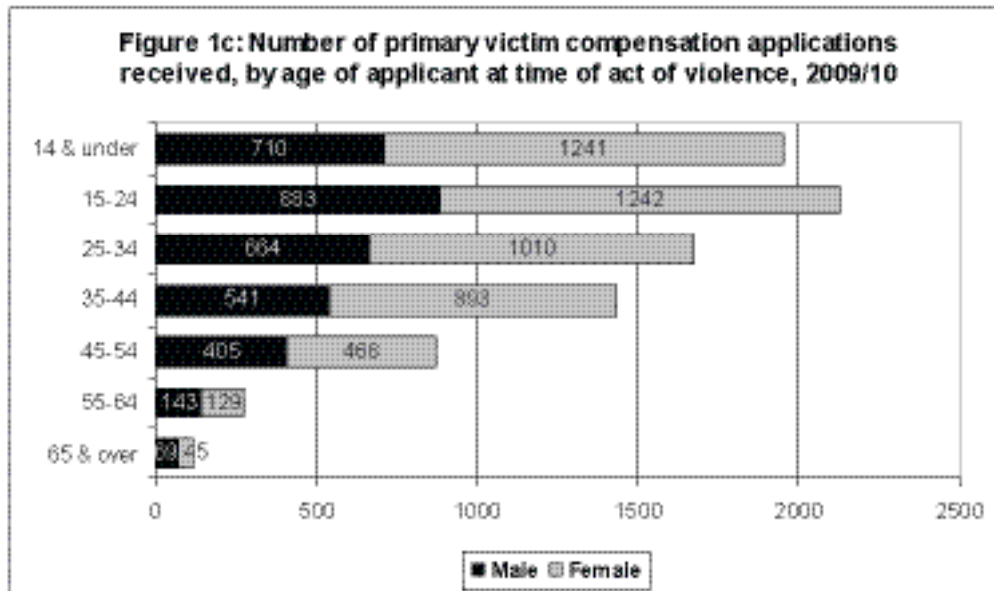
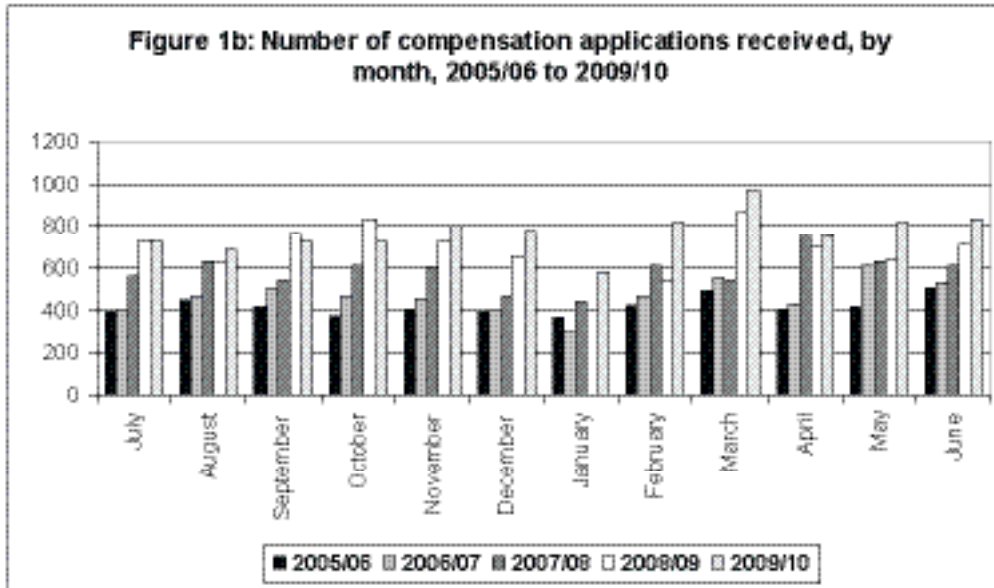
The increase has posed problems for Victims Services, and if the rate of lodgement continues, then those difficulties will escalate. The increasing number of claims lodged has led to a significant backlog – pending claims increased from 13 328 to 18 030. This is nearly triple the pending claims in 2005/2006 which was 6246. The increase in the number of lodgements and the increase in pending claims require urgent consideration of an increase in the budget in coming years.

There are various reasons for the increase in lodgement rates. The increase is in part due to the success of an ‘online’ lodgement form which commenced in November 2009.

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 have traditionally made awards of legal costs regardless of the outcome of the claim.

In June 2010, Assessors were generally dealing with claims lodged in October 2008. The time between lodgement and determination of 20 months is, in my view, outside an acceptable optimum period. At the same time, Tribunal members were generally dealing with appeals lodged in February 2010, which is just within the optimum period. The continuance of that disposal rate does however place a very heavy workload on the two Tribunal Members.





BUDGETARY CONSIDERATIONS

The following table highlights the increase in claims lodged and in outstanding claims from year ending 30 June 2006 to 30 June 2010.

<i>year ending</i>	<i>received</i>	<i>determined</i>	<i>outstanding</i>
30/6/06	5054	5342	6246
30/6/07	5636	4492	7297
30/6/08	7031	4013	10241
30/6/09	8212	4893	13328
30/6/10	9245	4374	18030

I am satisfied that the staff, Assessors and Tribunal Members of Victims Services are working very close to maximum capacity in dealing with the present number of applications lodged and determined each year. I do not believe that the present budget provided to Victims Services will enable the finalisation of more than about 4800 claims per year. At the end of this financial year it would seem that the time between lodgement and determination of a claim will exceed 2½ years. Such a delay is obviously disappointing and detrimental to applicants. The delay can also cause additional expense as, because of the delay, further up to date medical reports may be required. The present budget provisions only allow for about 4800 claims to be heard as, on average, the determination of that many claims will consume the budget available for compensation. The determination of that many claims fully utilises the resources of Victims Services.

It follows that if a real effort is to be made to reduce the delay and the number of outstanding claims, a considerable increase in budget allocation will be necessary to cover both the increase in funds available for compensation and also the increase in staff, Assessors and Tribunal Members which would be required to enable more than 4800 claims to be prepared and determined.

I am informed that the estimate of the value of the 18 030 outstanding claims as at 30 June 2010, based on the present average payment of \$12 300 per determined claim, is \$221,769,000.

DISMISSAL RATE

In the year under review, 1665 claims were dismissed by Assessors (see Figure 4c). This represents 38 per cent of claims determined, a slight decrease on the previous year and remaining considerably lower than the 52 per cent dismissal rate in 2004/2005.

When looking at the last five 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 81 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.

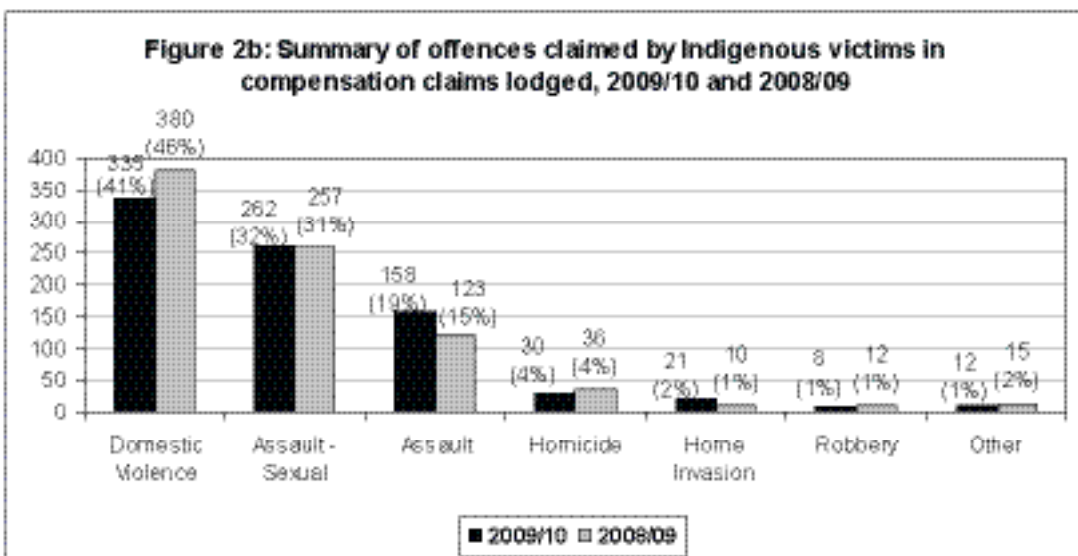
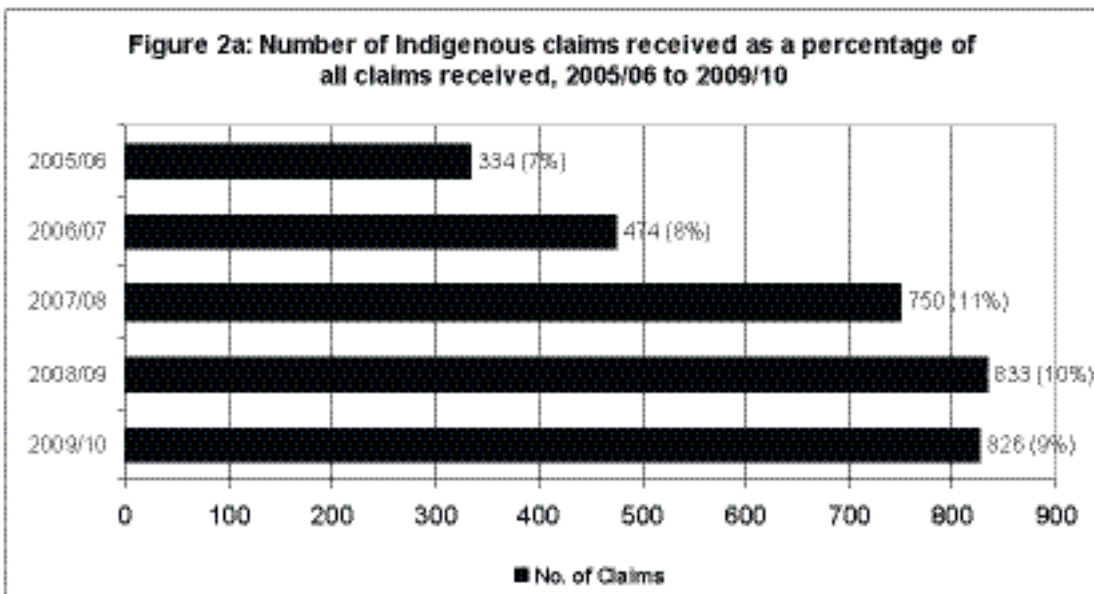
The major reasons for dismissal of applications related to the failure of the victim to establish an act of violence; or to establish a compensable injury; or that the amount of statutory compensation for the established compensable injury, and any deduction pursuant to section 30, did not meet the threshold of \$7500. However, due to a lower number of claims being based on assaults other than assaults in the nature of domestic violence, sexual assaults or armed robbery, section 30 issues have become less relevant. As a result fewer claims are being dismissed for issues arising under s30 of the Act.

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.

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.



FAMILY VICTIMS

The Tribunal received 275 claims from family members in relation to 185 deceased victims.

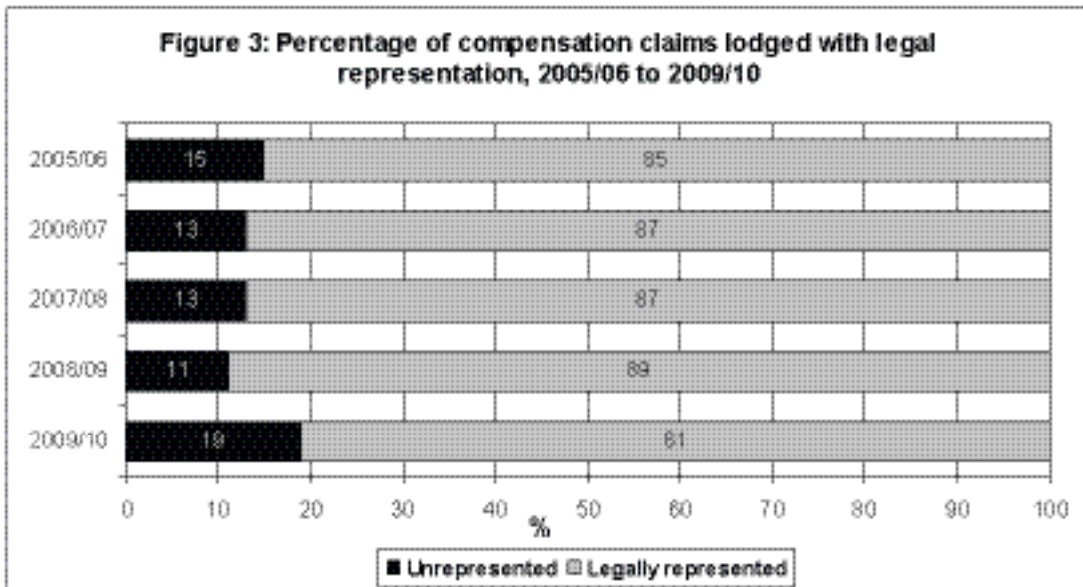
Leave was refused in 23 claims. Total payments, including interim payments of \$422 468 for funerals, amounted to \$3.4 million. 90 claims were dismissed. Most dismissals arose because the claimant was not dependant on the deceased at the time of the death, whereas another applicant or applicants were. Dependent claimants succeed to the exclusion of all other claimants. In some matters claimants were unable to establish that they were a family victim and in a small group of matters the death was ruled to be accidental or in unknown/unclear circumstances. A total of 167 applications for counselling by family members were received and 3268 hours approved.

UNREPRESENTED APPLICANTS/APPELLANTS

The proportion of unrepresented applicants lodging applications for statutory compensation has increased. The number of unrepresented applicants who lodged claims was 11 per cent in 2008/09 and was 19 per cent for 2009/10. This may be in part due to the streamlining of the application process commenced during the reporting period.

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, 2005/06 to 2009/10.



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 payments are capped at \$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.

In the year ended 30 June 2010, a total of \$58 295 was paid out during the year in relation to 66 claims. This included 38 payments for dental expenses and 26 payments for ambulance.

Whilst the maximum recoverable under the Scheme is \$1500, dental expenses frequently exceed that sum. In 2009/10, the maximum of \$1500 was paid in relation to 22 claims for dental expenses. 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 decreased slightly from 4893 to 4374.

This was due to an increase in the average payment. In 2009/10 the average payment was \$12 300, compared to \$11 615 in 2008/09.

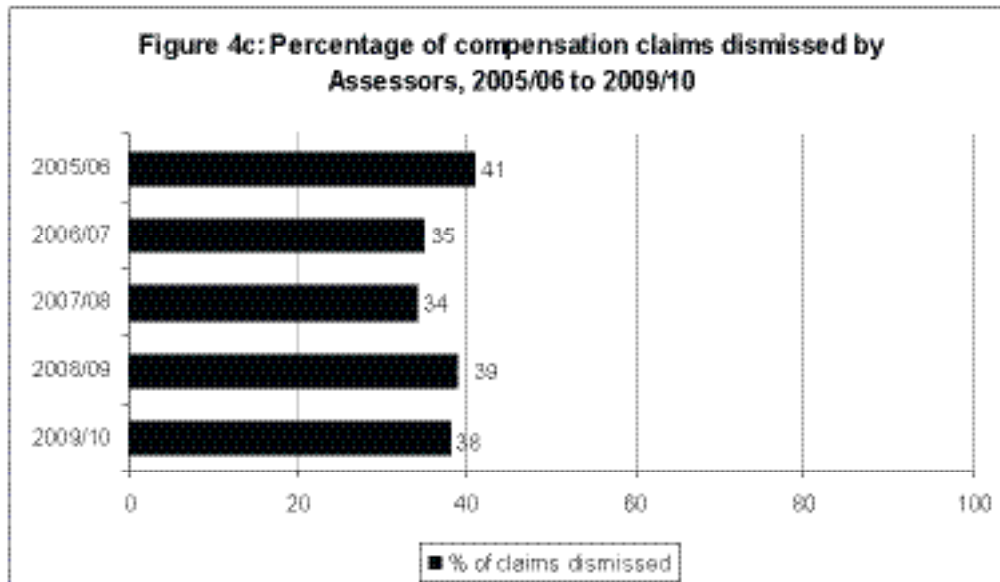
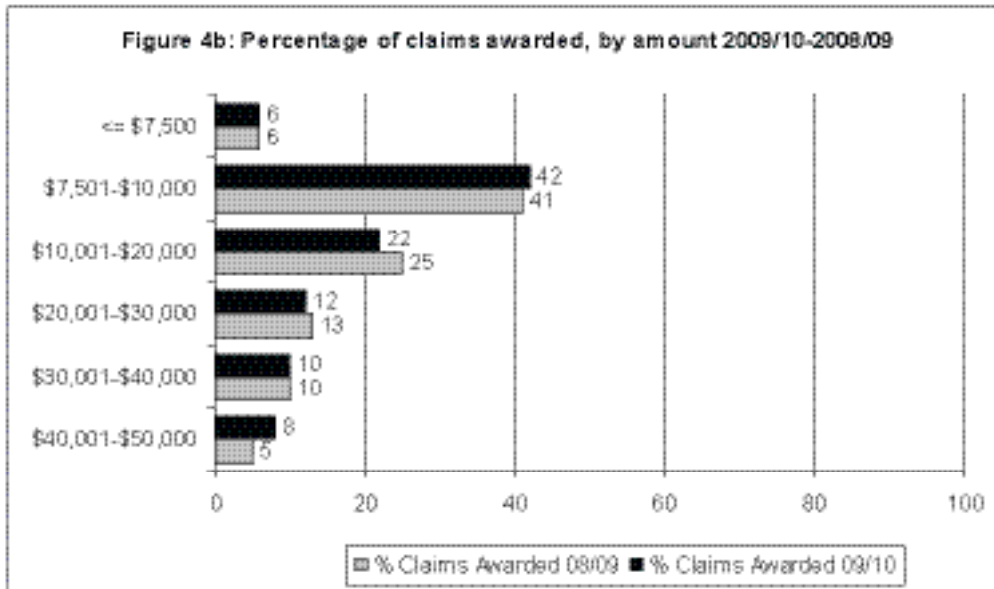
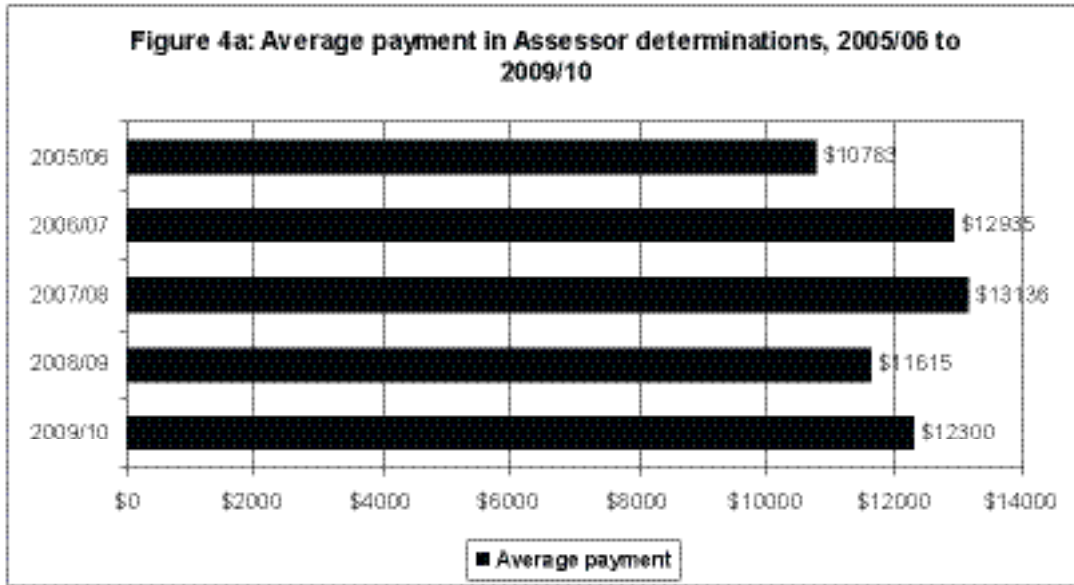
Figure 4a shows the average payment in Assessor determinations, 2005/06 to 2009/10.

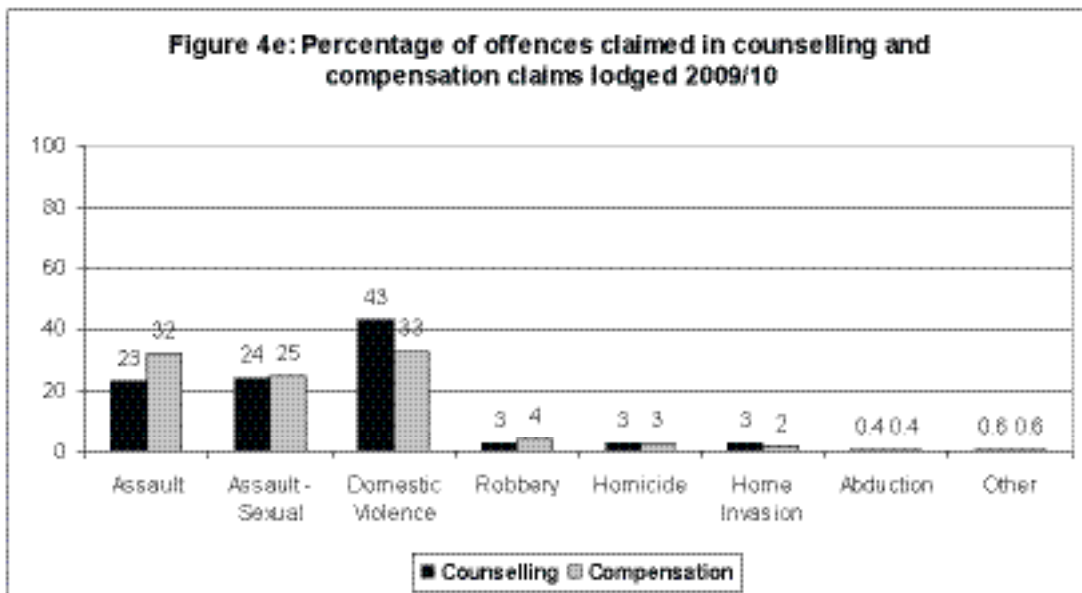
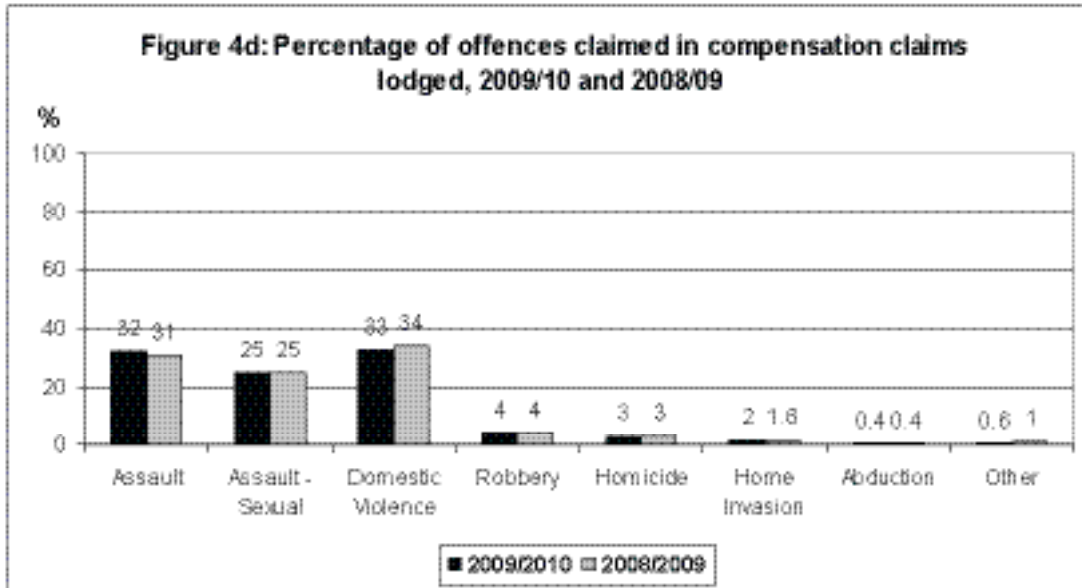
Figure 4b shows the percentage of claims awarded by amount, 2009/10 and 2008/09.

Figure 4c shows the percentage of claims dismissed by Assessors, 2005/06 to 2009/10.

Figure 4d shows the percentage of offences claimed in compensation claims lodged, 2008/09 and 2009/10. This figure highlights that domestic violence, assaults and sexual assaults are the most prevalent range of offences for which statutory compensation is claimed. In counselling claims the prevalent offences relate to domestic violence, sexual assaults and assaults.

Figure 4e shows a comparison of the percentage of offences claimed in counselling and compensation claims lodged, 2009/10.





COMPENSABLE INJURY OF SEXUAL ASSAULT

In the year 2009/10, Compensation Assessors determined 983 claims where sexual assault was recorded as the offence. Awards were made in 691 cases. The various categories of compensable injuries of sexual assaults where awards were made are:

- Sexual assault category 1 – 100 awards
- Sexual assault category 2 – 183 awards
- Sexual assault category 3 – 390 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.

Of the 691 successful applicants who claimed for sexual assault, 18 awards were made for chronic psychological or psychiatric disorder category 2, as a discrete injury having regard to section 11 of the Act. It is clear that for the vast majority of sexual assault claimants, the ‘offence based’ injury eg sexual assault category 1, category 2, or category 3 is more beneficial and meritorious to their successful claim, than a psychological injury presenting as a result of the ARW evidence.

Of the total awards for statutory compensation made in the year under review 26 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 911. Domestic violence is recorded as the offence in 1234 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 (797 awards)
- Chronic psychological or psychiatric disorder category 1 that is moderately disabling injury (12)
- Chronic psychological or psychiatric disorder category 2 that is severely disabling injury (70)
- Physical injuries (32)

Of the total awards of statutory compensation made in 2009/10, 34 per cent were for victims of domestic violence (domestic violence incident). My comments relating to the ultimate award of a discrete psychological injury and the evidentiary relevance of an ARW report to the outcome of the claim when discussing sexual assault claims, also broadly apply to domestic violence claims. However, this is slightly less relevant than with sexual assault claims, possibly due to their more beneficial quantum having regard to Schedule 1, clause 3.

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 4374 claims for statutory compensation determined in 2009/10, 2673 (61%) were accompanied by an ARW report. In those 2673 claims accompanied by an ARW report, the compensable injuries of a chronic psychological or psychiatric disorder category 1 or category 2 were awarded in 443 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 last year’s report. The expense incurred for 2673 ARW reports at \$605 per report is \$1,617,165. I again refer to my earlier comments relating to ARW reports and domestic violence and sexual assault based claims (above).

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.

During 2009/10, 3263 claims were lodged out of time as against 2921 in the previous year and 2272 in 2007/08.

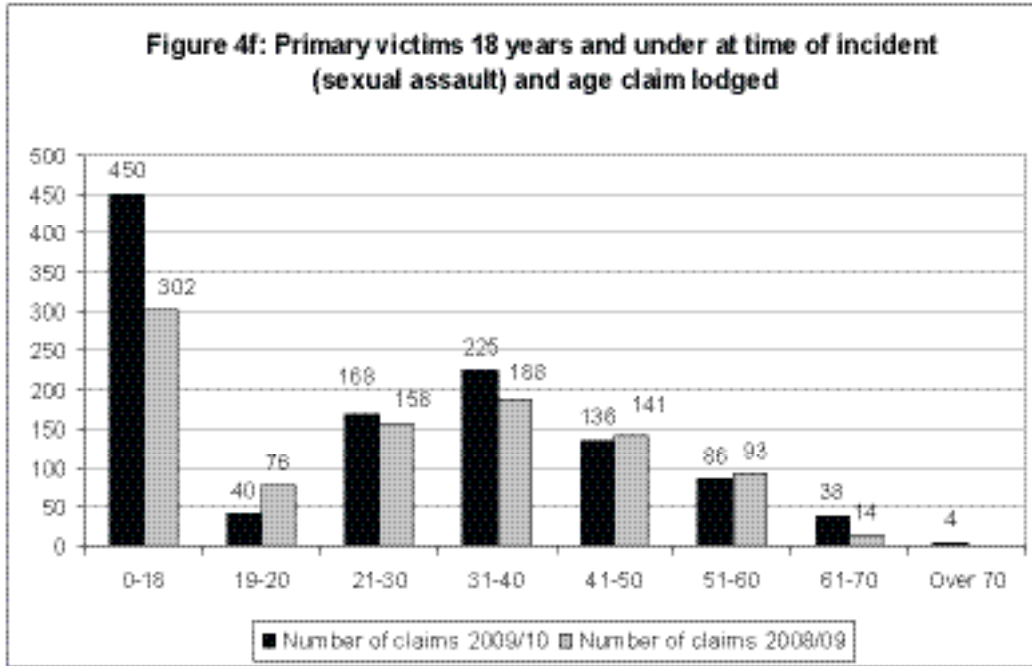
Table 3 sets out the number filed, result and offence claimed. The total number of sexual assault claims lodged out of time, 1590, included 1147 claims where the applicant was a child – under 18 years – at the time of the sexual assault.

Table 3: Compensation claims lodged, leave matters, 2009/10

	<i>Granted</i>	<i>Refused</i>	<i>Deferred</i>	<i>Decision pending</i>	<i>Total</i>
Sexual Assault	1113	12	3	462	1590
Domestic Violence	834	6	5	366	1211
Assault	169	39	13	94	315
Robbery	11	6	0	7	24
Family	42	8	1	23	74
Other	20	11	2	16	49
Total	2189	82	24	968	3263*

* 36 per cent of claims lodged.

Figure 4f 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.



Family members of homicide victims lodged 74 leave applications in 2009/10 going back to homicides that occurred as long ago as 1973.

APPEALS TO THE TRIBUNAL AGAINST DETERMINATIONS OF ASSESSORS

The Act provides for an appeal from a Compensation Assessor to the Tribunal. During the year 817 appeals were lodged with the Registry, a significant increase on the 684 appeals lodged in the previous year. Of those 83 per cent were against dismissals of the claims by Assessors, 13 per cent against quantum and the balance of 4 per cent against the Assessor under delegation refusing leave to lodge applications out of time.

Of the 714 appeals determined approximately 42 per cent were successful where the Tribunal either made an award or remitted the matter to a Compensation Assessor. Included in those 714 appeals were 31 appeals against refusal to grant leave to file applications for statutory compensation out of time. Of the appeals against refusal to grant leave 12 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, 2008/09 and 2009/10

	2008/09	2009/10
Appeals lodged	684	817
Appeals determined	657	714
Pending	204	307

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 2009/10 financial year the Tribunal dealt with 11 applications by convicted inmates awarding statutory compensation in four claims and dismissing seven. In the previous year the Tribunal dealt with 13 applications and made an award in four claims dismissing nine.

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 2009 and 30 June 2010, ten new appeals were filed in the District Court of New South Wales against Tribunal determinations under Division 6 of the Act. This is similar in number to the 10 appeals lodged in the last financial year 1 July 2008 to 30 June 2009.

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

- Eleven matters were heard and finalised in the District Court 1/7/2009 – 30/6/2010. As at 30 June 2010, two matters remain to be heard (or otherwise disposed of) in the District Court.
- Ten new appeals were filed in the District Court.
- A majority of matters were settled by consent. One was dismissed as the appellant filed an appeal to the District Court instead of the Tribunal. One matter was discontinued and one withdrawn. 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.

During the reporting period one appeal was lodged to the Supreme Court in respect of the Tribunal’s refusal to give leave to bring a claim out of time. The appeal was discontinued by the solicitors for the plaintiff.

As at 30 June 2010 there were no pending leave appeals seeking prerogative relief before the Court.

Compensation appeals to the Supreme Court: during the reporting period one appeal was lodged to the Supreme Court seeking prerogative relief to set aside the decision of the Tribunal Member. After obtaining instructions this matter was settled by consent.

Recovery proceedings appeals: No appeals were lodged to the Supreme Court under section 55 of the Act in respect of a determination of the Tribunal Magistrate in recovery proceedings where restitution was ordered to be paid by the perpetrator of the crime.

Court of Appeal

During the reporting period, one matter remains outstanding in the Court of Appeal. This is an appeal from the decision of the Supreme Court.

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 Ms Wong as the Fund Advocate/Solicitor has appeared as the Solicitor on record and before the Court. The appeals have been predominantly heard in the Sydney CBD during the period under review with one matter heard at Penrith, two in Wollongong and one matter in Parramatta.

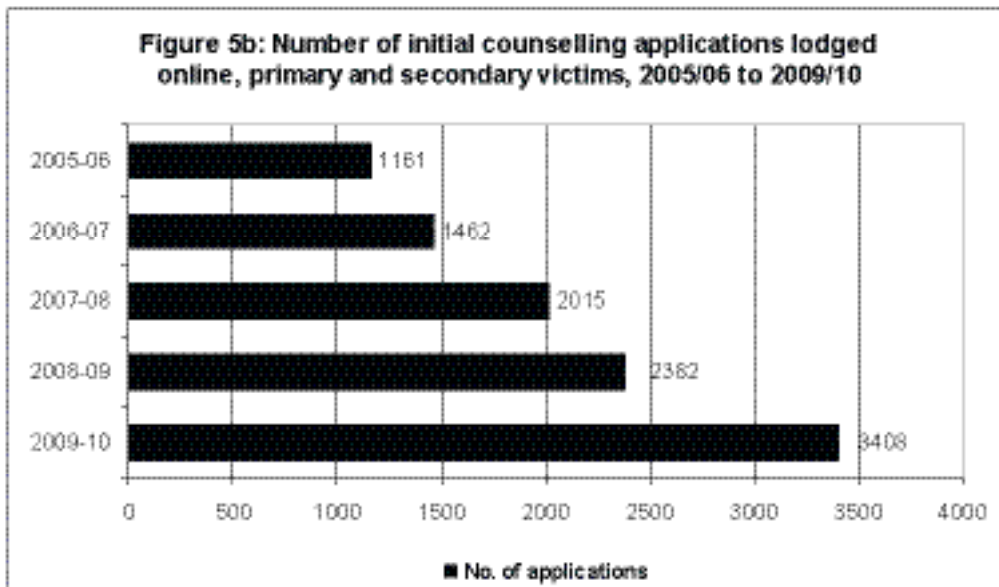
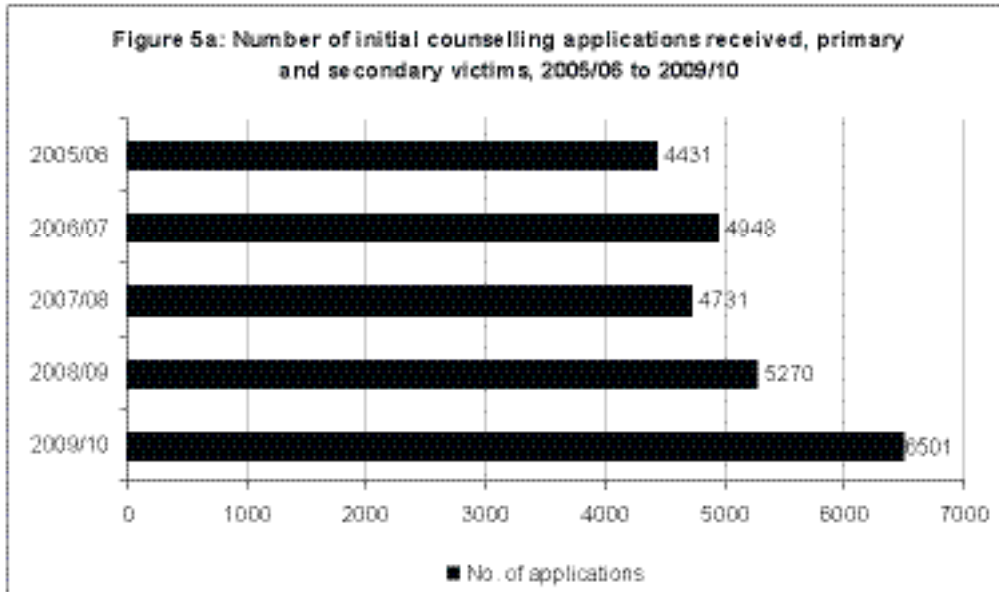
APPROVED COUNSELLING SCHEME

The Scheme was established under the 1996 Act. In 2009/10, 6668 applications for initial counselling were received including 6501 primary/secondary victims and 167 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, 2005/06 to 2009/10.

Figure 5b shows the number of initial counselling applications lodged online, primary/secondary victims, 2005/06 to 2009/10.



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 \$9.24 million as against \$6.95 million for the previous year: \$3.98 million was recovered from convicted offenders as against \$3.63 million the previous year. Court levies amounted to \$4.35 million as against \$3.29 million for the previous year and other revenue totalled \$0.91 million as against \$0.03 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 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 2009 restitution action was being commenced approximately eleven months after the date of the award. As at June 2010 this period was approximately thirteen months.

During the year under review 1544 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 48 per cent of cases where awards of statutory compensation are made.

RESTITUTION RECOVERY

The amount recovered from convicted offenders totalled \$3.98 million – an increase on the \$3.63 million recovered in the previous year.

Since the inception of the statutory scheme in 1988, more than \$48 million has been recovered from convicted offenders. In excess of \$35 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 as at 30 June 2010 was approximately 9.8% of the level achieved in the previous financial year. 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

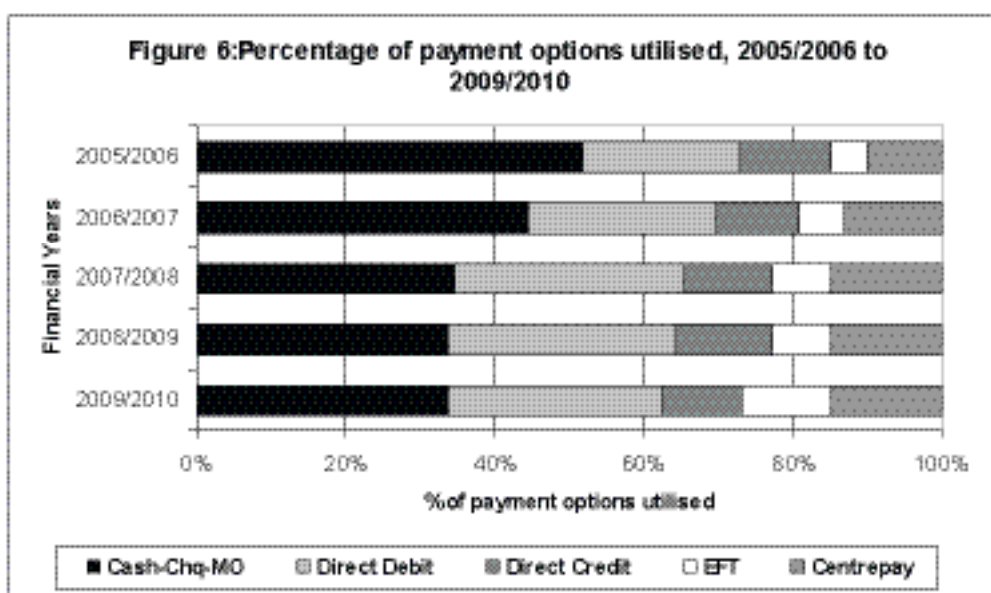
New payment options came into full effect in 2004 and include direct debit from a financial institution account, deduction from Centrelink social security payments through Centrepay, direct payment by the offender into the Department’s bank account using a provided deposit book, and electronic payments made over the Internet (EFT). As at 30 June 2010 approximately 4656 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 \$6.55 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, 2005/06 to 2009/10.

In 2005/06, more than 52 per cent of receipts were made by cash, cheque or money order.

This has reduced to 34 per cent in 2009/10. The remainder of receipts have come from direct debit (29%), Centrepay (15%), direct credit (11%) and EFT (11%). 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 \$460 000 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 2009/10, over \$400 000 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 246 arrangements amounting to approximately \$2.76 million were entered into against provisional orders. A further 244 arrangements amounting to \$1.57 million were entered into against confirmed orders made by the Tribunal. The amount agreed upon represented an average of 56 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 2190 matters were listed for hearing or confirmation by the Tribunal during the year, resulting in orders amounting to approximately \$17 million; this represents an average of 78 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 22 per cent of these matters.

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

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 743 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 \$4.29 million against 195 offenders since the enactment of this provision. The action has resulted in the payment of approximately \$1 018 755.

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 awarded 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 an 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 192 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 evidence of 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 79 subpoenas were served on the Director during the year under review. Of this total, 5 related to proceedings in the criminal divisions of the Supreme, District or Local Court, where production was successfully opposed – pursuant to section 84.

LAW WEEK 2010

Victims Services participated in the Law Week road show from 17 May to 21 May 2010. The theme for Law Week was “Law and Justice in your Community”.

Representatives from Victims Services, Diversity Services, Legal Aid NSW, Law Access, the Aged Care Rights Service/Older Persons Legal Service, NSW Trustee and Guardian, Hume-Riverina Community Legal Service, Local court staff and representatives from the Aboriginal Community Justice Group participated in events.

The road show visited South West NSW, specifically Albury, Wagga Wagga, Narrandera, Leeton and Griffith. Presentations and community consultations were held in Public Libraries and at Aboriginal Community Centres and Land councils.

Victims Services staff provided information on the rights of victims of crime and compensation and counselling available from Victims Services.

While some of the events were poorly attended, there were some cases where the people who were reached were individuals who needed assistance and would not have reached out to DJAG otherwise. In addition, contact was made with local service providers and networks developed. Local television and newspapers gave good coverage of the Road Show and of the issues presented.

RECOMMENDATIONS

LIMITATION PERIODS

The previous Chairperson, His Honour Brahe made eight recommendations to Government in the Annual Report for the year ending 30 June 2008. I understand that the recommendations are presently being considered by Government. Discussions have been held regarding the recommendations between officers of Victims Services and officers of the Justice and Attorney General’s Department. Pending the finalisation of the consideration of those recommendations, I propose to make one further recommendation which is a variation of a recommendation by His Honour Brahe.

His Honour Brahe recommended that Government should limit the time for lodging claims for sexual assault. In support of that recommendation His Honour noted that during the year ending 30 June 2008 there were 124 claims lodged by primary victims who were 18 years and under at the time of the sexual assault but were aged 41 and over at the time of lodging the claim. For year ending 30 June 2010 the number of such claims lodged increased to 264. Of those 264 claims, 136 of the victims were aged between 41 and 50, 86 were aged between 51 and 60, 38 were aged between 61 and 70 and 4 were aged over 70 at the time of the lodgement of the claim. The claims are very time consuming to deal with. They are nearly always accompanied by an ARW report at a cost of \$605 to the Fund. It is difficult to obtain exact figures but experience would indicate that more than half of the claims are unsuccessful. The unsuccessful applicants have had their hopes raised by reason of their being granted leave to bring the claim out of time pursuant to section 26 of the Act which requires leave to be given in such cases unless the Director is satisfied that there is no good reason to do so. The disappointment and anguish caused to unsuccessful applicants in these cases is considerable and, in my view, the harm may well outweigh the benefit in terms of support and rehabilitation in awarding compensation to the successful applicants where the act of violence occurred at least more than 20 years previously and, in many cases, more than 40 years previously. In my view, serious questions can be raised as to whether such payments comply with the Objects in section 3 of the Act to provide “support and rehabilitation for victims of crimes of violence”. Moreover, in the very rare circumstances that a victim of sexual abuse or domestic violence develops or re-experiences difficulties arising from an act of violence which occurred more than 20 years ago such victim would still be entitled to apply for and receive counselling free of charge under the present counselling scheme.

Similar difficulties are arising in relation to claims for domestic violence. Far more claims are being lodged relying on single incidents of domestic violence (eg. an assault), which occurred 20 or 40 or more years ago. The claim will usually be one of a series of claims made by an applicant against her former partners spreading over the applicant’s lifetime. The claim will be supported by statutory declarations or statements by witnesses (usually members of the family) and supported by reports from health professionals opining that as a result of the assault the appellant suffered psychological harm. Such claims will often be successful because they comply with the requirements of the Act. However again in my view the same question may be raised as to whether payments to such applicants comply with the Objects of section 3 of the Act. In my view they certainly do not represent the best use of the sparse resources of the Fund.

RECOMMENDATION

I recommend that there should be a final limitation period within which all claims, including those for sexual assault and domestic violence, must be lodged. I consider the appropriate period of limitation to be 20 years after the act of violence or 20 years after the applicant attains the age of 18 years, whichever is the later.

ACKNOWLEDGEMENTS

I gratefully acknowledge the assistance of the staff of Victims Services to victims of crime and to the public generally. I acknowledge and thank the Director, Mandy Young, for her leadership, direction and support during the year. I particularly thank the staff in the appeals section Ms Samantha Lemusu and Ms Colleen Frazer, Mr Jhoven Latta and Mr Nigel Carter for the excellent support and expertise provided by them to Tribunal members. I especially acknowledge and thank Ms Louise Lenard, Executive Officer, Victims Services for her expertise and support in the preparation of this report and the reports for previous years. During the 12 months under review our Registrar Mr John McAteer was seconded to the NSW Privacy Office. We miss his encyclopaedic knowledge of

the Act and Law and his effective, kindly leadership. Ms Mahashini Krishna has acted as Registrar and does an excellent job. She also acts as Legal Officer/Solicitor and Senior Advocate for the Fund. She has overseen the daily workings of the Tribunal in a most commendable and friendly manner. Mr Miles Holt was appointed Legal Officer and is a most welcome and competent addition to staff. During the year Ms Jenny Wong, the Senior Advocate, was seconded to the Crown Solicitors Office. She is greatly missed. I have singled out the members of staff with whom the Tribunal members have most contact and upon whom we particularly rely. I appreciate and thank all members of staff for their contribution to the efficient and effective administration of Victims Services. Finally, I thank my magisterial colleagues and Tribunal Members, Gilmore, Cleary and Crawford for their dedication, loyalty and friendship.

