



Victims Compensation Tribunal
New South Wales

Chairperson's Report
2010/2011



Victims Services
Attorney General & Justice

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

Further copies may be obtained from

The Chairperson
Victims Compensation Tribunal
Locked Bag 5118
Parramatta NSW 2124

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

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(VCT 2010/11 • 11/2011)



**Victims Compensation
Tribunal**
of New South Wales

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

9 November 2011

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 2011.

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 J.O. Crawford and A.D. Moore, exercised powers of the Tribunal. All members hold office on a part time basis.

This report covers the period of the financial year 1 July 2010 to 30 June 2011. I intend to use the term “the year” when referring to that period.

Appointment of Tribunal Member His Honour Allan Darroll Moore

His Honour Allan Darroll Moore was appointed a member of the Tribunal on 28 February 2011.

His Honour comes to the Tribunal with a well deserved, distinguished reputation as a Magistrate. He commenced with the Department of Attorney General and Justice in 1968 and worked at Court Houses throughout NSW until 1989. He was appointed as a Magistrate on 24 April 1989. He served as a Magistrate at Cootamundra, Downing Centre, Manly, Central Local Court, Hornsby and Burwood. For 11 years of his career he was the Magistrate in Charge at the Central Local Court hearing the most serious criminal matters in the state during that period. He was also appointed an Industrial and Licensing Magistrate. He retired as a full time Magistrate on 31 December 2010. He was then appointed an Acting Magistrate on 1 February 2011 doing general relieving work as well as his duties with the Tribunal.

Staffing

Staff numbers increased slightly during the year from 82 to 84 positions. Employee-related expenses increased from \$5.05m to \$6.78m in the year under review. The increase is largely explained by the following matters:

- (i) A four per cent salary increase from 1 July 2010.
- (ii) From 1 July 2010 the nine per cent super guarantee was paid by the Fund whereas in prior years this expenditure was met by the Department of Attorney General and Justice.
- (iii) Also effective from 1 July 2010 accounting for temporary agency staff is now included in the accounts as employee-related expenditure whereas previously these costs appeared under operational expenses.

Operational expenses fell during the year from \$2.50m to \$1.99m. The decrease is attributed to accounting for temporary agency staff now included in employee-related expenditure effective from the 1 July 2010.

Legal Officer Ms Mahashini Krishna has continued to act as Registrar whilst Mr John McAteer continues on secondment in a temporary position with the Office of the Privacy Commissioner.

Amendments to the Act

Significant amendments to the *Victims Support and Rehabilitation Act 1996* were made in the *Courts and Crimes Legislation Further Amendment Act 2010* which was assented to on 7 December 2010. Amendments were made to;

- ♦ Section 5(3) – related acts
- ♦ Section 14A – Victims Assistance Scheme (VAS)
- ♦ Section 14(2) – effect of death of secondary and family victims on outstanding claims
- ♦ Section 21 – Approved Counselling Scheme
- ♦ Section 23A – preclusion from making claims for acts of violence that pre-date the determination of a successful claim
- ♦ Section 26 – family victims - time for lodging claims
- ♦ Section 26A, section 26B – withdrawal and lapsing of claims
- ♦ Section 35 – professional costs on applications and appeals

The amendments took effect from 1 January 2011. Victims Services is carefully monitoring the effect of the amendments, particularly those regarding the awarding of legal fees, related acts and the section 23A preclusion of some claims.

Independent assessment of the Victims Compensation Scheme

The NSW Attorney General, The Honourable Greg Smith SC MP announced on 11 August 2011 that the Government has ordered an independent assessment of the Victims Compensation Scheme with a view to delivering faster and more effective financial support to victims of violent crime. Although the announcement was made outside the period covered by this report I consider it important to acknowledge the announcement as it would appear that the assessment will consider many of the issues raised in previous Chairpersons’ Reports. The Attorney announced that the NSW Government will engage independent experts to;

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

I very much welcome the Attorney’s announcement. No doubt victims advocates, legal practitioners and all interested stakeholders will be afforded the opportunity to make submissions during the assessment process. I would urge them to do so.

Summary of important statistics

- ♦ Applications for statutory compensation received during the year totalled 8,854.
- ♦ Assessors determined a total of 4,973 claims for compensation.
- ♦ A total of \$63.2m (statutory compensation awarded by Assessors and Tribunal Members on appeal, professional costs and disbursements and Approved Counselling) was paid.
- ♦ Pending compensation claims have increased from 18,030 to 21,610.
- ♦ The number of appeals to the Tribunal totalled 635 and 735 were determined. There were 254 appeals pending at the close of the financial year.

- ♦ Under the Approved Counselling Scheme, 6,717 applications for initial counselling were received during the year. There were 74,232 counselling hours approved for victims of crime in initial and further applications for counselling. Payments of \$3.42m were made to Approved Counsellors.
- ♦ Applications for initial counselling lodged online continued to increase. There were 3,811 online applications received during the year compared to 3,408 in 2009/10, 2,382 in 2008/09 and 2,015 in 2007/08.
- ♦ A total of \$4.08m was collected from convicted offenders during the year slightly up from the previous year.
- ♦ Electronic payment options are available for defendants who are liable to pay restitution. 5,167 debtors had taken up this option by 30 June 2011.

VICTIMS SUPPORT AND REHABILITATION ACT 1996

Compensation Assessors

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

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

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

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

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

Applications

Table 1: Summary of compensation applications, 2009/10 and 2010/11		
	2009/10	2010/11
Received	9,245	8,854
Pending	18,030	21,610
Awards	2,709	2,935
Dismissals	1,665	2,038
Total determinations	4,374	4,973
Total money paid	\$60.3m*	\$63.2m*

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

Number of claims

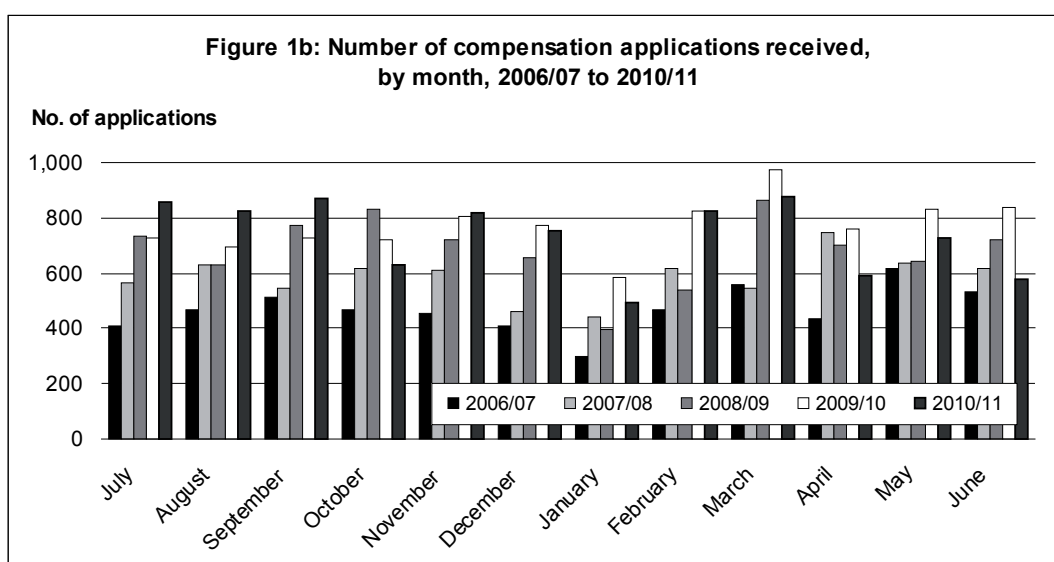
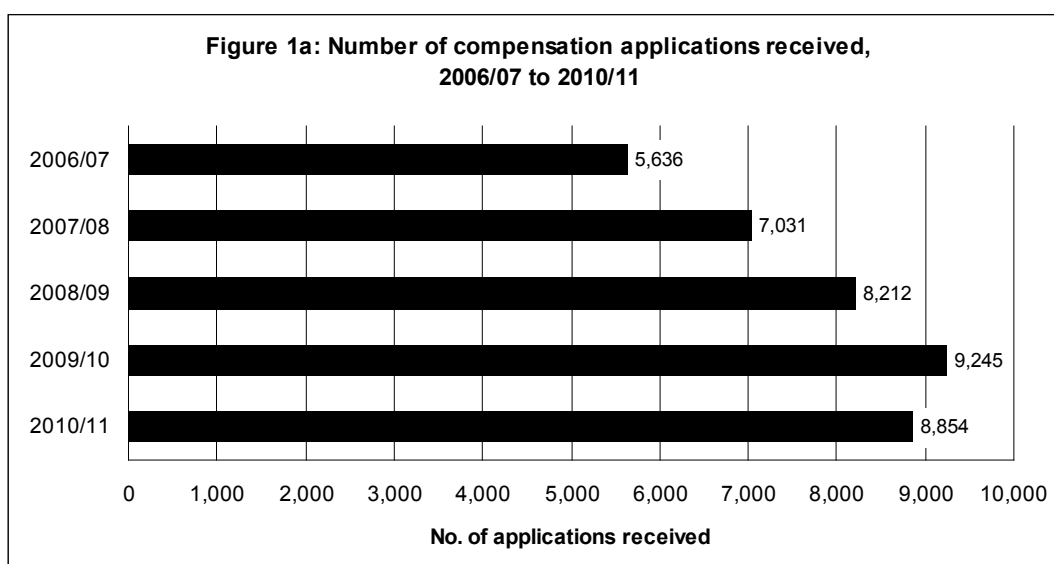
Last year I reported that the number of applications for statutory compensation lodged during that year increased approximately 13 per cent to 9,245. For the year under review 8,854 applications for compensation were received, representing a decrease of approximately four per cent over the previous year. The figures below indicate the following:

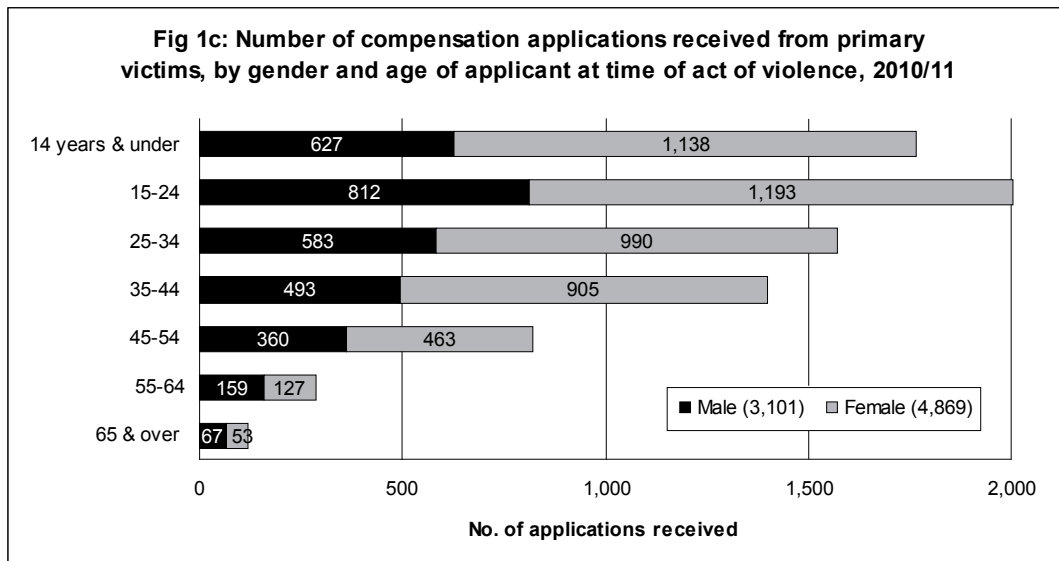
Figure 1a shows the number of compensation applications received, 2006/07 to 2010/11.

Figure 1b shows the number of compensation applications received on a monthly basis, 2006/07 to 2010/11.

Figure 1c shows the number of compensation applications received from primary victims by gender and age of the applicant at time of the act of violence, 2010/11. Claims by females continue to outnumber those by males.

As the figures show, the number of applications received this year was 8,854 while the number of determinations was 4,973. The number pending (as set out in Table 1) has also increased, from 18,030 to 21,610. The increase in pending claims has resulted in the time between lodgement and determination of claims by the Assessor at June 2011 reaching 25 months, which in my view is outside an acceptable optimum period.





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. The Director has a discretion to accept applications that are lodged out of time. The section provides that in the case of sexual assault, domestic violence or child abuse, leave should be granted unless the Director is satisfied that there is no good reason to do so. In all other cases leave should not be given unless the applicant establishes that there is good reason to do so.

During the year, 2,956 claims were lodged out of time as against 3,263 in the previous year and 2,921 in 2008/09.

Table 2 sets out the number of late applications filed, the result and the offence alleged. The total number of sexual assault claims lodged out of time, 1,589, included 1,216 claims where the applicant was a child (under 18 years) at the time of the sexual assault.

Table 2: Compensation claims lodged, leave matters, 2010/11

	<i>Granted</i>	<i>Refused</i>	<i>Deferred</i>	<i>Decision pending</i>	<i>Total</i>
Sexual Assault	1,551	9	18	11	1,589
Domestic Violence	981	18	7	9	1,015
Assault	141	33	17	27	218
Robbery	21	12	1	5	39
Homicide	30	21	0	5	56
Home Invasion	8	6	3	1	18
Other	11	5	1	4	21
Total	2,743	104	47	62	2,956*

* 33 per cent of claims lodged.

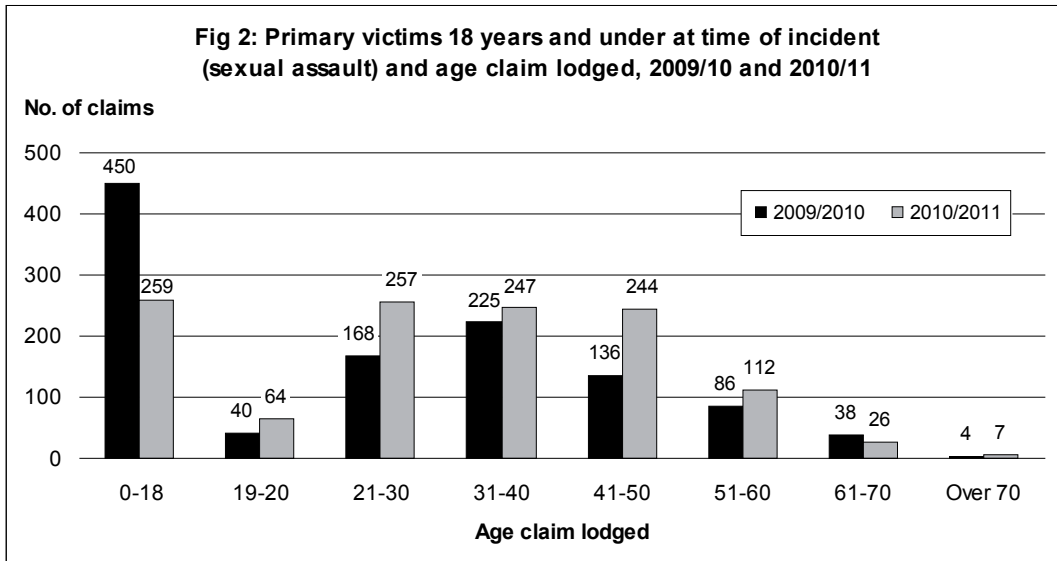


Figure 2 shows the number of claims (sexual assault) lodged by primary victims 18 years and under, by age at time of lodgement of the claim, 2009/10 and 2010/11.

The highly significant statistic is that 389 claims were lodged where the victim was aged 18 years and under at the time of the alleged offence but aged between 41 and 90 years at the time of lodgement of the claim. There were 264 similar claims lodged in the previous year. Those historical sexual assault claims give rise to difficulties both for the applicant and the Assessor/Tribunal dealing with them because of the time lapse. It is these claims that are the basis for the recommendation to the Government contained later in this report.

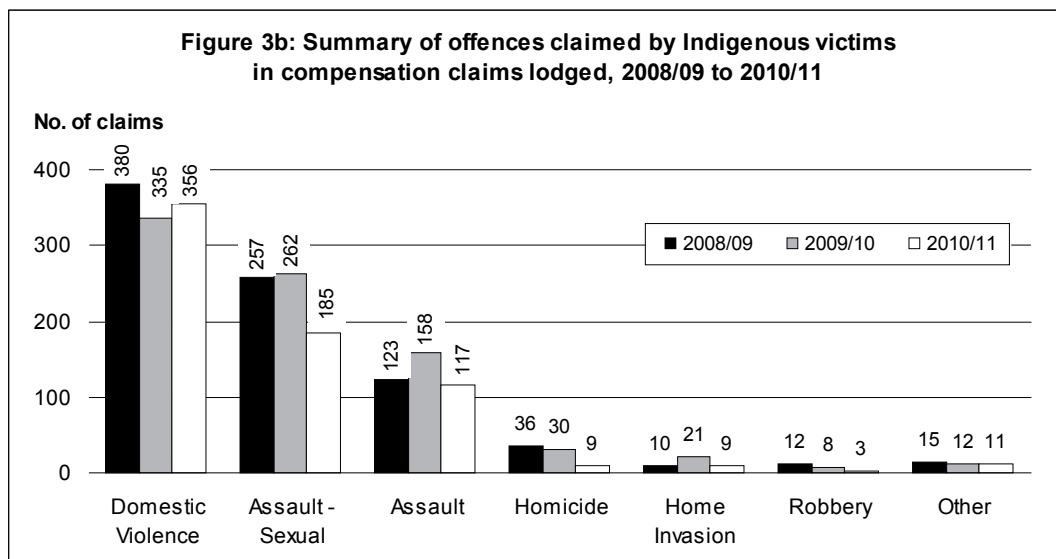
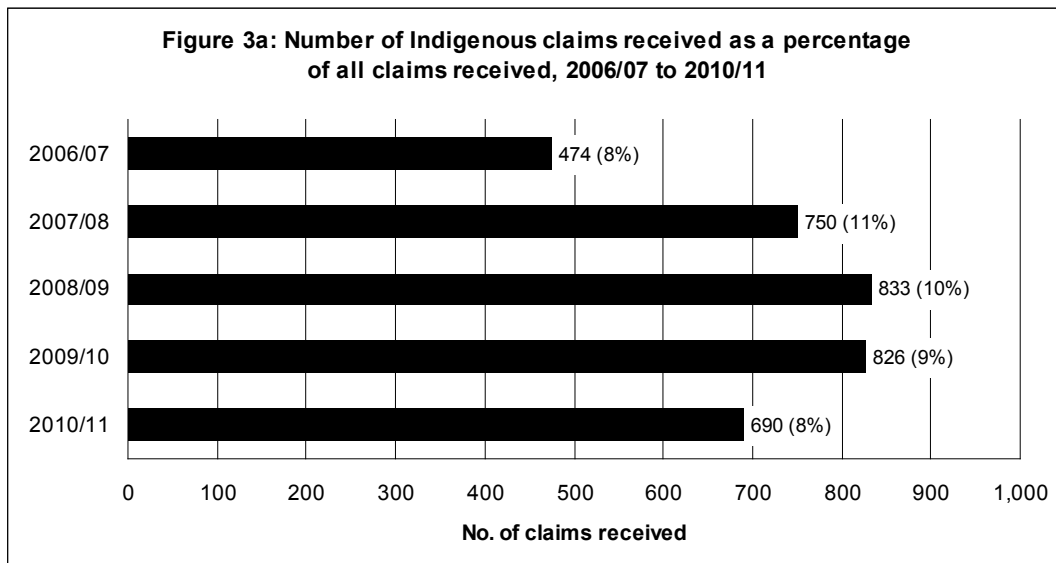
Family members of homicide victims lodged 56 leave applications in 2010/11 going back to homicides that occurred as long ago as 1957.

Indigenous claims

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

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

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



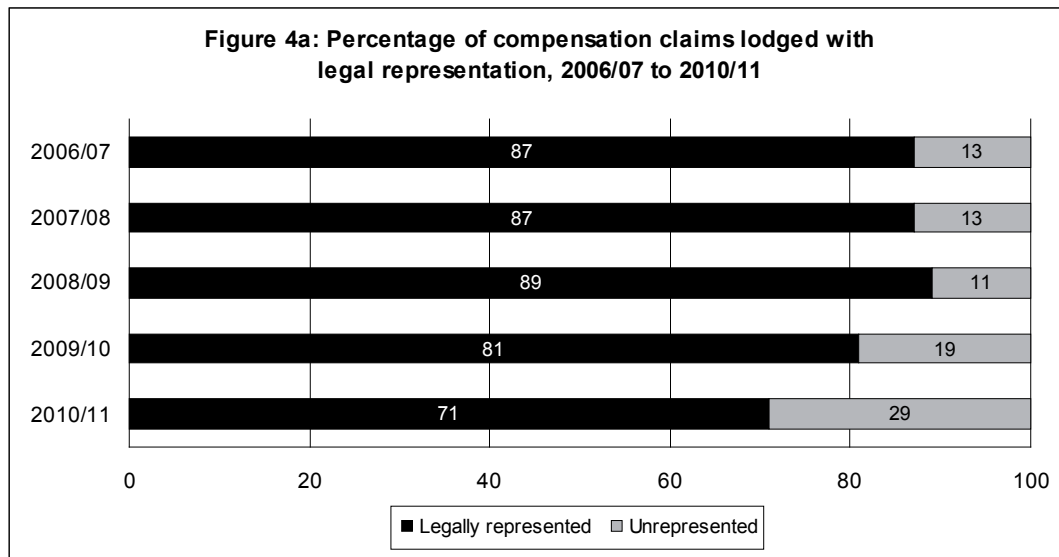
Unrepresented applicants/appellants

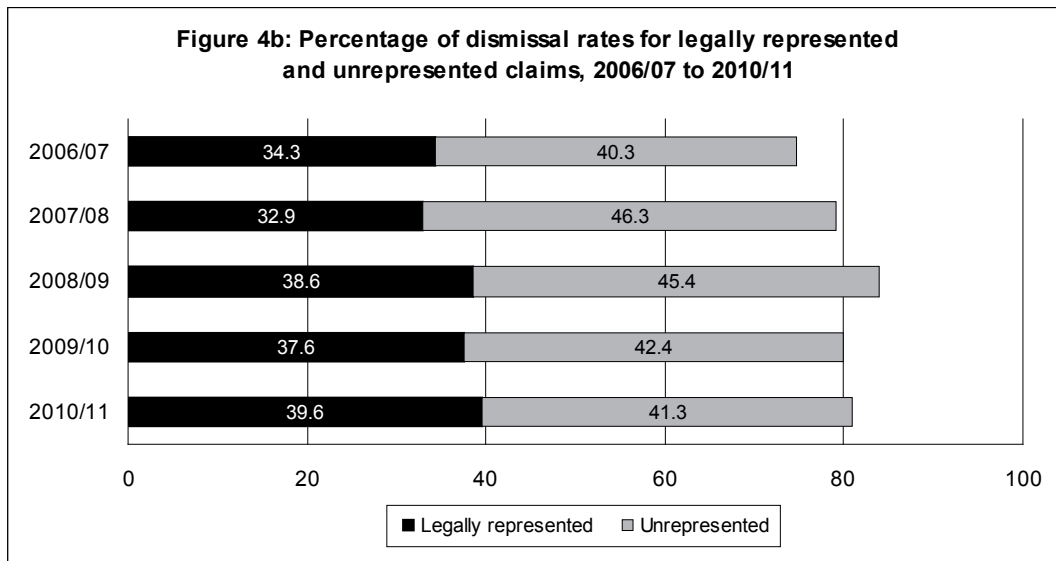
The proportion of unrepresented applicants lodging applications for statutory compensation increased from 19 per cent in 2009/10 to 29 per cent in the year under review. Victims Services is closely monitoring this trend. It may well be due to a reduction in the number of legal firms prepared to do victims compensation matters. The reduction in legal fees provided for in the 2010 amendments to the Act has made the work less financially attractive. There is also some evidence that some legal firms are being more selective in commencing claims, leaving applicants with claims with less chance of success having to bring such claims without legal representation. The question of the funding of appropriate legal assistance to applicants and appellants will be an important matter for consideration and recommendation by the independent assessment review.

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

Figure 4a shows the percentage of compensation claims lodged with legal representation, 2006/07 to 2010/11.

Figure 4b shows the percentage of dismissal rates for legally represented and unrepresented claims, 2006/07 to 2010/11. The percentages in this figure are calculated within each category.





Determinations by Assessors

The number of applications determined by Compensation Assessors during the year increased from 4,374 to 4,973.

It is pleasing to note that the number of determinations finalised during the year increased by 599 – a compliment to the consistently hard work performed by the Assessors.

Figure 5a shows the average payment in Assessor determinations, 2006/07 to 2010/11.

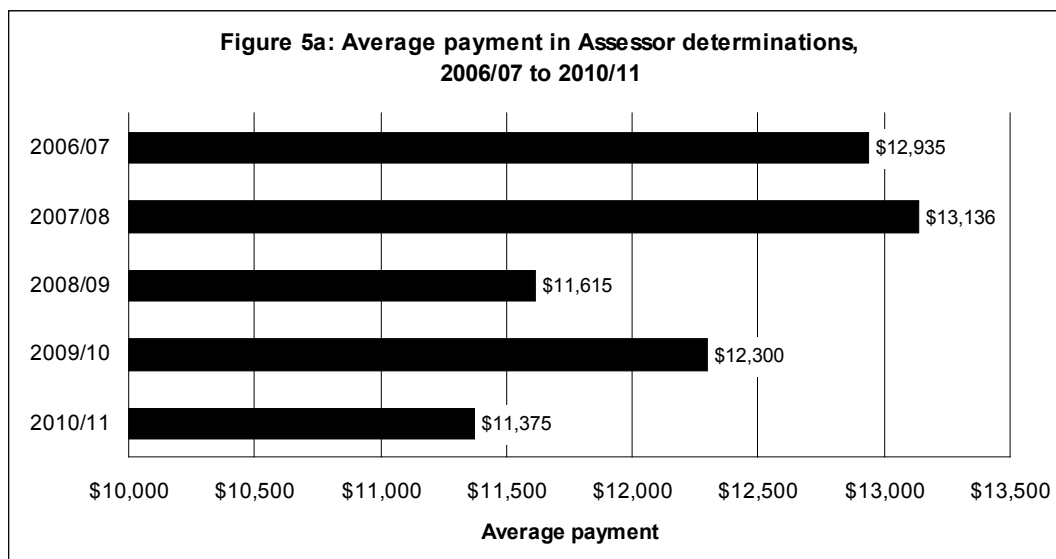
Figure 5b shows the percentage of claims awarded by amount, 2009/10 and 2010/11.

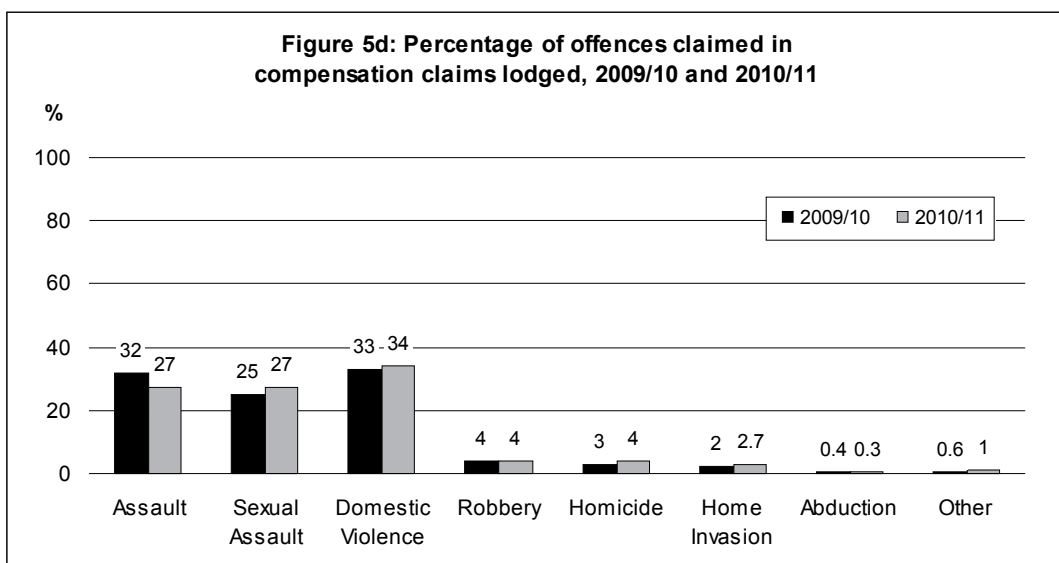
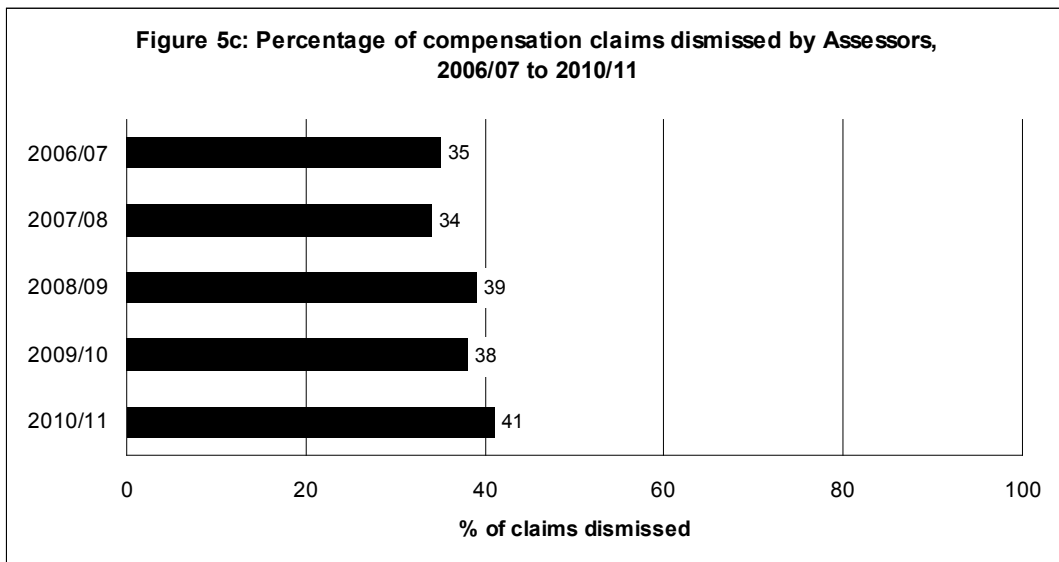
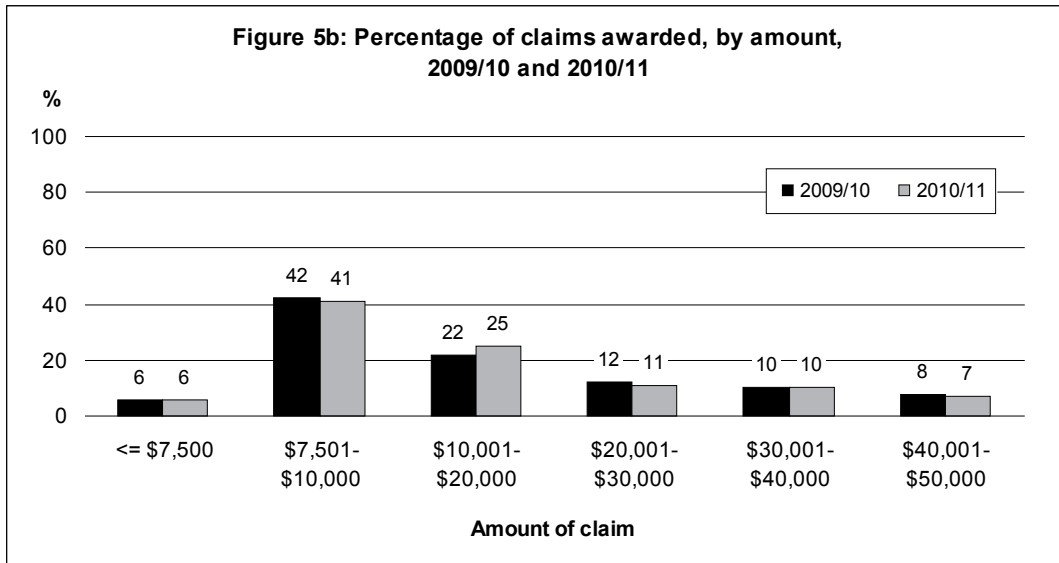
Figure 5c shows the percentage of claims dismissed by Assessors, 2006/07 to 2010/11.

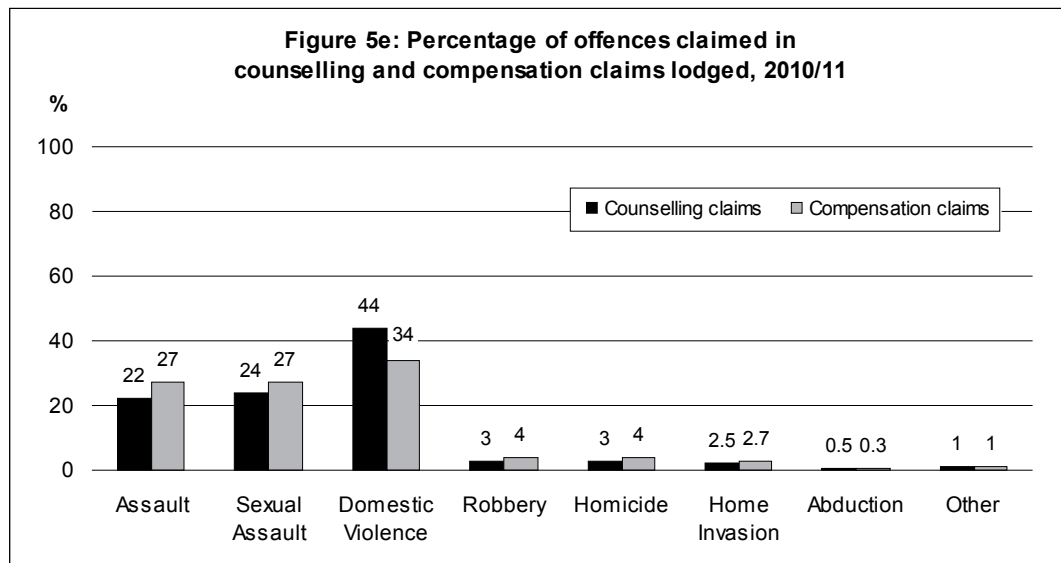
Figure 5d shows the percentage of offences alleged in compensation claims lodged, 2009/10 and 2010/11.

Figure 5e shows a comparison of the percentage of offences alleged in counselling and compensation claims lodged, 2010/11.

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







Dismissal rates

In the year under review, 2,038 claims were dismissed by Assessors. This represents 41 per cent of claims determined, a slight increase on the previous year (see Figure 5c). The increased rate of dismissal in the year under review coincided with a considerable increase in multiple claims by applicants where claims were not well founded and poorly prepared.

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

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

Table 3: Summary of reasons for dismissal, by percentage, 2010/11

<i>Reason</i>	<i>claims dismissed (%)</i>
No act of violence	43
No compensable injury	25
Claim withdrawn	10
Below threshold	10
Other	4
Secondary victim and maximum award paid to primary	3
Related acts	3
Family victim and dependent family received award	2
Total	100

Budgetary considerations

The following table highlights the increase in claims lodged and in outstanding claims from year ending 30 June 2007 to 30 June 2011.

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

<i>Year ending</i>	<i>Received</i>	<i>Determined</i>	<i>Outstanding</i>
30 June 2007	5,636	4,492	7,297
30 June 2008	7,031	4,013	10,241
30 June 2009	8,212	4,893	13,328
30 June 2010	9,245	4,374	18,030
30 June 2011	8,854	4,973	21,610

I am satisfied that the staff, Assessors and Tribunal Members of Victims Services are working at optimum capacity in dealing with the present number of applications determined each year. The present budget allocation provided to Victims Services, in my view, enables the finalisation of about 4,900 claims per year. The determination of that many claims consumes the present budget available to Victims Services.

The time between lodgement and determination of a claim of about 25 months as at 30 June 2011 is obviously disappointing and can be detrimental to applicants. The delay can also cause additional expense as, because of the delay, further up to date medical reports and additional submissions may be required from the applicants. It follows that if a real effort is to be made to reduce the delay and the number of outstanding claims, a considerable increase in budget allocation will be necessary to cover both the increase in funds available for compensation and also the increase in staff, Assessors and Tribunal Members which would be required to enable more than 4,900 claims to be prepared and determined in a year.

I am informed that the estimate of the value of the 21,610 outstanding claims as at 30 June 2011, is \$239.2m. No doubt these matters will be the subject of much investigation and recommendations by the independent assessment.

Family victims

The Tribunal received 318 claims from family members in relation to 163 deceased victims during the year.

Leave was refused in 18 claims. Total payments, including interim payments of \$660,760 for funerals, amounted to \$5.48m. Eighty-six claims were dismissed. Most dismissals arose because the claimant was not dependant on the deceased at the time of the death, whereas another applicant or applicants were. Dependent claimants succeed to the exclusion of all other claimants. In some matters claimants were unable to establish that they were a family victim and in a small group of matters the death was ruled to be accidental or occurred in unknown/unclear circumstances. A total of 174 applications for counselling by family members were received and 3,871 hours of counselling approved.

Compensable injury of sexual assault

During the year Compensation Assessors determined 1,133 claims where sexual assault was alleged as the offence.

The range for the compensable injuries of sexual assault is:

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

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

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

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

Awards were made in 743 cases as follows:

- ♦ Sexual assault category 1 (118 awards)
- ♦ Sexual assault category 2 (184 awards)
- ♦ Sexual assault category 3 (397 awards)
- ♦ Psychological or psychiatric disorder category 1 (7 awards)
- ♦ Psychological or psychiatric disorder category 2 (37 awards)

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

Of the total number of awards for statutory compensation made during the year, 25 per cent related to victims of sexual assault.

Compensable injury of domestic violence

Domestic violence was alleged as the offence in 1,426 claims determined. There has been a steady rise in the number of claims lodged for the offence of domestic violence.

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

Awards were made in 932 cases as follows:

- ♦ Compensable injury of domestic violence (854 awards)
- ♦ Psychological or psychiatric disorder category 1 (6 awards)
- ♦ Psychological or psychiatric disorder category 2 (54 awards)
- ♦ Physical injuries (18 awards)

Of the total number of awards for statutory compensation made during the year, 32 per cent were for victims who established domestic violence as the act of violence.

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

Victims seeking to claim the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling or category 2 that is severely disabling must provide a report from an 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 4,973 claims for statutory compensation determined during the year, 2,884 claims (58%) were accompanied by an ARW report. In those 2,884 claims accompanied by an ARW report, the compensable injuries of a chronic psychological or psychiatric disorder category 1 or category 2 were awarded in 379 claims. Authorised Report Writer reports were filed in claims where other compensable injuries such as sexual assault and domestic violence were awarded. The expense incurred for 2,884 ARW reports was \$1,531,749.

Victims Assistance Scheme (VAS) – Statutory compensation for expenses

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

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

A total of \$84,595 was paid out during the year in relation to 102 claims. This included 51 payments for dental expenses and 43 payments for ambulance.

Whilst the maximum recoverable under the Scheme is \$1,500, dental expenses frequently exceed that sum. The maximum award of \$1,500 was paid in relation to 28 claims for dental expenses. A number of claims were dismissed because no compensable injury was nominated or established, which is a requirement under the Scheme.

It is hoped that the Review announced by the Attorney on 11 August 2011 will look at increasing the amount of expenses payable to victims of violent crime.

Convicted inmates

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

During the year the Tribunal dealt with 14 applications by convicted inmates. Statutory compensation was awarded in six claims and eight claims were dismissed. In the previous year the Tribunal dealt with 11 applications and made an award in four claims and dismissed seven claims.

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

Review of determinations for statutory compensation

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

In the year under review the Chairperson considered that the Tribunal should review 22 matters. The review mechanism is generally used where there is an administrative error and may result in an increase or variation of the Assessor’s determination.

Appeals to the Tribunal against determinations of Assessors

The Act provides for an appeal from a Compensation Assessor to the Tribunal. During the year 635 appeals were lodged with the Registry, a significant decrease on the 817 appeals lodged in the previous year. Eighty-three per cent of those appeals were against dismissals of the claims by Assessors, 12 per cent against quantum and the balance of five per cent against the Assessor under delegation refusing leave to lodge applications out of time.

The Tribunal determined 735 appeals. Of the appeals determined, approximately 36 per cent were successful. The Tribunal made an award in 257 matters and remitted 11 matters to a Compensation Assessor for re-determination. Included in those 735 appeals were 37 appeals against refusal to grant leave to file applications for statutory compensation out of time. Of the appeals against refusal to grant leave 20 appeals were allowed and leave was given. In appeals against the refusal to grant leave, appellants are able to file further evidence for the delay as of right.

Appeals are listed for call over within two to three weeks of lodgement. The average time for an appeal to be finalised during the year from lodgement to determination was three months. In June 2011 the Tribunal members were generally dealing with appeals lodged in February 2011, which, in my view is within the optimum period. The number of appeals pending at 30 June 2011 was 254, a decrease of 53 on the figure of 307 outstanding at 30 June 2010.

Table 5: Summary of appeals, 2009/10 and 2010/11

	2009/10	2010/11
Appeals lodged	817	635
Appeals determined	714	735
Pending	307	254

Appeals from the Tribunal

District Court

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

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

During the year seven appeals were finalised in the District Court including a matter which was commenced in the previous year. As at 30 June 2011 four matters remain to be heard in the District Court. Three of the finalised matters were settled by consent. The Fund was successful in three appeals and unsuccessful in one appeal.

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

Supreme Court

During the year one appeal was lodged against the Tribunal decisions in the Supreme Court. This matter was finalised. As at 30 June 2011 there were no outstanding matters in the Supreme Court.

Court of Appeal

On 18 March 2011 the Court of Appeal delivered its judgment in *Victims Compensation Fund Corporation v JM* [2011] NSWCA 89. The Fund lodged the appeal against the judgment of His Honour Rothman J delivered in the Supreme Court on 2 December 2009 (*JM v Victims Compensation Fund Corporation* [2009] NSWSC 1300).

The facts in *JM* established that the appellant had been sexually assaulted by the same offender on a weekly basis when the appellant was aged between five and 15 years. The Tribunal Member found that the sexual assaults formed a series of related acts pursuant to section 5(3) of the Act and that for the purposes of the Act the series of related acts constituted a single act of violence pursuant to section 5(4) of the Act. His Honour Justice Rothman in the Supreme Court upheld the appellant’s appeal and expressed his view that the offender’s actions amounted to considerably more separate acts of violence for which compensation should be payable.

The Court of Appeal unanimously upheld the appeal and restored the Tribunal Member’s decision. The Court of Appeal Judges held that the Tribunal Member had properly taken into account the matters to be considered when deciding whether individual acts were related pursuant to section 5(3). His Honour MacFarlan JA pointed out that whether or not acts were related pursuant to section 5(3) involved questions which are “essentially a rather difficult matter of degree”. His Honour held that the effect of section 39(3) of the Act was that the legislature intended to leave the decision in relation to such difficult matters “to the Tribunal without further close examination”. His Honour quoted with approval the test discussed by the High Court in *Minister for Immigration and Ethnic Affairs v Wu Shang Liang* (1996) HCA6 wherein the High Court quoted with approval the words of the Federal Court in *Collector of Customs v Pozzolanic* (1993) 43 FCR 280 at 287 that;

“The reasons for the decision under review are not to be construed minutely and finely with an eye keenly tuned to the perception of error.”

His Honour Young JA approved the following statements made by the majority of the High Court in Wu’s case;

“These propositions are well settled. They recognise the reality that the reasons of an administrative decision maker are meant to inform and not to be scrutinised upon over zealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed.”

In JM, His Honour Sackville AJA commented as follows;

“As Young JA points out the result in the present case might be seen by many as harsh. It is, however, the consequences of a statutory scheme which provides compensation for victims of crime but in a manner which attempts to curtail the costs of the scheme. Not infrequently legislation which seeks to reconcile competing objectives can lead to apparently anomalous or harsh results.”

The Court of Appeal’s determination in JM has provided a very useful guide to the difficult task of considering the issue of related acts pursuant to section 5(3) of the Act.

The Fund was represented in JM by the New South Wales State Crown Solicitor’s Office in the Court of Appeal. In all other appeals Victims Services Registrar Ms Krishna has appeared as the solicitor on record. The Fund has been represented at the hearing of the appeals by either the Registrar Ms Krishna or Mr Ting, the Senior Advocate. Both have provided outstanding service as advocates for the Fund.

Subpoenas

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

Approved Counselling Scheme

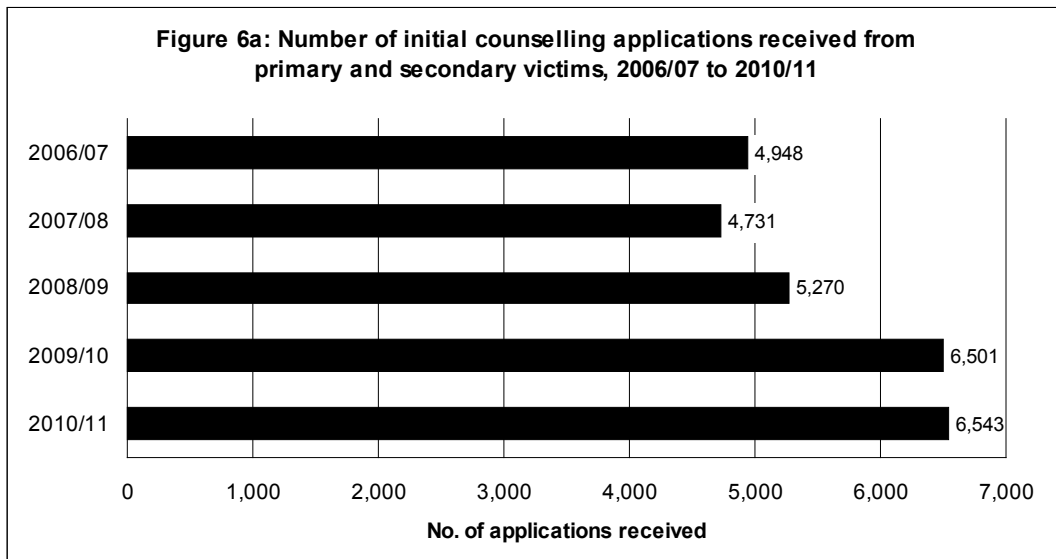
The Scheme was established under the 1996 Act. During the year 6,717 applications for initial counselling were received from 6,543 primary or secondary victims and 174 from family victims. The 2010 amendments to the Act brought about significant beneficial changes to the Approved Counselling Scheme. The Director, under section 21(3) can now approve counselling and can delegate that function to approved staff. The approval of counselling no longer requires a determination by a Compensation Assessor. The initial hours approved for counselling have been increased from two to 10 hours with a preliminary report required from the Approved Counsellor after the first two hours of counselling. Counselling may be authorised for a total of 22 hours and the number of hours can be further increased if exceptional circumstances are established.

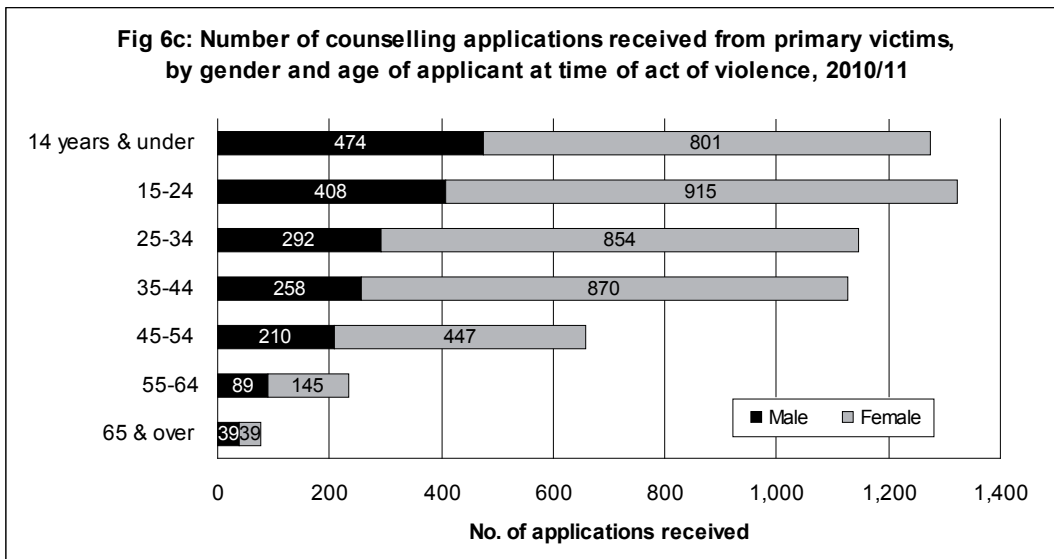
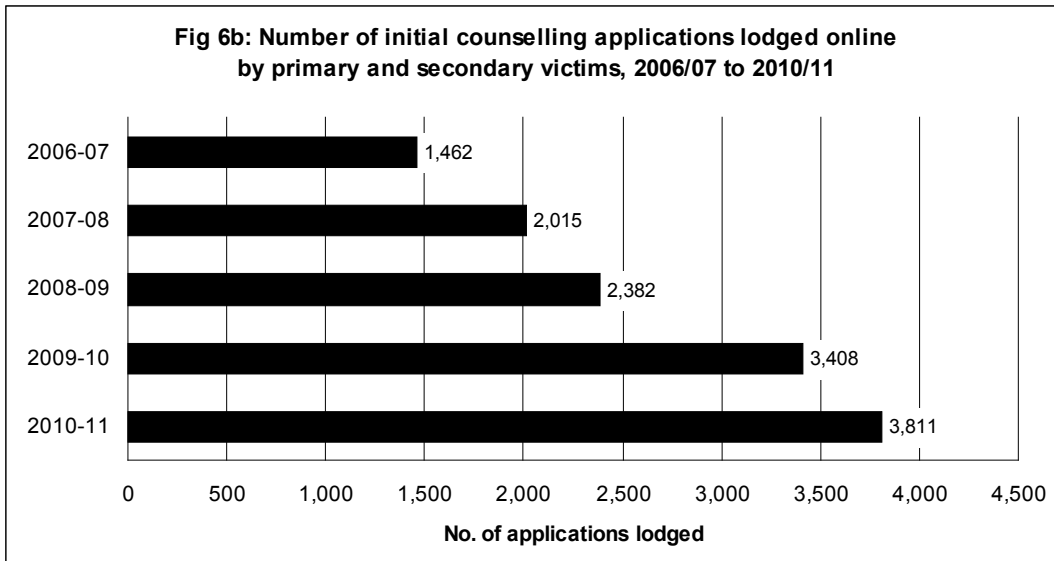
During the year 74,232 counselling hours were approved for victims of crime in initial and further applications for counselling. This was a significant increase from 2009/10, when 53,698 hours were approved. The reason for this increase was related to the change in legislation that increased the initial hours approved from two to 10 hours.

Figure 6a shows the number of initial counselling applications received from primary and secondary victims, 2006/07 to 2010/11.

Figure 6b shows the number of initial counselling applications lodged online by primary and secondary victims, 2006/07 to 2010/11.

Figure 6c shows the number of counselling applications received from primary victims, by gender and age of applicant at time of act of violence, 2010/11





Client satisfaction survey

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

During the year under review 238 responses were received which were mostly extremely positive:

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

REVENUE

Revenue comes from three sources:

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

In the year under review, revenue totalled \$13.35m as against \$9.24m for the previous year. The revenue was received as follows:

- ♦ \$4.08m was recovered from convicted offenders as against \$3.98m in the previous year.
- ♦ Court levies amounted to \$7.95m as against \$4.35m for the previous year.
- ♦ Other revenue totalled \$1.32m as against \$0.91m for the previous year.

During the year the compensation levy payable pursuant to section 79(1)(a) of the *Victims Support and Rehabilitation Act 1996* (the Act) for indictable matters was \$148 and for other matters pursuant to section 79(1)(b) of the Act was \$64.

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

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

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

Restitution recovery

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

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

General work pressures on staff have resulted in some delay in commencing recovery action under the Act. At the end of the period under review recovery action was commenced approximately ten months after the award date which compares favourably with the period of 13 months during the previous year.

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

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

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

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

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

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

Notwithstanding all those problems, the amount recovered during the year from convicted offenders totalled \$4.08m compared with \$3.98m recovered in the previous year. During the year 1,849 provisional orders valued at approximately \$30.9m were made by the Director. The fact that, despite the difficult economic climate experienced during the year under review, increased recoveries were made can be attributed to a continuation of the more proactive approach to debtor management and to additional payment options for restitution debtors introduced during the year.

Restitution debtor management

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

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

As at 30 June 2011 approximately 5,167 offenders were using one of the new payment options which do not require the payment of fees. Previously many offenders paid using money orders costing \$6.95 per payment. Payment of the outstanding amounts by the new methods has considerably lessened the amount of cash, cheques and money orders received by Victims Services and provides a much more efficient method of collection.

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

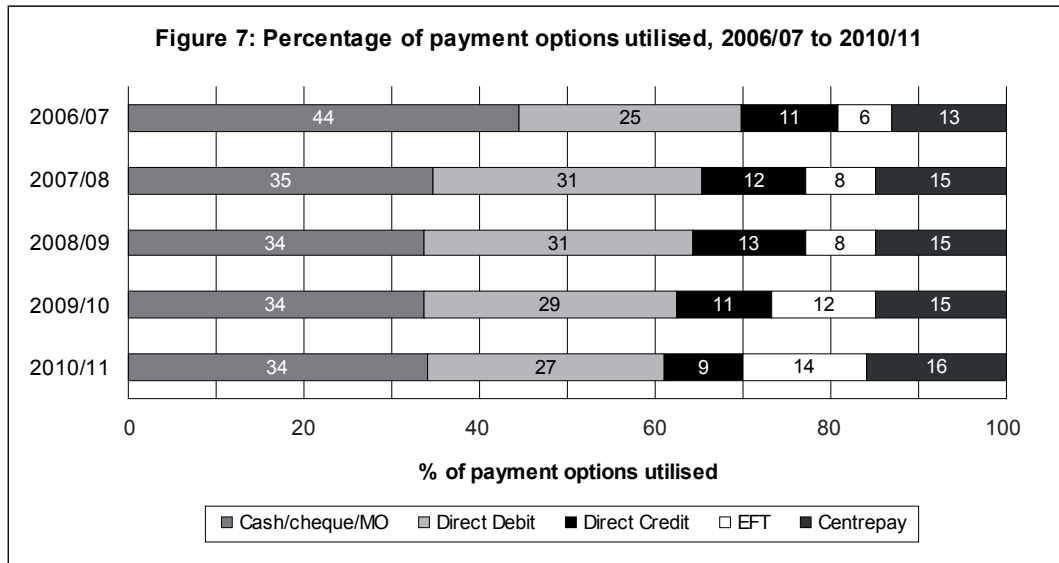


Figure 7 shows the percentage of payment options utilised from 2006/07 to 2010/11.

Set off of awards against restitution (contras)

Section 31 of the Act provides that a determination for restitution against a convicted offender may be set off against an award of compensation to the same offender. Each year since 2006/07, an average of \$407,159 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 2010/11, over \$330,000 was set off under section 31.

Arrangements with the Director

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

During the year 274 arrangements amounting to approximately \$2.77m were entered into against provisional orders. A further 220 arrangements amounting to \$1.53m were entered into against confirmed orders made by the Tribunal. The amount agreed upon to be paid represented an average of 53 per cent of the amount provisionally ordered and payment generally is by monthly instalments.

Hearings before the Tribunal

Approximately 2,076 matters were listed for hearing or confirmation by the Tribunal during the year. Orders resulting in approximately \$22m to be paid were made. The amount ordered to be paid represented an average of 84 per cent of the amount provisionally ordered. The orders made by the Tribunal generally required the amounts to be paid by monthly instalments.

Where a defendant has filed an objection to a provisional order, the matter is listed for hearing before a Tribunal Member. There was an appearance of defendants or their representative in approximately 25 per cent of these matters.

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

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

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

No response orders

When a convicted offender fails to respond to a provisional order, the Tribunal may confirm the order. The Tribunal made 1,107 such orders in the year under review.

SPECIAL EVENTS

Meeting the Needs of Victims of Crime Conference

The *Meeting the Needs of Victims of Crime Conference* was hosted jointly by Victims Services and the Australian Institute of Criminology in Sydney on 18-19 May 2011. The major theme of the conference was meeting the needs of victims through building the evidence.

This two-day conference was an opportunity for service providers, Government and non-Government organisations, policy makers, criminal justice practitioners and academics from around Australia and overseas to forge links and share knowledge to improve support of victims.

The NSW Attorney General, The Hon. Greg Smith SC MP, officially opened the conference and The Hon. Brendan O’Connor MP, Minister for Home Affairs and Justice, opened Day 2 of the conference. The following four distinguished international and Australian speakers provided plenary addresses:

- ♦ Dr Jonathan Doak (Director of the Criminal Justice Research Group, Nottingham Law School, UK)
- ♦ Professor Jane Ursel (Professor of Sociology, the University of Manitoba, Canada)
- ♦ Dr Ann O’Neill (Director of Angelhands inc.)
- ♦ The Hon. David Levine AO RFD QC (Chairperson of the Serious Offenders Review Council NSW)

The conference program contained more than 50 sessions from researchers and service providers addressing some of the wide range of issues which affect victims of crime. Over 200 delegates at this conference had the opportunity to exchange ideas and solutions, examine promising practices and discuss challenges in meeting the needs of victims of crime. The conference was generally regarded to be an outstanding success.

Compensation Users Forum

Victims Services held a Compensation Users Forum on 27 April 2011. Victims Services intends to hold regular forums to encourage people working in the area and accessing the services to attend and discuss recent trends and issues. Solicitors who regularly act for victims in victims compensation matters and agencies and groups supporting victims of crime were invited to attend.

The major theme of this forum was to discuss the 2010 amendments to the *Victims Support and Rehabilitation Act 1996*.

The Assistant Director General, Mr Brendan Thomas officially opened the forum. The panel consisted of:

- ♦ The Chairperson Mr Brian Lulham (Magistrate)
- ♦ Mr John Crawford (Magistrate)
- ♦ Ms Mahashini Krishna (Registrar)
- ♦ Ms Sue Hogan (Compensation Manager)
- ♦ Ms Sonya Madison (Compensation Assessor)

More than 60 delegates attended the forum which was well received. It is planned to hold further forums regularly each year.

Practitioners Day

On 20 May 2011, Victims Services organised the first combined Practitioners Day for Approved Counsellors and Authorised Report Writers.

The day was an opportunity for professional development, particularly in areas affecting victims of crime, for practitioners to build stronger connections and networks and also for Victims Services to present information about recent changes to legislation and policy.

The day’s proceedings included trauma specialists giving keynote presentations; workshops focusing on specific areas such as domestic violence, working in culturally competent ways with aboriginal clients and psychometric testing; and a panel exploring report writing and complex cases.

The Practitioners Day was well attended with approximately 150 Approved Counsellors, Authorised Report Writers and Victims Services staff participating. Feedback from practitioners was mostly positive and practitioners felt it was worthwhile for their professional development and would assist them in supporting victims of crime.

RECOMMENDATIONS

In view of the announcement of the establishment of an independent assessment of the Victims Compensation Scheme, I am hesitant to make recommendations to Government. It seems to me more appropriate that any recommendations await the opportunity to consider the draft proposals resulting from the independent assessment and for submissions to be made at that time.

I do, however, propose to renew the recommendation which I made in the Chairperson’s Report financial year ending 30 June 2010.

Limitation periods

The statistics in Figure 2 on page 13 of this report establish that during the year under review 389 claims were lodged where the primary victim was 18 years and under at the time of the sexual assault but was aged between 41 and 90 years at the time of lodging 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 circumstances where 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 for incidences of domestic violence that occurred 20 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.

I repeat the recommendation in this report which is as follows:

I recommend to Government that there should be a final limitation within which all claims, including those for sexual assault and domestic violence, must be lodged. I consider the appropriate period 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, Ms Mandy Young for her leadership, direction and support during the year. I acknowledge and appreciate the continued support and cooperation of the Chief Magistrate of the Local Court, His Honour Judge Henson. I particularly thank the staff in the appeals section. Ms Colleen Frazer is an extremely competent and conscientious manager of appeals. I thank her for her outstanding contribution. I also acknowledge the excellent support provided by her assistant, Mr Suresh Vichur. Again, I acknowledge and thank Ms Louise Lenard, Executive Officer, Victims Services for her expertise and support in the preparation of this report and the reports for previous years. During the period under review Ms Mahashini Krishna has acted as Registrar and has done an excellent job. She has also acted as an Advocate for the Fund. She has overseen the daily workings of the Tribunal in a most commendable and friendly manner. She is an outstanding officer. Mr Matthew Ting has proved to be an excellent Advocate for the Fund. He provides excellent advice to Victims Services and is invariably complimented by District Court Judges for his assistance to them in the conduct of matters before the Court. Mr Miles Holt, our Legal Officer has looked after the difficult recovery work of Victims Services in a most commendable manner. I acknowledge the dedication and skill of the Compensation Assessors and I thank them for their contribution. I have singled out the members of staff with whom the Tribunal Members have most contact and upon whom we particularly rely. I acknowledge, however, the very considerable contribution made by all members of staff and I appreciate and thank all of them for their contribution to the efficient and effective administration of Victims Services. Finally, I thank my Magisterial colleagues and Tribunal Members, Their Honours Crawford and Moore for their dedication, loyalty and friendship.

