



# Victims Compensation Tribunal New South Wales

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Chairperson's Report  
2006/2007

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Produced by  
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ISSN 1444-609X

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(VCT06/07 • 10/07)



**Victims Compensation  
Tribunal**  
of New South Wales

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

11 October 2007

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 2007.

Yours faithfully

A handwritten signature in blue ink, appearing to read "C. Brahe".

C. Brahe  
**Chairperson**



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## OVERVIEW

The Victims Compensation Tribunal was established under the *Victims Compensation Act 1987* and continued under the *Victims Support and Rehabilitation Act 1996*. The Tribunal operates out of levels 4, 5 and 6 at 299 Elizabeth Street Sydney. However in November 2007 the Tribunal is scheduled to move to the new Justice Precinct at Parramatta.

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

## STAFFING

Staff numbers remained constant during the year at 80 personnel. Employee related expenses fell from \$4.58 million in 2005/06 to \$4.43 million in the year under review.

Operational expenses fell from \$2.45 million to \$2.27 million.

Ms. Tracey Hall, Registrar for the past two years left the Tribunal on 15 June 2007 to take up a position with the Local Courts Administration. In her role as Registrar, Ms. Hall had the responsibility for the budget of the Tribunal, overseeing staff and general administration. Her dedication, enthusiasm and expertise ensured that the Tribunal operated efficiently and effectively.

## AMENDMENTS TO THE ACT

Following the review of the Act the Government introduced a number of amendments to the Act in 2006. A new definition of injury applies to those applications not determined as at 22 December 2006.

Injury now means:

- (a) actual physical bodily harm
- (b) psychological or psychiatric harm

but does not include injury arising from loss or damage to property.

In *VCFC v GM and 5 Ors* (2004) NSWCA 185, 16 June 2004 the Court of Appeal held that it was necessary for a victim of a sexual assault claiming for statutory compensation, to establish injury as it was then defined to constitute an act of violence. Injury at that time was defined as actual physical bodily harm or psychological or psychiatric disorder. In the case of minors, who had been victims of sexual assault, there was, in some cases a reluctance to have the victim assessed by a psychiatrist or psychologist and in other cases such assessment did not establish a disorder – see annual report for the years 2000/01 and 2001/02. The new definition of injury, effective for claims which first came before an assessor from 22 December 2006, does not require the diagnosis of a disorder but does require evidence of psychological or psychiatric harm. Evidence of psychological or psychiatric harm may be provided by a psychologist or psychiatrist or by other persons such as school counsellors, social workers or other relevant health professionals.

## REPORTING ACT OF VIOLENCE

Section 30(1)(b) provides that whether the act of violence was reported to a police officer within a reasonable time is a reason for not making or reducing an award of statutory compensation. As from 22 December 2006 that provision has been modified by section 30(1)(b1) that provides that regard must be had to whether the act of violence was reported to a relevant health professional or practitioner or a relevant agency.

## DOMESTIC VIOLENCE

In previous reports I submitted that there should be a limitation by persons claiming statutory compensation for the compensable injury of domestic violence in that claims were being made by persons who had resided in the same household as the offender years prior to the act of violence as specified in the former section 4(1)(d) *Crimes Act, 1900*. As from 22 December 2006 the victim and offender must be living in the same household at the time of the offence – see clause 7A(3) of Schedule 1 of *Victims Support and Rehabilitation Act 1996*. Other amendments contained in clause 7A(3) related to a person, who at the time of the offence, was living as a long time resident in the same residential facility as the other person; and to a person who, at the time, had a relationship involving his or her dependence on the ongoing paid or unpaid care of the person who committed the offence.

## VICTIMS ASSISTANCE SCHEME.

A major development for victims was the establishment of the Victims Assistance Scheme operative as from 16 February 2007. In respect of certain prescribed expenses, the Scheme reimburses victims who are not eligible for statutory compensation because their injuries do not meet the threshold of \$7,500 provided by section 20(1) of the Act. For example, a victim may claim for a broken jaw where the standard amount of statutory compensation is \$7,200. Because the amount is below the threshold, the claim must be dismissed notwithstanding that dental expenses may be considerable. I referred to this circumstance in my report for 2000/01. Since 16 February 2007 where such a claim is dismissed an award not exceeding \$1,500 may be made for prescribed expenses. An application may be made for prescribed expenses alone where it is clear that the amount for the compensable injury will fall below the threshold of \$7,500. An application for prescribed expenses may also include a claim for statutory compensation, in the event that the application for statutory compensation should be unsuccessful.

## KEY FACTS

Applications for statutory compensation received during the review period totalled 5,636.

A total of 4,492 claims for compensation were determined.

A total of \$64.25 million (statutory compensation, professional costs and fees for authorised report writers and counselling) was paid.

Pending claims have increased from 6,246 to 7,297.

The number of appeals to the Tribunal fell substantially from 803 in 2005/06 to 587 in the current year. 648 appeals were determined with 101 pending as against 162 in the previous period.

Under the Approved Counselling Scheme, 4,767 applications for initial counselling were approved in 2006/07. 47,785 counselling hours were approved for victims of crime for initial and further applications for counselling and over 28,000 hours were used resulting in payment of \$2.79 million. Almost 340 approved counsellors are utilised for this service.

Applications for initial counselling lodged on line continued to increase. 1,462 online applications were received in 2006/07 compared to 1,161 the previous year.

A victim survey of the Approved Counselling Scheme conducted during the year found that 98% of respondents were helped and supported by their counsellor and 98% said their counselling was worthwhile.

Victims Services received over 38,000 calls in 2006/07 through the general enquiry line, and the 24 hour Victims Support Line (VSL) operated by the Victims of Crime Bureau. Callers to the VSL can be provided with information, support and/or referral to a range of specialist support services or counselling.

A total of \$3.63 million was collected from convicted offenders during 2006/07 down from the previous year.

Electronic payment options are available for defendants who are liable to pay restitution. At the end of 2006/07 over 3,500 debtors had taken up this option.

The Victims Assistance Scheme commenced on 16 February 2007 to assist eligible victims of crime receive reimbursement for a range of expenses incurred to support their recovery. Those prescribed expenses include ambulance, dental, physiotherapy, optical, house cleaning, security and home help.

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

The DVD entitled “Missing”, concerning Indigenous young people who go missing, which was a joint initiative of the Families & Friends of Missing Persons Unit and NSW Police Force, was launched on 4 August 2006. A rural pilot involving a total of 11 presentations of the DVD through CTCs in rural and remote communities in NSW has been completed. Approximately 650 dvds have been distributed to key Aboriginal organisations, relevant Government Departments, non-government agencies and agencies within the missing person sector.

## VICTIMS SUPPORT AND REHABILITATION ACT 1996

During the period under review the following compensation assessors determined claims under the Act – Messrs. Baron, De Mayo, Hipwell, Keays-Byrne, McAteer, Stephenson and Ms Bell, Ms. Humphreys, Ms. Krishna and Ms. Madison. Mr. McAteer is the Legal Officer and Acting Fund Advocate and apportions his time between Fund work and Victims Services work. Mr. Stephenson is the Acting Manager of Appeals and Ms. Krishna Acting Legal Officer and they, like Mr. McAteer, apportion their time accordingly.

### APPLICATIONS

|                     | 2005/2006               | 2006/2007               |
|---------------------|-------------------------|-------------------------|
| Received            | 5,054                   | 5,636                   |
| Pending             | 6,246                   | 7,297                   |
| Determinations      | 5,342                   | 4,492                   |
| Dismissals          | 2,210                   | 1,565                   |
| <b>Total awards</b> | <b>\$61.82 million*</b> | <b>\$61.46 million*</b> |

\* Including costs, disbursements and Appeal awards.

I reported last year that the flow of applications for statutory compensation had steadied around the 5,000 per year mark. For the year under review there was an increase exceeding 10% in applications received. It will be interesting to note whether this trend continues. Of interest is the fall in the number of claims that were dismissed by the compensation assessors. In the year 2004/05, 2,887 applications were dismissed, in 2005/06, 2,210 and in the year under review, 1,565. This reduction in the number of dismissals is due, in part, to changes to the definition of “injury” which was effective from 22 December 2006 as claims for sexual assault were delayed pending the amendment. The major reasons for dismissal of applications

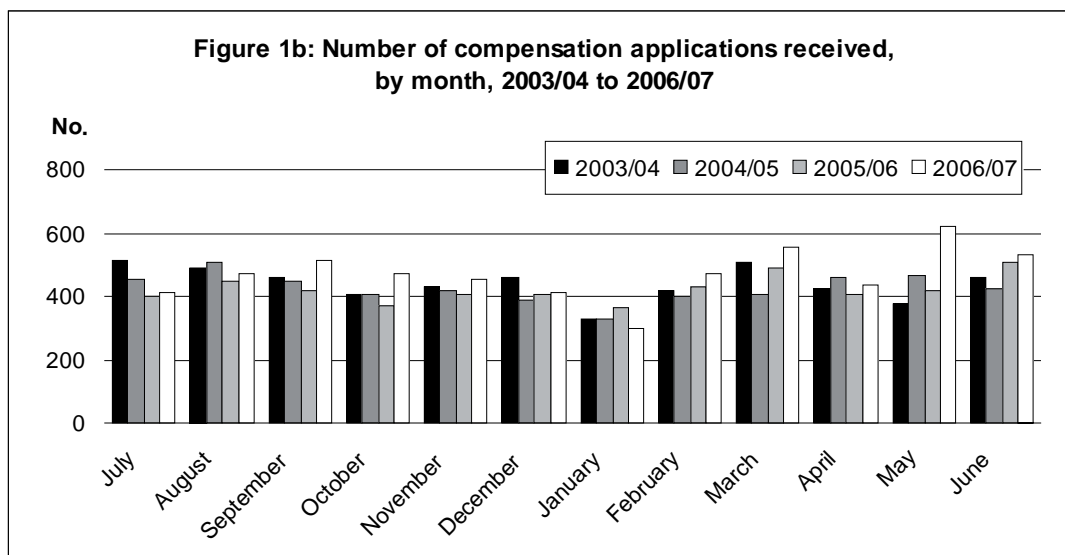
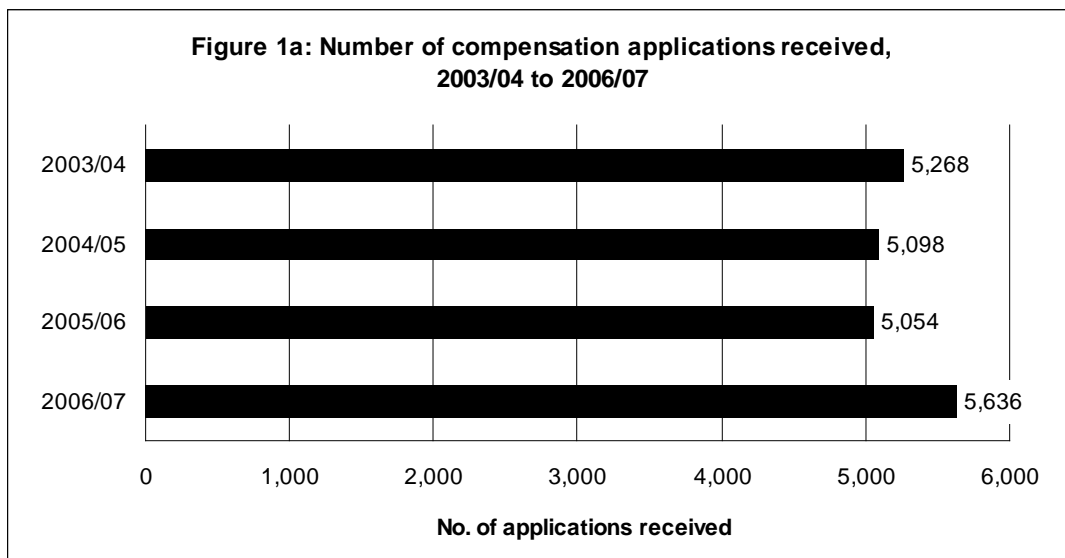
related to the failure of the victim to establish an act of violence; or to establish a compensable injury; or that the amount of statutory compensation for the established compensable injury, and any deduction pursuant to section 30, did not meet the threshold of \$7,500.

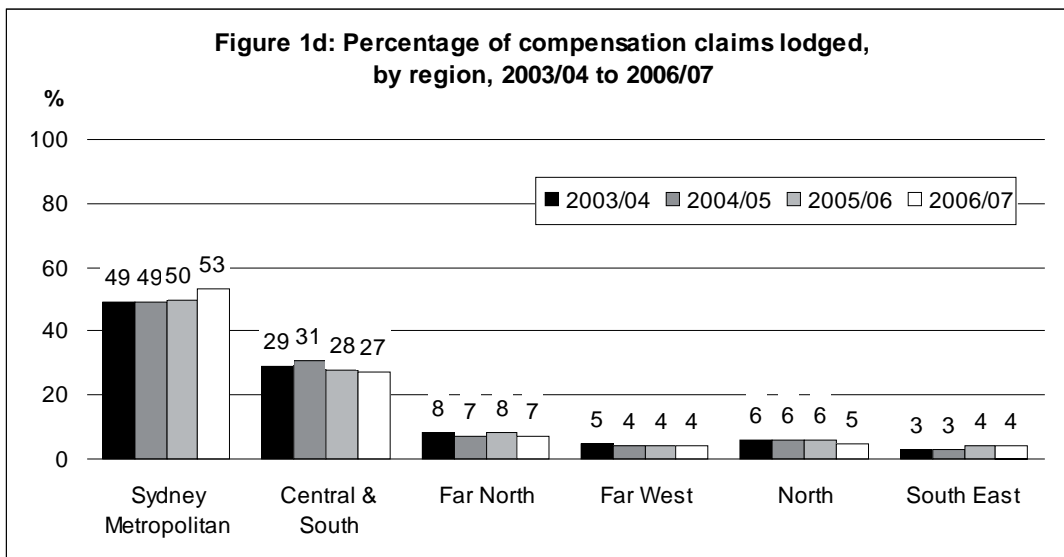
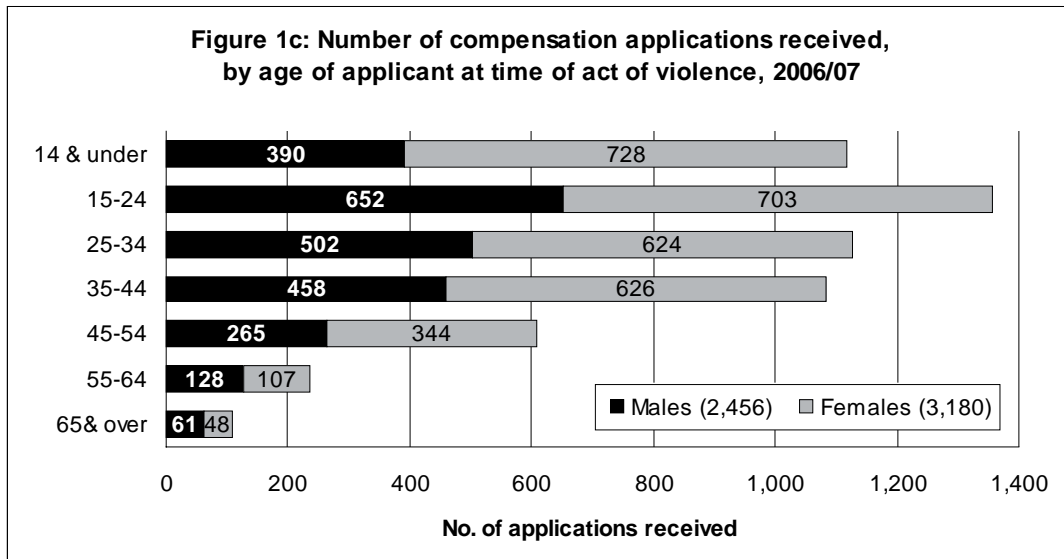
Figure 1a below shows the number of applications received from 2004/05 until 2006/07. Figure 1b shows the number of applications received over the same period on a monthly basis.

Figure 1c shows the number of applications received during 2006/07 by age of the applicant at the time of the act of violence. Claims by females outnumbered those by males, particularly in the 14 years of age, and under category arising from claims for sexual assault.

Figure 1d shows the percentage of claims lodged by region – Sydney Metropolitan, Central & South, Far North, Far West, North and South East.

The percentage of applications for statutory compensation received from each of those areas, over the last four years, has been constant.

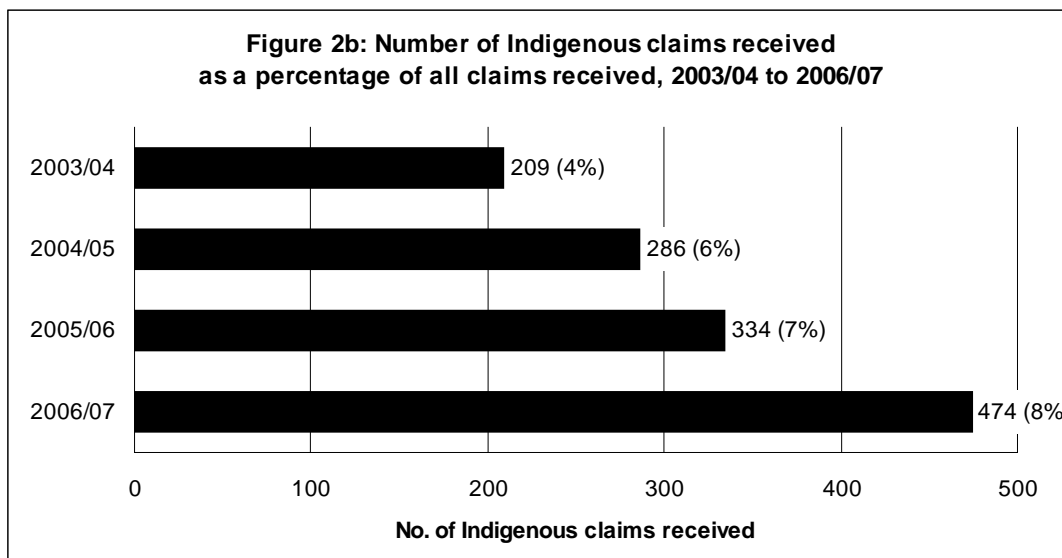
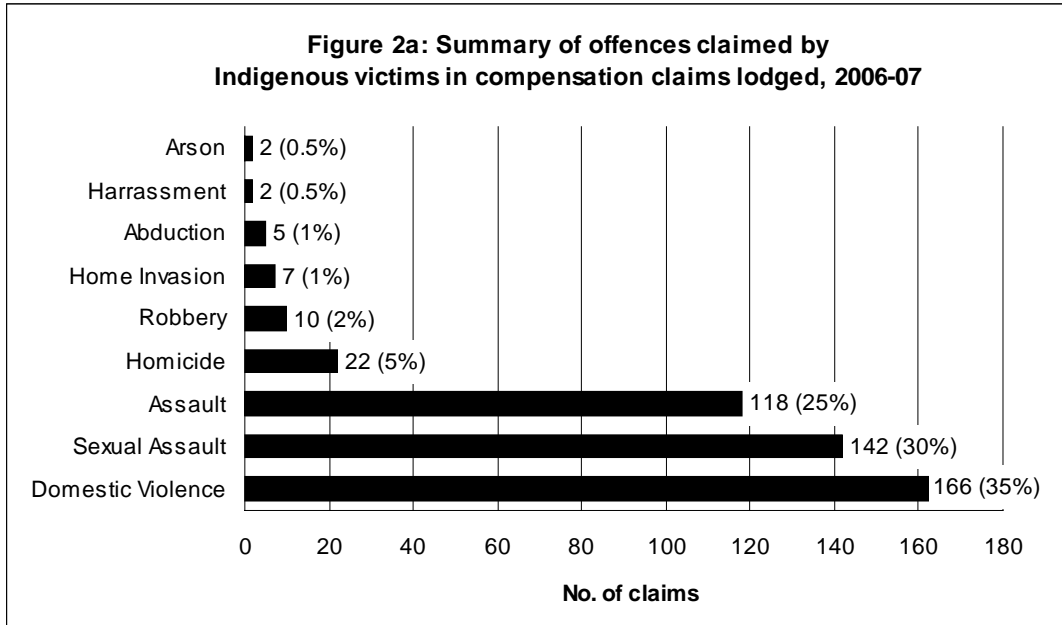




## INDIGENOUS CLAIMS

Because of the special focus on Aboriginal issues in the past year Figure 2a shows the number of Indigenous claims received over the past four years as a percentage of all claims received and the total number of claims received from Indigenous persons over the same period. That information is obtained from applicants who identify that they are Indigenous in the application form. The figures show a steady rise in the number of claims from Indigenous victim applicants – 209 in 2003/04 to 474 in 2006/07 – 8% of the total number of claims lodged.

Figure 2b shows the offences giving rise to applications for statutory compensation. The most common offences giving rise to applications are domestic violence, sexual assault and assault in that order. This is mirrored in offences in the broader community where the order is assault, sexual assault and domestic violence (see Figure 4c).



**FAMILY VICTIMS**

The Tribunal received 320 claims from family members in relation to 137 deceased victims. Interim awards (generally for funeral expenses) were made in 63 cases. Total payments including interim payments amounted to \$2.31 million. 23 claims were dismissed generally because of the ineligibility of the applicants or the deceased was not a homicide victim. A total of 252 applications for counselling by family members were received and 4,498 hours approved.

**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 2006/07 financial year the Tribunal dealt with seven applications by convicted inmates and dismissed two. In the previous year the Tribunal dealt with 14 applications and dismissed seven.

In those cases where an award of statutory compensation was made the Tribunal considered that the victims had been seriously and permanently injured. The nature of the injuries was serious physical injury or sexual assault. In those cases where an award was made and the applicant is indebted to the Crown (being a convicted offender in claims where an award had been made to a victim) the determination for restitution is set off against the award for compensation pursuant to section 31.

Details of the applications determined in the 2006/07 financial year where awards were made in favour of convicted inmates were as follows:

A victim of stabbing sustained a permanently clicking jaw, and a seriously disabling strained neck. Another victim of an assault sustained a permanently clicking jaw, permanent facial numbness and a blow out fracture of the orbit bone.

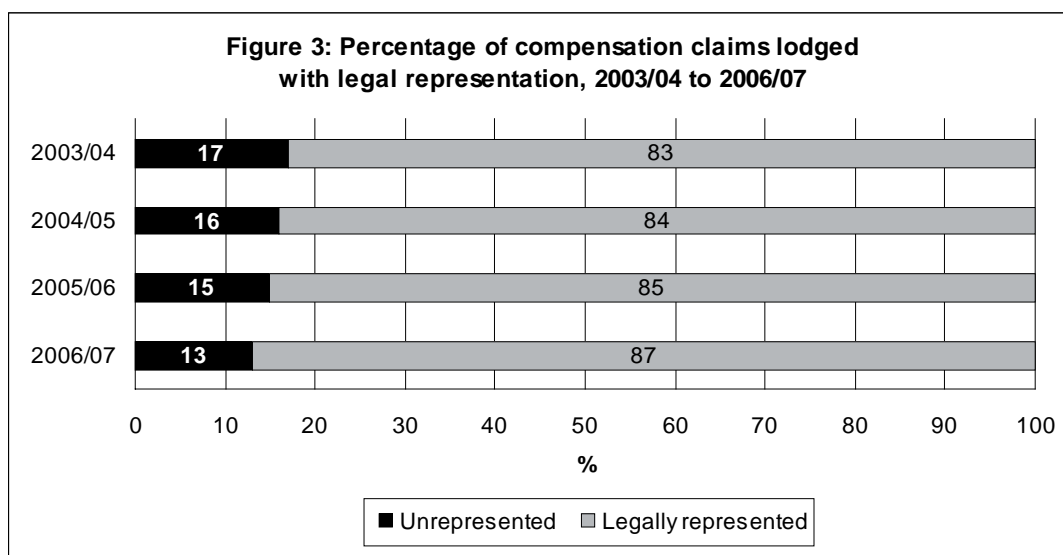
A sexual assault victim, attacked by two inmates, was awarded statutory compensation for the compensable injury of sexual assault category 3. In another case of sexual assault an award was made for the compensable injury of sexual assault category 2.

An award was also made for an inmate who suffered the partial loss of his ear as a result of an assault. This inmate was a convicted offender who was indebted to the Crown because an award had been made against him. Pursuant to section 31 the determination for restitution was set off against the award for compensation in favour of the inmate. As the balance did not meet the threshold no award was payable.

There were two claims that were dismissed, one being discontinued and the other failed to establish injury pursuant to section 5(1)(c).

### UNREPRESENTED APPLICANTS/APPELLANTS

There has been a decreasing trend for unrepresented applicants to lodge applications for statutory compensation. The number of unrepresented applicants who lodged claims has gradually declined from 17% in 2003/04 to 13% for 2006/07 (see Figure 3).



Conversely there continues to be an increasing number of unrepresented applicants appealing to the Tribunal against the assessors’ 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.

I acknowledge that all personnel in Victims Services assist both represented and unrepresented victims.

## VICTIMS ASSISTANCE SCHEME

The Victims Assistance Scheme (VAS) was introduced on the 16 February 2007.

The data in the table below is gathered from the information provided by applicants on the form *Application for Compensation and/or Expenses* where the applicant has indicated they are claiming VAS only or compensation and prescribed expenses

|                            | 16 Feb 07<br>to 28 Feb 07 | March<br>2007 | April<br>2007 | May<br>2007 | June<br>2007 |
|----------------------------|---------------------------|---------------|---------------|-------------|--------------|
| VAS only                   | 0                         | 0             | 0             | 3           | 0            |
| VAS + compensation         | 0                         | 1             | 6             | 25          | 48           |
| <b>Total number lodged</b> | <b>0</b>                  | <b>1</b>      | <b>6</b>      | <b>28</b>   | <b>48</b>    |

For the period 16 February to 30 June 2007, 83 applications were received where the applicant indicated they are claiming VAS only or VAS and compensation.

It is anticipated that the number of applications lodged will continue to increase as applicants or their representatives become aware of the Scheme.

Due to the need to consider the compensation component prior to VAS (where applicable) or because VAS matters were not ready for determination, no money was paid out for prescribed expenses in the 2006/07 financial year.

## DETERMINATIONS

For the year under review the compensation budget was fully expended. The number of applications determined by compensation assessors declined from 5,342 to 4,492. That reduction was due to various reasons, including a significant rise in the average payment from \$10,783 to \$12,935. This averaging relates to applications determined by compensation assessors. The increase has resulted from amendments to the Act affecting sexual assault claims, and the increase in cases where the compensable injury of chronic psychological/psychiatric disorder category 2 that is severely disabling, is established. The increase in the average payment is significant. It may be that legislative changes are taking effect in relation to acts of violence where the standard amount or range of compensation is high for the compensable injury.

The next three figures set out the following material:

Figure 4a: Average payment in determinations – 2003/04 to 2006/07

Figure 4b: Percentage of compensation claims dismissed – 2003/04 to 2006/07

Figure 4c: Percentage of offences claimed in compensation claims lodged – 2006/07

Figure 4d: Percentage of offences in counselling and compensation claims lodged – 2006/07

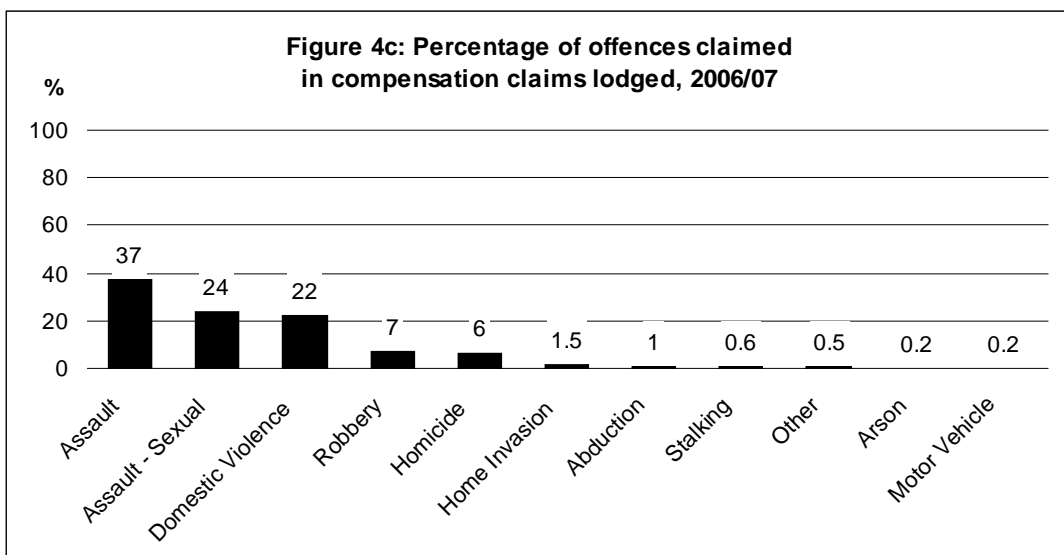
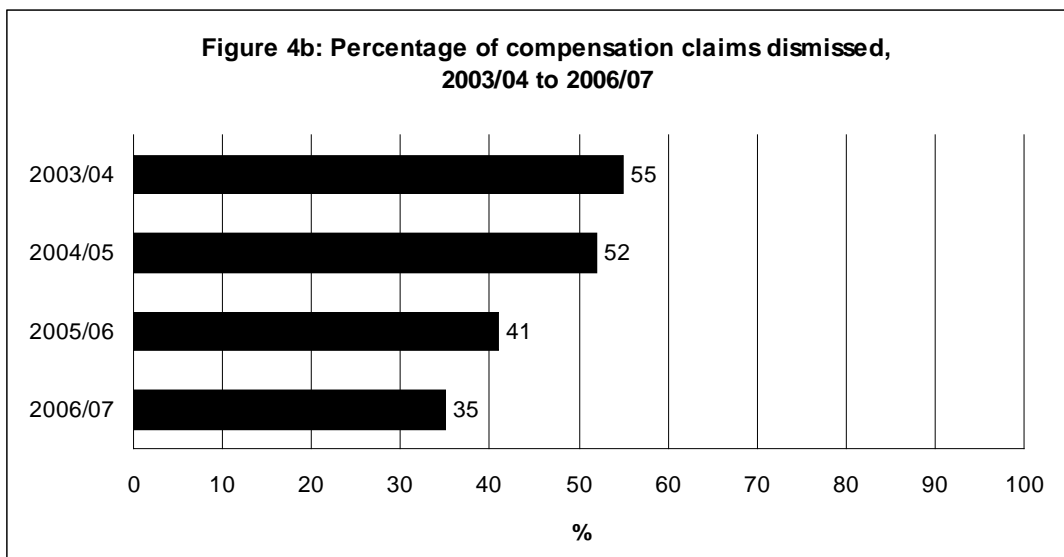
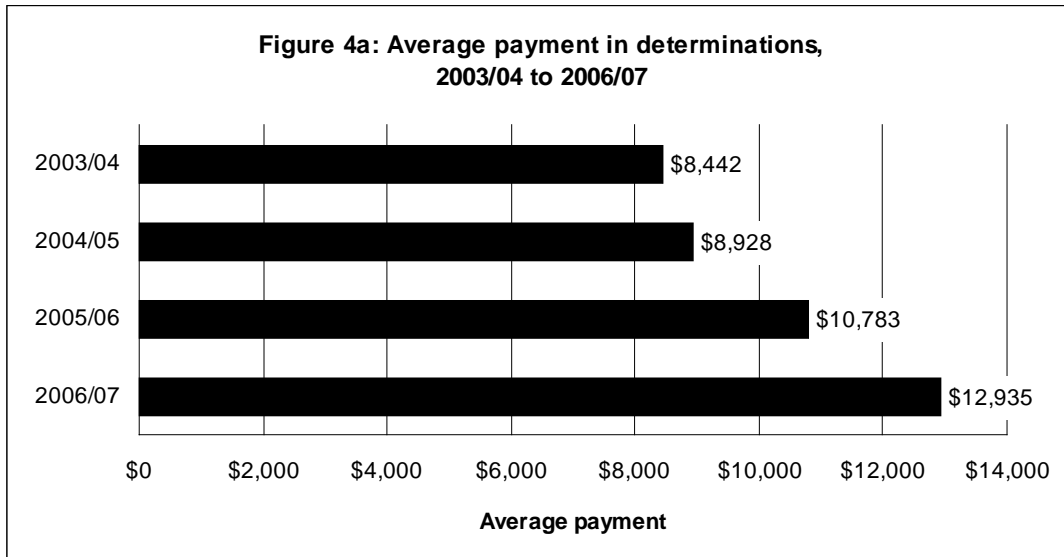


Figure 4c highlights that assaults, sexual assaults and domestic violence are the most prevalent type of offences for which statutory compensation is claimed. In counselling claims the prevalent offences relate to domestic violence, assaults and sexual assaults.

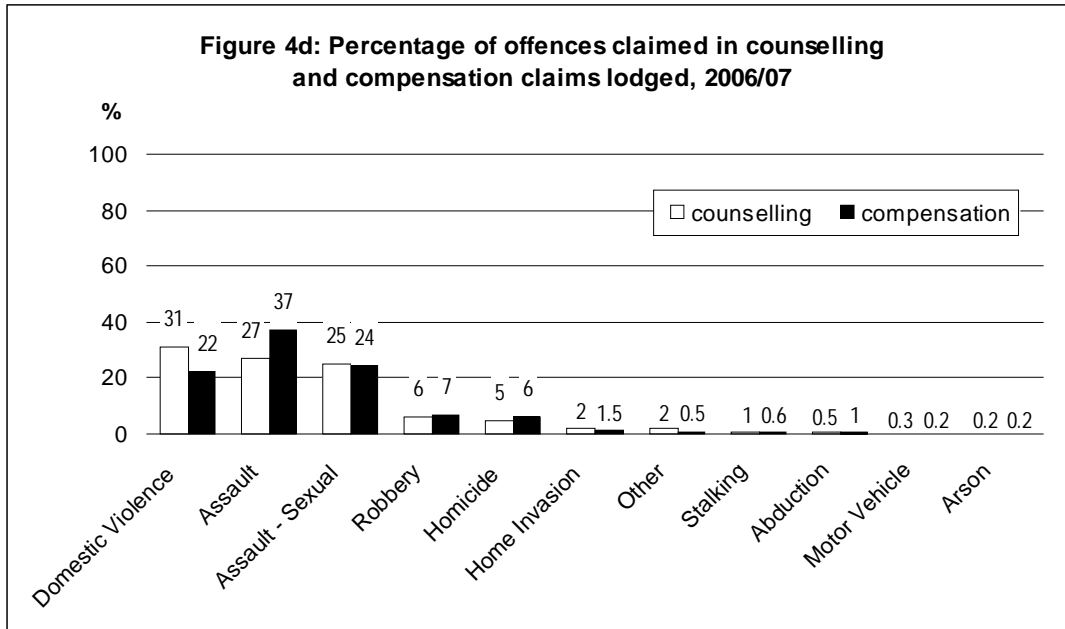


Figure 4d shows the offences claimed in counselling and compensation claims lodged during 2006/07.

### COMPENSABLE INJURY OF SEXUAL ASSAULT

In the year 2006/07, 990 claims for sexual assault were determined. Awards were made in 853 cases and 137 were dismissed. A total of \$23,754,663 was paid to victims of sexual assault in the year as shown in the following figure. The various categories of compensable injuries of sexual assaults are:

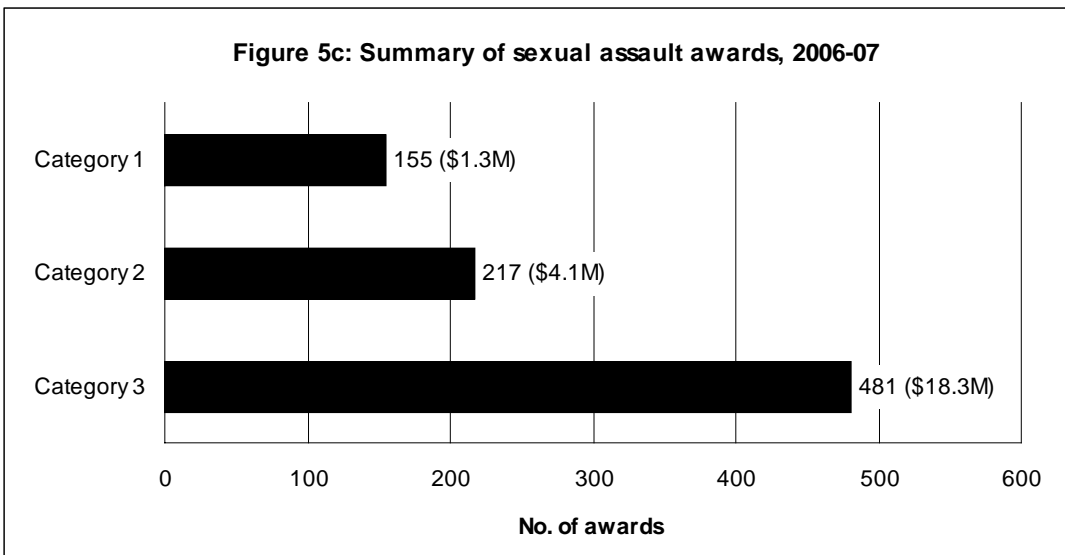
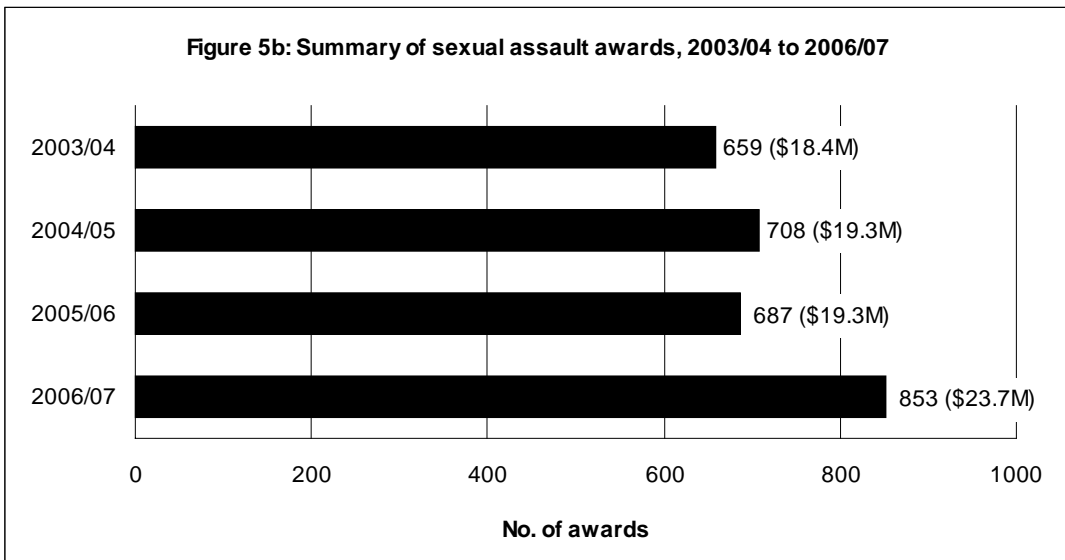
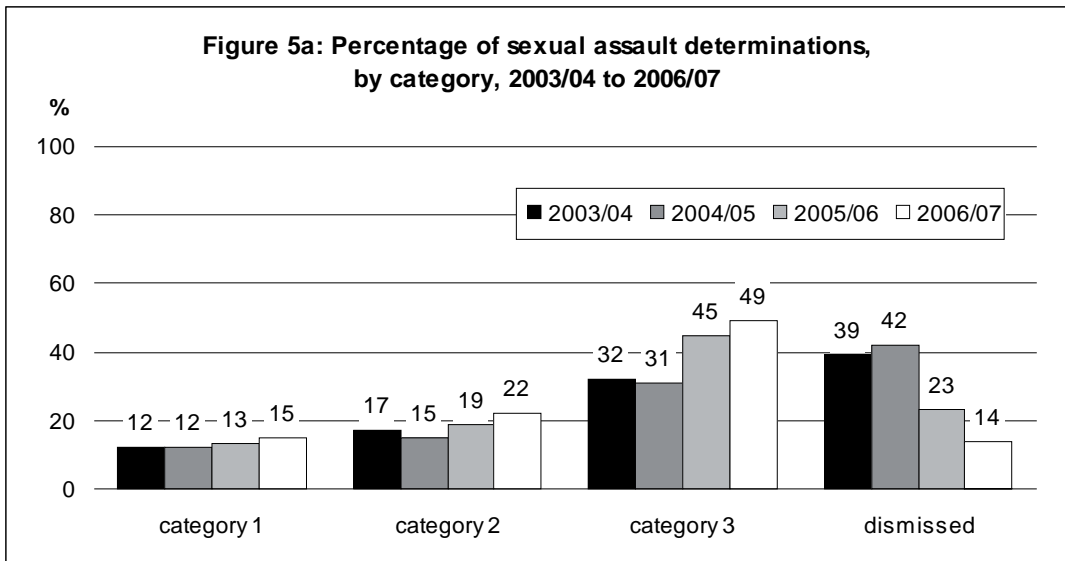
- Category 1 – 155 claims ..... \$1,334,624
- Category 2 – 217 claims ..... \$4,129,040
- Category 3 – 481 claims ..... \$18,290,999

The next three figures set out the following material:

Figure 5a: Percentage of sexual assault determinations, by category – 2003/04 to 2006/07

Figure 5b: Summary of sexual assault awards – 2003/04 to 2006/07

Figure 5c: Summary of sexual assault awards – 2006/07



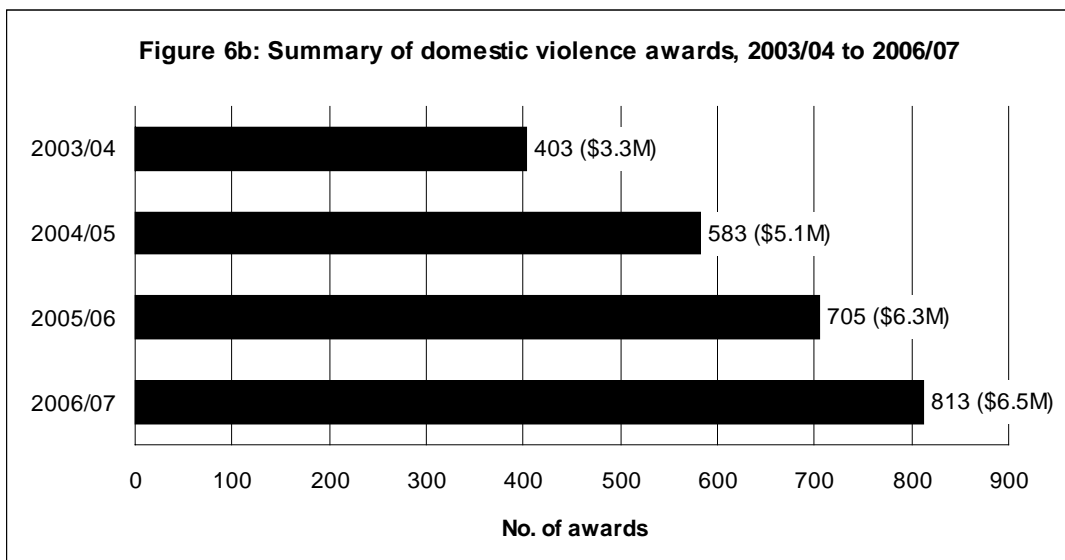
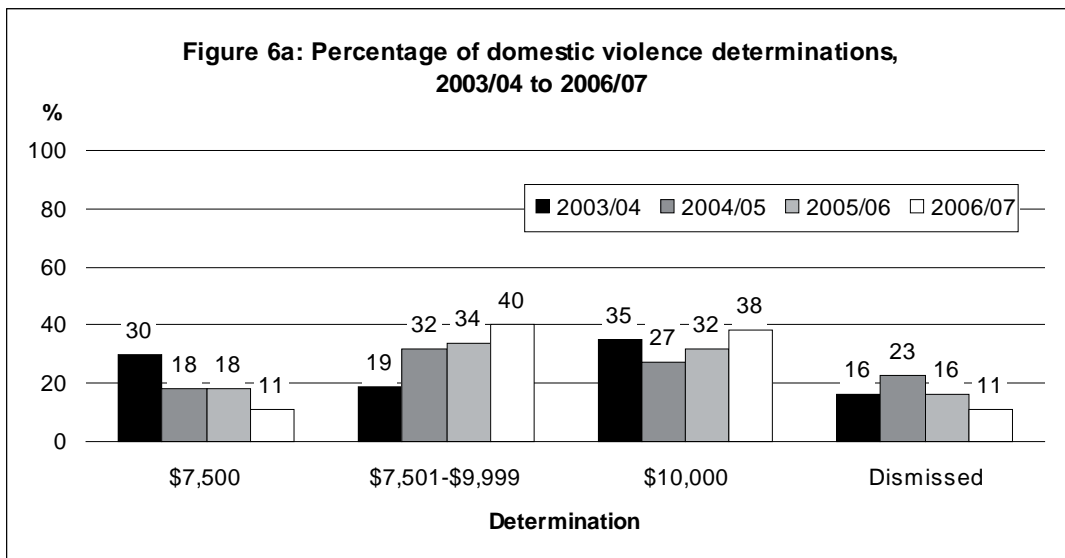
**COMPENSABLE INJURY OF DOMESTIC VIOLENCE**

Awards for the compensable injury of domestic violence totalled 813 as opposed to 705 for the previous year. There has been a steady rise in the number of claims lodged where the applicant is applying for statutory compensation for the compensable injury of domestic violence. A total of \$6.5 million was awarded.

The next two figures set out the following material:

Figure 6a: Percentage of domestic violence determinations – 2003/04 to 2006/07

Figure 6b: Summary of domestic violence awards – 2003/04 to 2006/07



**COMPENSABLE INJURIES OF CHRONIC PSYCHOLOGICAL/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 a list of Authorised Report Writers (ARW) approved by the Director. As a result of amendments to clause 5

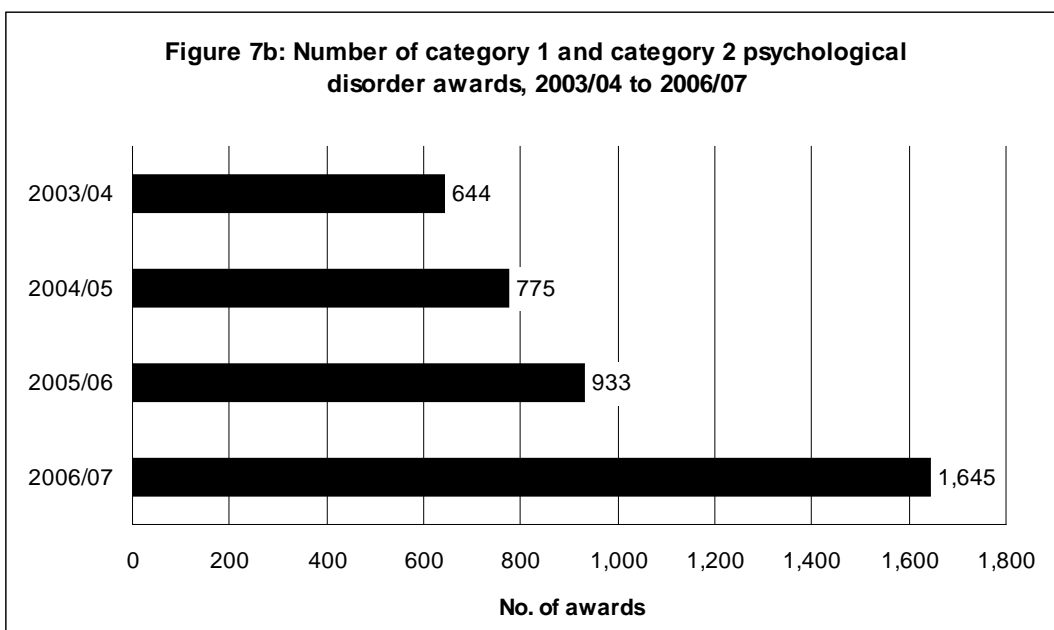
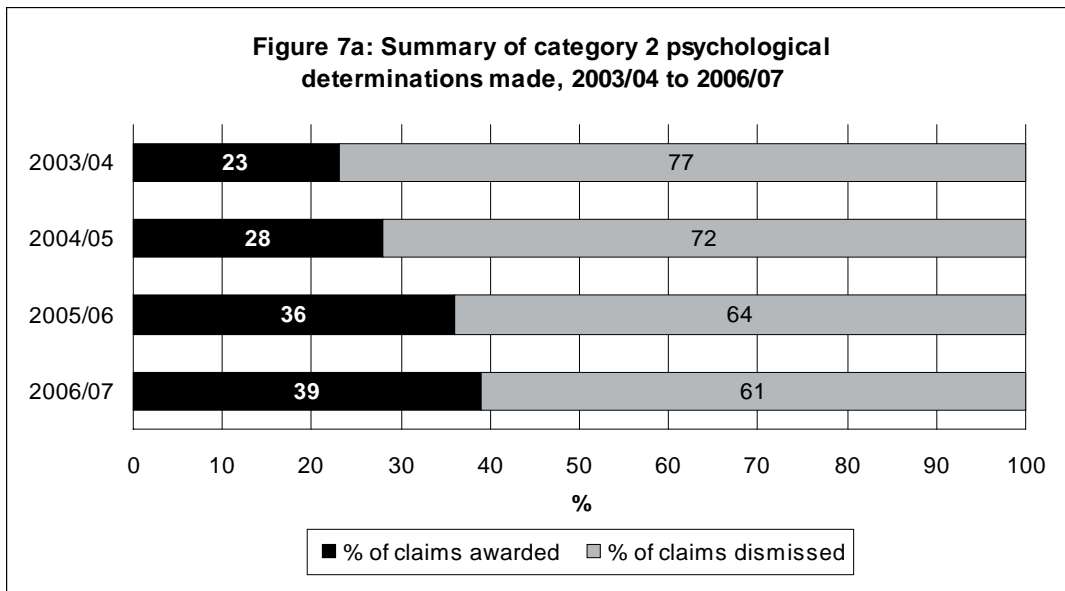
of Schedule 1 of the Act, which became effective on 31 May 2000, a category 1 disorder is only available where the act of violence has apparently occurred in the course of the commission of the offences of armed robbery, abduction and kidnapping.

As a result it seems that applicants who otherwise may have claimed a category 1 disorder, now claim a category 2 disorder that is severely disabling. The number of applicants successfully claiming a category 2 disorder that is severely disabling increased from 36% to 39%. That increase has impacted on the increase in the average award for the past year.

The next two figures set out the following material:

Figure 7a: Summary of category 2 psychological determinations made, 2003/04 to 2006/07

Figure 7b: Number of category 1 and category 2 psychological awards, 2003/04 to 2006/07



**APPEALS TO THE TRIBUNAL AGAINST DETERMINATIONS OF ASSESSORS**

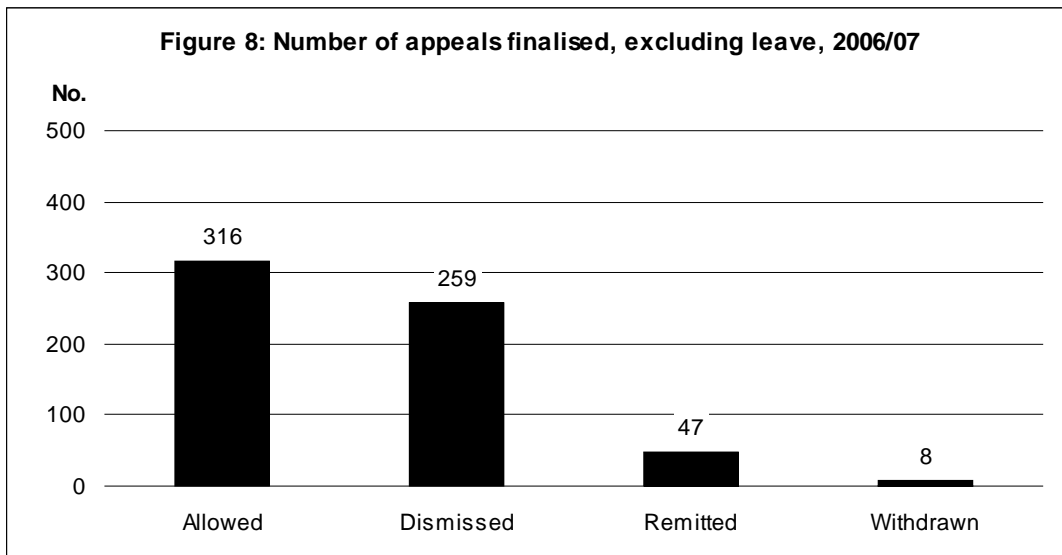
The Act provides for an appeal from a compensation assessor to the Tribunal. During the year 803 appeals were lodged compared with 961 in the previous year. Appeals against dismissal totalled 639, against quantum 134 and refusal to give leave to file applications out of time 38.

|                    | 2005/2006 | 2006/2007 |
|--------------------|-----------|-----------|
| Appeals lodged     | 803       | 587       |
| Appeals determined | 881       | 648       |
| Pending            | 162       | 101       |

As Figure 4b shows on page 17 the rate of dismissal by compensation assessors has fallen and that has had some impact on the number of appeals lodged.

In the financial year 648 appeals were determined. Of these 316 were allowed; 259 dismissed; 47 were remitted to assessors to be considered and determined again and eight were withdrawn (see Figure 8). Included in the total 648 appeals determined were 18 appeals against refusal to grant leave to file applications for statutory compensation outside the two-year limitation period. Of that number one appeal was granted and leave was given and 17 appeals were dismissed and leave was refused.

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.



**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 a number of matters. The review mechanism is generally used where there is an administrative error.

## APPEALS TO THE DISTRICT COURT ON POINT OF LAW

During the year under review 25 appeals were lodged in the District Court on a point of law. In the preceding year 26 appeals had been lodged. The Court dealt with 29 matters during the year and the results are as follow:

|                      | 2006/2007 |
|----------------------|-----------|
| Remitted to Tribunal | 6         |
| Dismissed            | 17        |
| Discontinued         | 6         |

The District Court matters have been predominantly heard in the Sydney CBD during the period of this report. In the greater metropolitan area one matter was heard at Parramatta and another at Penrith. Appeals were heard in Orange, East Maitland, Coffs Harbour, Wollongong and Newcastle.

As I reported last year, an appeal to the Court of Appeal against a District Court judgment dismissing the appeal was determined in favour of the Victims Compensation Fund Corporation. The victim lodged a special leave application with the High Court of Australia against the Court of Appeal decision. On 5 October 2006 Justices Gummow and Heydon dismissed the special leave application in favour of the Fund.

In appeals to Court of Appeal and to the District Court against Tribunal decisions, the Acting Fund Advocate represented the Victims Compensation Fund Corporation. The Crown Solicitor’s Office represented the Fund in the High Court appeal.

## APPROVED COUNSELLING SCHEME

The Scheme was established under the 1996 Act. Applications for 2 hour of counselling received increased from 4,431 to 4,948. Of the total received 4,767 applications were approved. Counselling payments totalled \$2.79 million as against \$2.49 million for the previous year.

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.

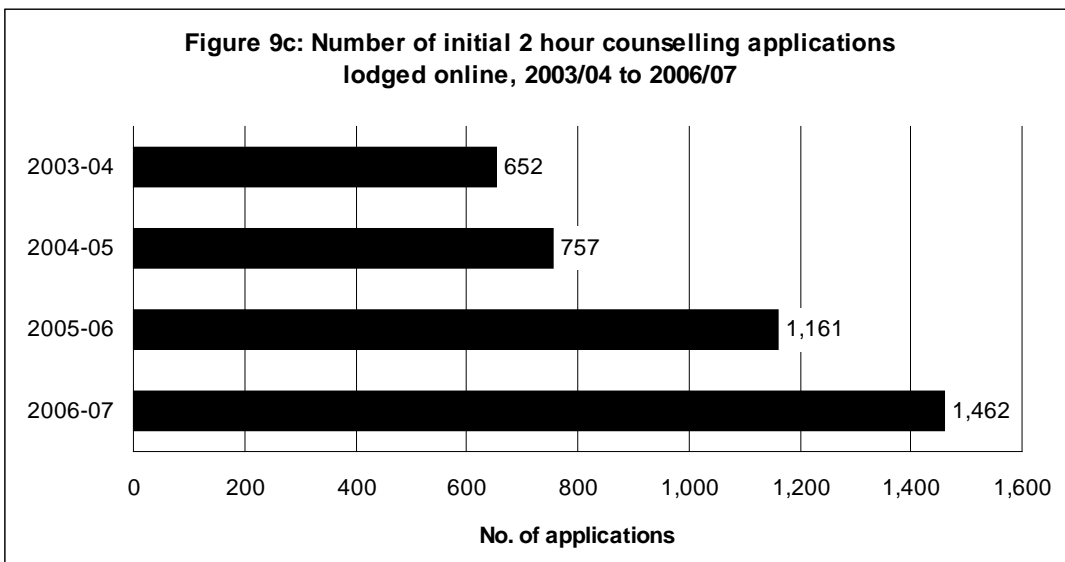
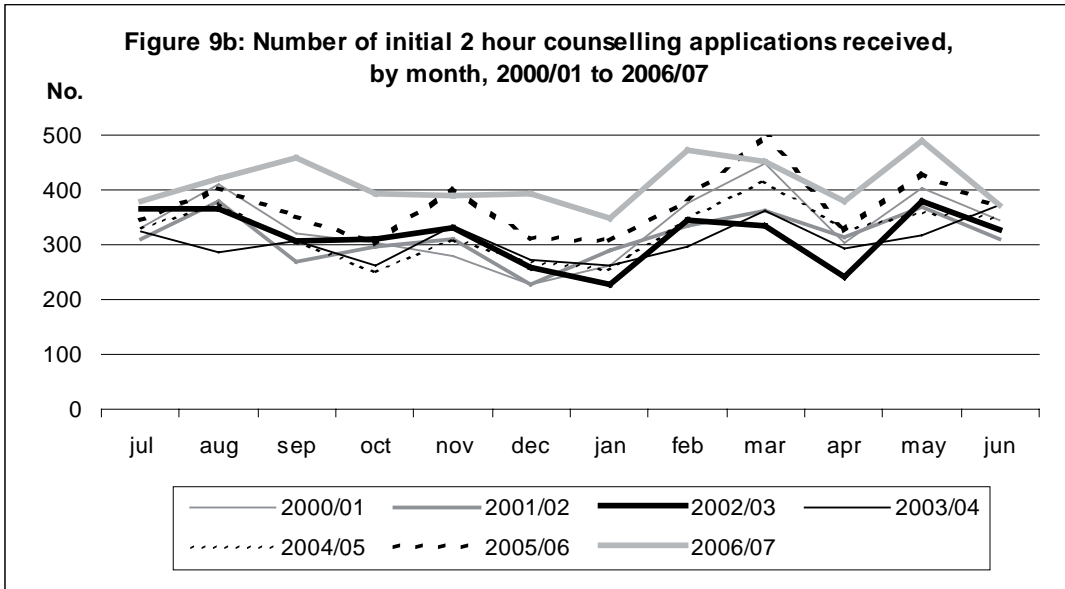
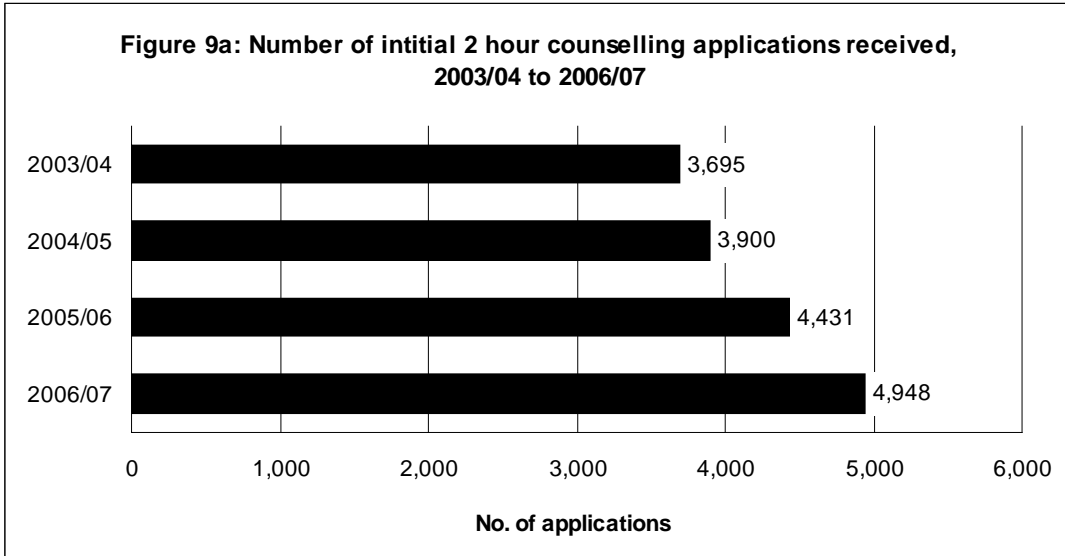
The next four figures present the following material:

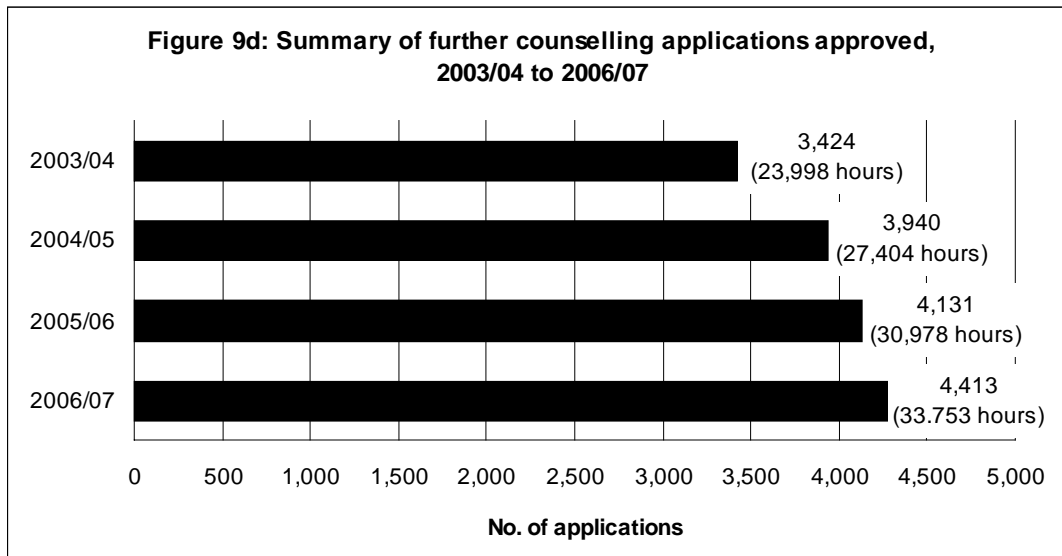
Figure 9a: Number of initial 2 hours counselling applications received – 2003/04 to 2006/07

Figure 9b: Number of initial 2 hours counselling applications received, by month – 2000/01 to 2006/07

Figure 9c: Number of initial 2 hours counselling applications lodged online, 2003/04 to 2006/07

Figure 9d: Summary of further counselling applications approved, 2003/04 to 2006/07





## CLIENT SATISFACTION SURVEY

As part of the quality assurance methods that the Victims of Crime Bureau 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.

For the year ended 30 June 2007, 277 responses were received and the results were overwhelmingly positive. In response to the question “Did you find your counsellor helpful and supportive?”, 98% stated that they agreed or very much agreed that the counsellor was helpful and supportive.

In response to the question “Did you find your counsellor flexible in the appointment times offered?”, 99% agreed that the counsellor was flexible and in response to the question “Did you find that counselling was worthwhile and helped you cope better?”, 98% answered in the positive.

## REVENUE

Revenue comes from three sources:

- Restitution from defendants.
- Court levies
- Other revenue

In the year under review, revenue totalled \$6.94 million as against \$7.69 million for the previous year: \$3.63 million was recovered from convicted offenders as against \$4.08 million the previous year. Court levies amounted to \$2.70 million as against \$2.73 million for the previous year and other revenue totalled \$0.61 million as against \$0.88 million.

## 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 2006 restitution action was being commenced approximately eight months after the date of the award. As at June 2007 this period remains the same.

During the year under review 1,672 provisional orders valued at approximately \$29 million were made by the Director as against 1,669 valued at approximately \$27 million 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 action is possible in approximately 50% of cases where awards of statutory compensation are made.

## RESTITUTION RECOVERY

The amount recovered from convicted offenders totalled \$3.63 million – a decrease on the \$4.08 million recovered in the previous year.

Since the inception of the statutory scheme in 1988, more than \$38 million has been recovered from convicted offenders. In excess of \$24 million of this amount has been recovered since 2000.

The impact of interest rate increases in the year under review and the flow on effect of higher prices for goods and services has impacted on many people in the low socio-economic environment from which restitution defendants come. However a continuation of the more proactive approach to debtor management and introduction of new payment options for restitutions debtors has seen recovery levels maintained at the average of more than \$3.5 million since 2000. The new payment options 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 and electronic payments made over the internet. As at 30 June 2007 approximately 3,500 convicted offenders were using one of the new payment options.

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) 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 offender is either unidentified or criminal proceedings have resulted in acquittal or dismissal, payments of statutory compensation cannot be the subject of restitution action.

I have previously 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.

## **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 189 arrangements amounting to approximately \$1.8 million were entered into. The amount agreed upon represented an average of 49% 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 and seeks to settle the matter rather than become involved in a formal hearing mainly initiates arrangements. The terms of the arrangement usually reflect both the financial circumstances of the offender and any mitigating circumstances including whether other convicted offenders were involved in the act of violence.

## **HEARINGS BEFORE THE TRIBUNAL**

Approximately 2000 matters were listed for hearing or confirmation by the Tribunal during the year resulting in orders amounting to approximately \$15.1 million; this represents an average of 76% 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 24% 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 1,148*. That decision considered section 45 of the 1987 Act. Section 51 of the current legislation broadly corresponds with section 45.

Approximately 60% 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.

In the preceding year an appeal was filed in the Supreme Court appeal against the decision of a Tribunal Member pursuant to section 55 of the Act. That matter was finalised and remitted to the Tribunal for a redetermination. The outcome of the redetermination is again the subject of an appeal to the Supreme Court pursuant to section 55.

In the Supreme Court appeals, the Legal Officer, Victims Services, represented the Director and Tribunal individually.

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 526 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 \$2.32 million against 96 offenders since the enactment of this provision. The action has resulted in the payment of approximately \$527,000.

There are limited opportunities for the Director to make such applications due to the small number of convicted offenders who are registered property owners. Where possible charges on land are pursued. Victims Services is able to access NSW Department of Lands, Land and Property Information Database for this purpose. Interstate registers of property owners cannot be searched.

## **RESTRAINING ORDERS**

The 1999 amendments also enabled the Director to apply for a restraining order on the property of a person charged or convicted of an offence that involved an act of violence for which an award of statutory compensation might be made. The purpose of the amendment was to prevent a defendant from disposing of property to avoid any subsequent payment of restitution. Relevant circumstances were identified during the year where such action was required. The Director commenced proceedings under section 58E of the Act in the reporting period and was successful in gaining a restraining order in relation to one multiple offender.

Whilst the above restraining order remains in force, all pre-existing restraining orders have been finalised.

## **GARNISHEE ORDERS**

During the reporting period increasing use was made of Garnishee Orders in seeking to recover restitution from offenders who were eligible to receive or who were awarded damages in civil proceedings. The use of Garnishee Orders has to date proved to be a more efficient and successful course of action on recovery in such matters than the recent amendments to the *Civil Liability Act 2002*. The latter provides that restitution debts be paid directly from court awarded damages prior to paying the balance to plaintiffs in such matters.

## **REPAYMENTS**

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

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

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

Currently there are 235 matters where follow-up action is in hand. A number of repayments have been received and a few matters have been cleared as the Director has obtained 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 because of being served with a subpoena, or in some instances because of media publicity or from defendants who lodge an objection to a Provisional Order.

## **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 Attorney General’s Department SUN financial system are providing ongoing improvements to the financial information necessary to determine a debtor’s compliance.

## **SUBPOENAS**

Some 116 subpoenas were served on the Director during the year under review. Of this total, 13 related to proceedings in the criminal divisions of the Supreme, District or Local Court, where production was successfully opposed - pursuant to section 84. Despite the amendment to section 84, which was made in 2001 it, appears that some practitioners remain unaware of its provisions.

## **RECOMMENDATION**

As result of the review of the Act, the Government introduced amendments, which commenced on 22 December 2006, and other associated amendments on 16 February 2007. I have referred to the more important amendments earlier in the report.

In relation to the Table (of Compensation Injuries) in Schedule 1 of the Act, the Attorney General undertook to give consideration to the introduction of further compensable injuries not presently provided for in the Table. In that event, I recommend that the entire Table be reviewed -

- (a) as to the descriptive affect of compensable injuries, and
- (b) the amount of statutory compensation payable for injuries below the threshold.

Since the Review, an issue has arisen as a result of judgments in the District Court. This issue relates to the compensable injuries of a chronic psychological or psychiatric disorder category 1 that is moderately disabling or category 2 that is severely disabling. Where the evidence establishes that the compensable injury is caused directly by the act of violence there is no problem. However where other traumas (occurring prior to or subsequent to the act of violence) have also impacted adversely on the victim, problems may occur in determining whether the compensable injury arose as a direct result of the act of violence. Clause 4 of Schedule 1 provides where an act of violence results in a compensable injury because of the the aggravation, acceleration, exacerbation or deterioration of an an existing condition,

the standard amount of compensation for the injury is to be reduced by the proportionate amount that the Tribunal or compensation assessor considers attributable to the existing condition. Clause 4 makes no provision for post act of violence traumas that may also have impacted on the victim.

It is my recommendation that consideration be given to amending the provisions of clause 4 of Schedule 1 to overcome the present unsatisfactory situation where an existing condition can only be considered.

## **ACKNOWLEDGEMENTS**

I thank my magisterial colleagues, the Director and the Registrar for their continued valuable assistance and support. I acknowledge the assistance of the staff of Victims Services to victims of crime and the continuing high level of assistance provided to Tribunal Members by staff in the appeals section. In particular I acknowledge the splendid support given by Mr. McAteer, Acting Fund Advocate and Ms. Krishna Acting Legal Officer.



