



Victims Compensation Tribunal  
New South Wales

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Chairperson's Report  
2007/2008

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**New South Wales Government**  
Attorney General's Department  
Victims Services

Produced by  
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**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

9 October 2008

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 2008.

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 (the Tribunal) was established under the *Victims Compensation Act 1987* and continued under the *Victims Support and Rehabilitation Act 1996*. The Tribunal operated out of Levels 4, 5 and 6 at 299 Elizabeth Street Sydney but moved to the new Justice Precinct at Parramatta and opened for business on 19 November 2007.

The move was not favoured by all staff, some of whom transferred prior to and since the relocation. The new premises are spacious and provide comfortable accommodation in pleasant surroundings. The Tribunal occupies sections of Levels 1 and 4. Callovers are held before the Registrar in a hearing room on ground level; appeals and restitution hearings are heard before a Tribunal Member on Level 1 (which also houses the relevant Restitution and Appeals Registries). Assessors, the Compensation Registry, Accounts, Victims of Crime Bureau and administration operate from Level 4. The building provides conference rooms and other ancillary accommodation.

Pursuant to the Act only magistrates are eligible to be appointed as members of the Tribunal. During the period under review the Chairperson, Magistrate C.R. Brahe together with Magistrates C.A. Gilmore and T.G. Cleary 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 \$4.43 million to \$4.28 million in the year under review. Operational expenses increased from \$2.27 million to \$2.34 million.

The former Director, Mr. John Le Breton resigned in July 2007. Mr. Le Breton’s tenure as Director was marked by his caring approach to victims of crime and his concern that Victims Services operates as efficiently as possible to enable victims to overcome or alleviate the trauma that they suffered. Ms. Marianne Curtis, Manager of the Victims of Crime Bureau has acted as Director since Mr. Le Breton’s resignation.

In last year’s report I indicated that Ms. Tracey Hall, Registrar for the previous two years left the Tribunal on 15 June 2007 to take up a position with the Local Courts Administration. Legal Officer Mr. John McAteer has acted as Registrar pending the filling of that vacancy.

## SPECIAL EVENTS

### *National Victims of Crime Conference 2007.*

Victims Services hosted this conference on 2-3 October 2007. The theme of the conference was “Victims Rights – Taking a Closer Look”. The conference was opened by the Hon. John Hatzistergos MLC, Attorney General and Minister for Justice, who also launched Courtwise during the conference. Courtwise is an innovative website designed to assist victims of crime prepare for the experience of going to court as a witness.

There were three keynote speakers. Professor Dr. Marc Groenhuijsen from the Tilburg University of the Netherlands spoke on “Victims Rights in Europe: Practical Issues, Interpretation and Implementation”. Professor Groenhuijsen is a renowned lawyer and international victimologist known for his work in restorative justice. Associate Professor Sam Garkawe from Southern Cross University spoke on “International Norms in Favour of the Treatment and Rights of Crime Victims – Why they are important in Australia and how they can be improved”. Professor Richard Bryant from the University of NSW spoke on “Understanding and Treating Survivors of Criminal Assault”.

The conference focused on victims rights as victims progress through the criminal justice system. Charters of Victims Rights for victims of crime were considered in the context of implementation and the challenges of compliance and understanding by victims and service providers.

The conference was very successful with more than 130 Australian and overseas delegates attending. The benefits of forging links with delegates across Australia and internationally to further victims rights is important and highly desirable.

### *Law Society Address*

On 8 August 2007, the Chairperson addressed members of the City of Sydney Regional Law Society on the background to victims compensation and the operation of the *Victims Support and Rehabilitation Act 1996*.

### *Queensland Delegation*

On 8 February 2008, the Acting Director, Acting Registrar, Manager of Restitution and the Chairperson met with a delegation from Queensland to discuss the statutory compensation scheme. That State is reviewing the scheme whereby compensation is paid to victims of crime and the delegates were interested in the operation of the statutory compensation scheme in this State and the changes made to the law since 1987.

### *Delegation from the Supreme People’s Court of China*

As part of the ongoing *China-Australia Human Rights Technical Co-operation Program* the Acting Director, Acting Registrar, Manager of Restitution and Chairperson met with a delegation from the Supreme People’s Court on 19 February 2008. The all day meeting covered a general introduction to victims services; victims compensation, approved counselling and restitution; overview and history of victims compensation legislation, Victims of Crime Bureau, Charter of Victims Rights and Victims Advisory Board.

### *Telephone Conference with Canadian Authorities*

On 6 March 2008 the Acting Director, Acting Registrar, Manager Restitution and Chairperson held a telephone conference with officers of the Criminal Injuries Compensation Board in Ontario following an Ombudsman Review in 2007 that criticised the Board for delays and the Board’s cumbersome processes. The Canadian authorities had been provided with copies of the NSW Legislation and the Chairperson’s 2006-2007 report and there was a valuable interchange on various issues.

### *Law Week*

Victims Services invited legal practitioners to a Q & A Forum relating to claims for statutory compensation. Participants were invited to submit questions before the event and over 30 questions were received on a variety of issues including multiple claims, medical reports, category 1 and 2 psychological disorders, related acts, filing claims out of time and professional costs.

Morning and afternoon sessions were held and a total of 92 practitioners attended to hear the Chairperson and Acting Registrar respond to the questions and to answer questions from the floor. Practitioners generally enjoyed the practical discussion and interaction and suggested that the forum be held annually.

### *China Visit*

Following the attendance of the delegation from the Supreme People’s Court of China, the Chairperson, along with representatives from Juvenile Justice and Corrective Services, was invited to a Victims of Crime Seminar in Qingdao, Shandong Province on 17-18 May 2008 as part of the ongoing China-Australia

Human Rights Technical Cooperation Program. The Vice President of the Supreme People’s Court presided at the seminar that was attended by judges of the High, District and Intermediate People’s Courts, lawyers and academics.

The Chairperson’s presentation “Victims Compensation Mechanisms” was a background to the victims rights movement in New South Wales leading to victims compensation, the *Victims Rights Act 1996* and the Charter of Victims Rights. All the Chinese speakers called for the need to strengthen and protect the rights of victims. Visits were made to the Intermediate People’s Court, District Court and a prisoner re-forestation project.

The President of the Human Rights and Equal Opportunity Commission acknowledged the contribution of the three Australian delegates.

## KEY FACTS

- Applications for statutory compensation received during the review period totalled 7031.
- Assessors determined a total of 4013 claims for compensation.
- A total of \$61 million (statutory compensation awarded by assessors and Tribunal on appeal, professional costs and disbursements) was paid.
- Pending claims have increased from 7297 to 10 241.
- The number of appeals to the Tribunal totalled 639 and 563 were determined. There were 177 appeals pending at the close of the financial year.
- Under the Approved Counselling Scheme, 4984 applications for initial counselling were received in 2007/08. 45 605 counselling hours were approved for victims of crime for initial and further applications for counselling resulting in payment of \$2.87 million.
- Applications for initial counselling lodged on line continued to increase. In 2007/08, 2015 online applications were received compared to 1462 in 2006/07 and 1161 in 2005/06.
- A total of \$3.36 million was collected from convicted offenders during 2007/08 slightly down from the previous year.
- Electronic payment options are available for defendants who are liable to pay restitution. At the end of 2007/08 over 3950 debtors had taken up this option.
- Victims Services has continued to provide information sessions and forums about the Charter of Victims Rights, services and entitlements for victims of crime across NSW to a range of service providers including migrant resource centres, local courts, Office of the Director of Public Prosecutions, Department of Corrective Services, 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.

## VICTIMS SUPPORT AND REHABILITATION ACT 1996

### COMPENSATION ASSESSORS

During the period under review the following compensation assessors determined claims for statutory compensation and under delegation from the Director, applications for leave to file claims out of time – Messrs. Hipwell, Keays-Byrne, De Mayo, McAteer, Stephenson and Ms. Madison, Ms. Wong, Ms Bell and Ms. Krishna. Mr. McAteer is the Legal Officer, Acting Fund Advocate and Acting Registrar and apportions his time between Fund work and Victims Services work. Ms. Krishna is the acting Legal Officer and like Mr. McAteer, apportions her time accordingly.

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

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

- (a) the full standard amount for the most serious injury
- (b) ten per cent of the standard 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, the Act provides that the amount of compensation payable may be reduced or no award made – section 30. Section 24 provides that certain persons are ineligible to receive statutory compensation.

## APPLICATIONS

<b>Table 1: Summary of applications, 2006/07 and 2007/08</b>		
	<b>2006/07</b>	<b>2007/08</b>
Received	5636	7031
Pending	7297	10 241
Awards	2927	2630
Dismissals	1565	1383
<b>Total Determinations</b>	<b>4492</b>	<b>4013</b>
<b>Total money paid</b>	<b>\$61.46 million*</b>	<b>\$61.00 million*</b>

\* Including awards, costs, disbursements and Appeal awards.

## INCREASING CLAIMS

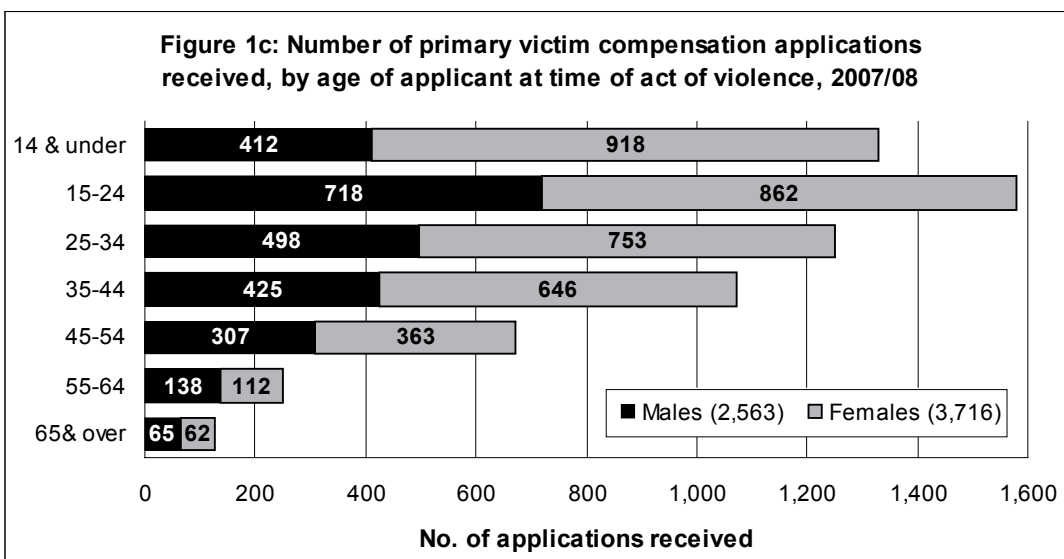
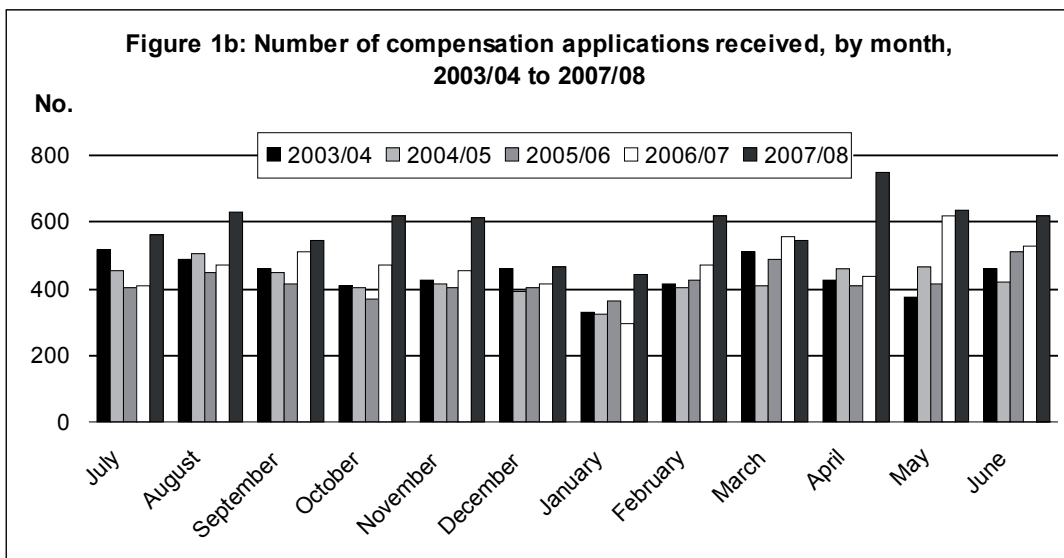
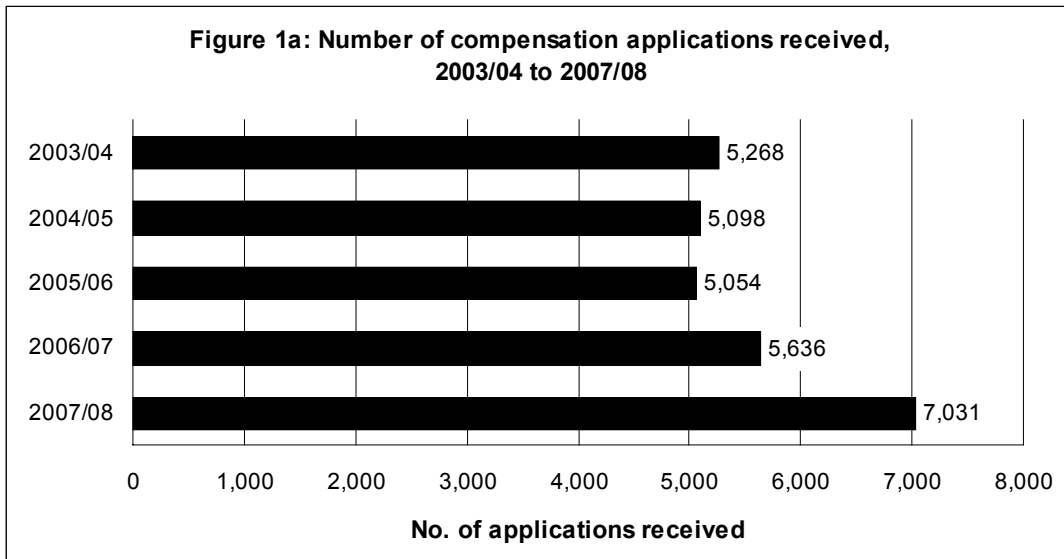
I reported last year that the flow of applications for statutory compensation had shown an increase of approximately 10 per cent to 5636. From 1998/99 under the current legislation through to 2005/06 the lodgement rate fell from 12 702 in 1998/99 to 5054 in 2005/06. For the year under review there was a substantial increase in applications received over the previous year – 7031, an increase of nearly 25 per cent.

Figure 1a shows the number of applications received, 2003/04 to 2007/08.

Figure 1b shows the number of applications received, on a monthly basis, 2003/04 to 2007/08.

Figure 1c shows the number of primary victim applications received, by age of the applicant at the time of the act of violence, 2007/08. Claims by females outnumbered those by males, particularly in the 14 years and under age group.

The increase has posed problems for Victims Services and if the rate of lodgement continues then those difficulties will escalate. The budget is fully expended each year so that it follows that if more claims were determined the budget would need to be increased. Moreover, the increasing number of claims lodged has led to a significant backlog – pending claims increased from 7297 to 10 241. It is likely



that this trend may continue in which event staffing would need to be reviewed. It is not the function of this report to propose any remedies but it may become necessary to consider the threshold at which statutory compensation is awarded and consider other economies.

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

Further, Victims Services is aware that more legal practitioners are holding themselves out as available to handle Tribunal claims. Indeed there are legal firms that specialise in this area. Some practitioners began specialising in Tribunal matters some years back and have now built up their practices to the extent that they have doubled the volume of matters they handle. There is some incentive to specialise as assessors generally make awards of legal costs regardless of the outcome of the claim. (See Recommendation 8).

## **DISMISSAL RATE**

I have commented on the fall in the number of claims that were dismissed by the compensation assessors in past reports. In the year 2004/05, 2887 applications were dismissed in 2005/06, 2210 and, in the year under review, 1383 (see Figure 4c).

The fall in the dismissal rate is due to a number of factors including the rate of legal representation by applicants. Currently legal practitioners file 87 per cent of all claims. It could be argued that claims are now being more appropriately brought and more professionally handled. Solicitors are filing stronger submissions on issues such as act of violence, the effects of contributory behaviour and the relationship of the parties where the compensable injury of domestic violence is claimed.

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

Over the years, these annual reports have shown that the Tribunal has a lower dismissal rate than that of assessors. Whilst appeals are dealt with on the material that was before the assessor, subject to section 38(3) additional material may be presented on appeal. The lower dismissal rate may be due in part to the receipt of that fresh material and also to Tribunal Members taking a more beneficial approach to the legislation than that previously taken by some assessors. Over time assessors have reacted positively to Tribunal decisions.

The fall in the number of dismissals is also due, in part, to changes to the definition of “injury” which was effective from 22 December 2006 making it easier for claims of domestic violence and or sexual assault to succeed.

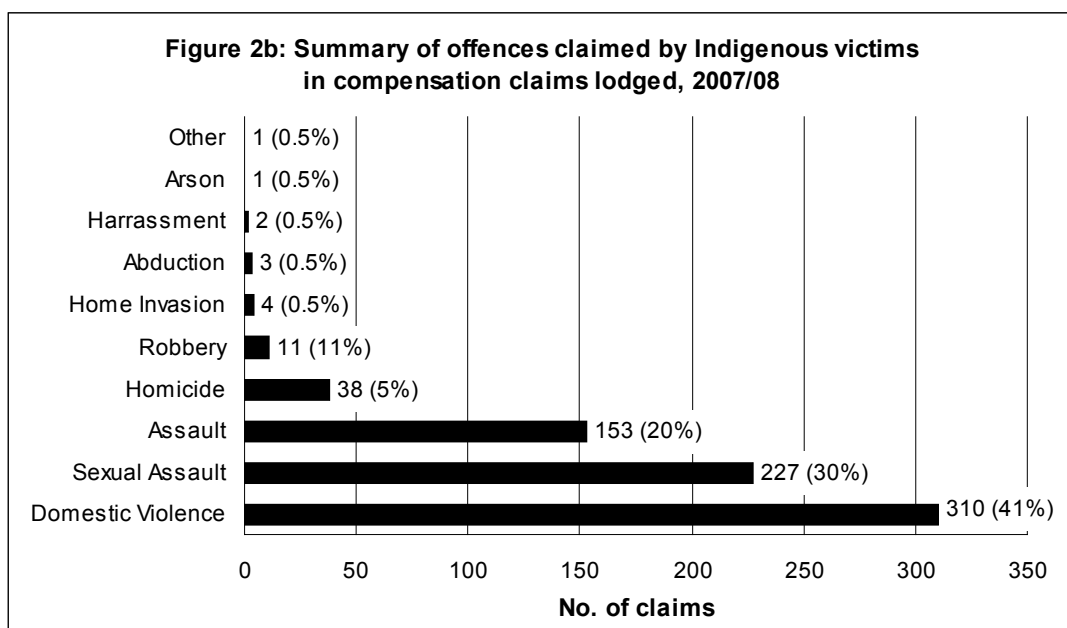
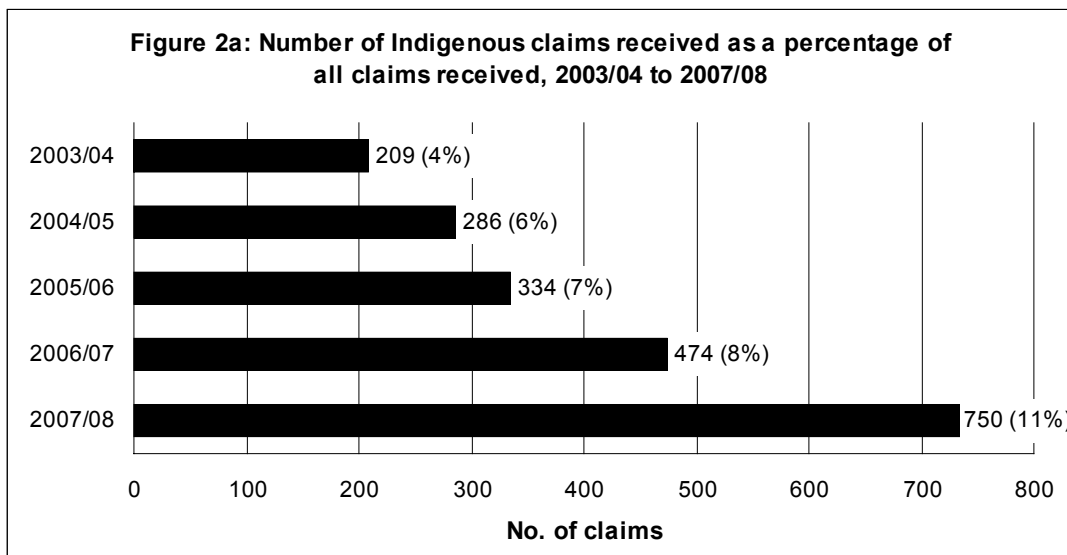
The major reasons for dismissal of applications related to the failure of the victim to establish an act of violence; or to establish a compensable injury; or that the amount of statutory compensation for the established compensable injury, and any deduction pursuant to section 30, did not meet the threshold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

## INDIGENOUS CLAIMS

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

Figure 2a shows the number of Indigenous claims received over the past five years as a percentage of all claims received and the total number of claims received from Indigenous persons over the same period. That information is obtained from applicants who identify that they are Indigenous in the application form. The figure shows a steady rise in the number of claims from Indigenous victim applicants – 209 in 2003/04 to 750 in 2007/08 – 11 per cent of the total number of claims lodged.

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



## FAMILY VICTIMS

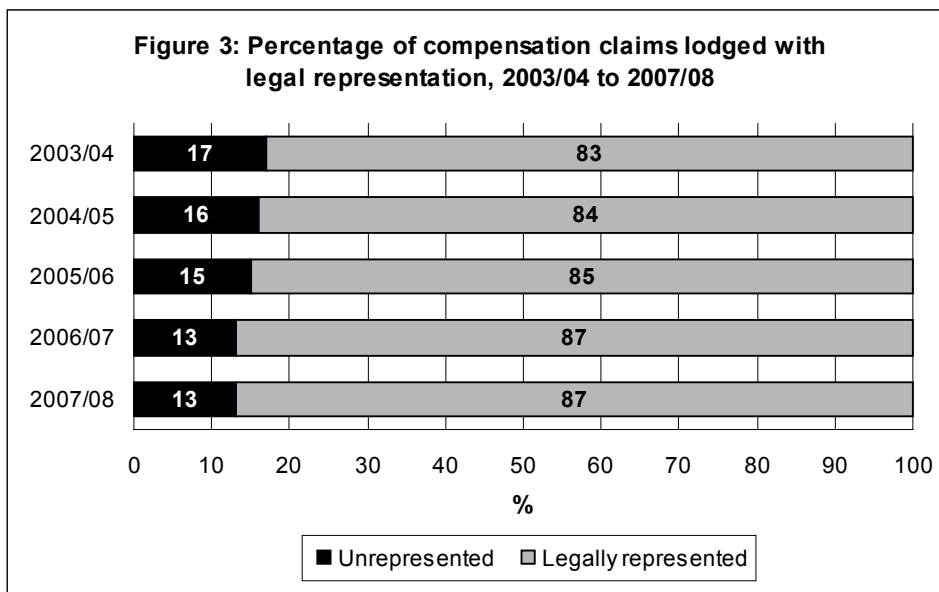
The Tribunal received 316 claims from family members in relation to 192 deceased victims. Leave was refused in 12 claims. Total payments, including interim payments of \$449 043 for funerals, amounted to \$2.24 million. 26 claims were dismissed. A total of 253 applications for counselling by family members were received and 5254 hours approved.

## 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 per cent in 2003/04 to 13 per cent for 2007/08.

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.

Figure 3 shows the legal representation of claims lodged, by percentage, 2003/04 to 2007/08.



## VICTIMS ASSISTANCE SCHEME (VAS) – STATUTORY COMPENSATION FOR PRESCRIBED EXPENSES

The Victims Assistance Scheme was introduced on the 16 February 2007. The purpose of the Scheme was to reimburse victims of crime not eligible for statutory compensation, for certain specified expenses. The threshold for claimed expenses must reach \$200 and cannot exceed \$1500. The expenses covered by the Scheme include ambulance services, dental services, physiotherapy, and domestic assistance during a victim’s recovery from the act of violence, cleaning of property, security measures and replacement of prescription glasses or contact lenses.

The Scheme extends to victims of an act of violence that occurred on and after 16 February 2007. The claim must be lodged within two years – there is no provision for late claims and applicants must establish they are primary victims of an act of violence that resulted in at least one of the compensable injuries in the Table to succeed in a claim.

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

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

In the year ended 30 June 2008, 1026 VAS claims were lodged. Of that number 29 applications only were in respect of expenses whilst the balance claimed expenses and statutory compensation (993) and four claimed expenses and counselling. A total of \$5950.62 was paid out during the year.

I have indicated the prescribed expenses for which reimbursement is made. A victim of a handbag snatch made a claim for aromatherapy massage treatment. That claim was held not to fall within the prescribed expenses. The maximum recoverable under the Scheme is \$1500 yet dental expenses not infrequently exceed that sum. A number of claims were dismissed because no compensable injury was nominated or established – a requirement under the Scheme.

I consider that the intent of VAS may not be being met by the Scheme as it currently operates because of the limit on expenses and the administrative problems. (See Recommendation 3).

## **DETERMINATIONS BY ASSESSORS**

The number of applications determined by compensation assessors declined from 4492 to 4013. That reduction was due to various reasons, including a significant rise in the average payment from \$12 935 to \$13 136. (The average payment takes into account all awards and dismissals.)

I touched on the increase in the average payments in an earlier report. The increase has resulted in part 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. For the year under review the compensation budget was fully expended. The increase in the average payment is significant. From 2003/04 to 2007/08 the average payment has increased from \$8442 to \$13 136 – increasing every year by a fairly consistent percentage but the increase has been more marked in the last two financial years. This can be explained by a drop in the dismissal rate as discussed earlier. It seems 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 injuries of sexual assault category 3 and chronic psychological or psychiatric disorder category 2 that is severely disabling.

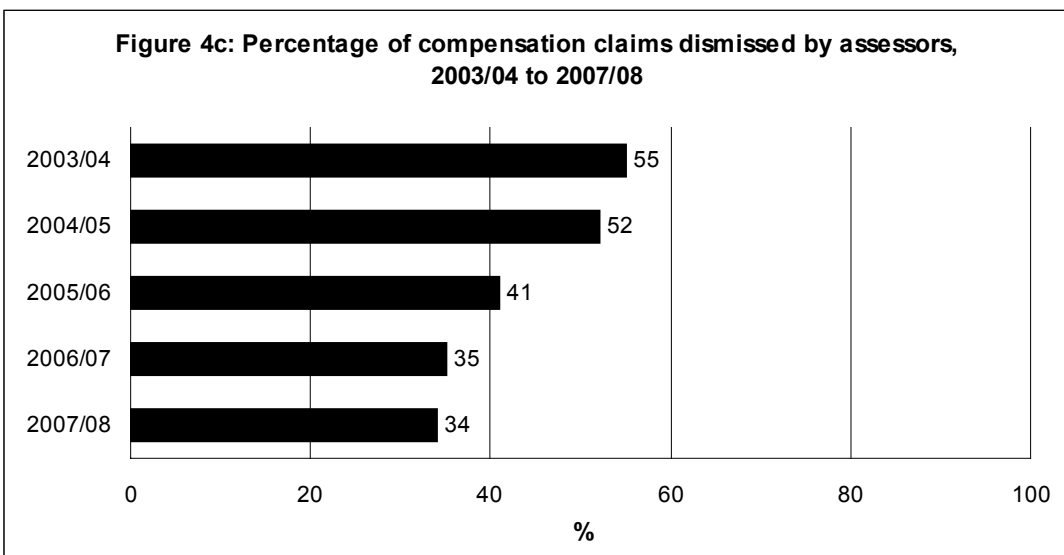
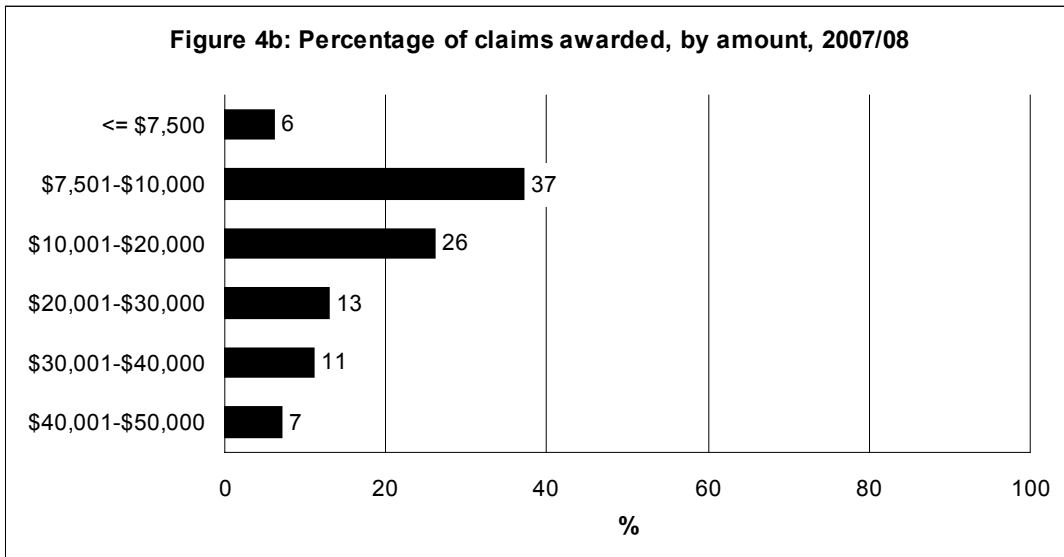
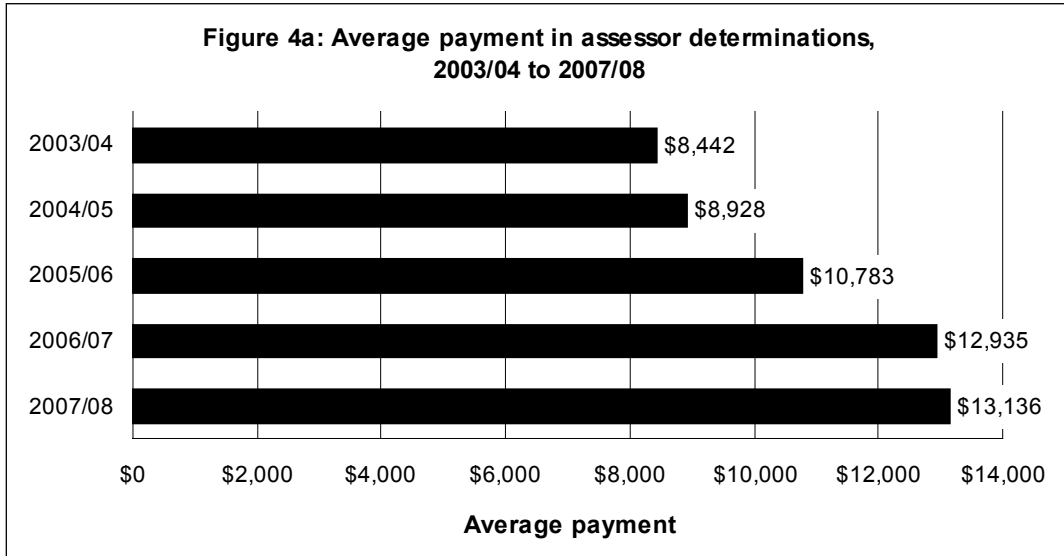
Figure 4a shows the summary of average payment in assessor determinations, 2003/04 to 2007/08.

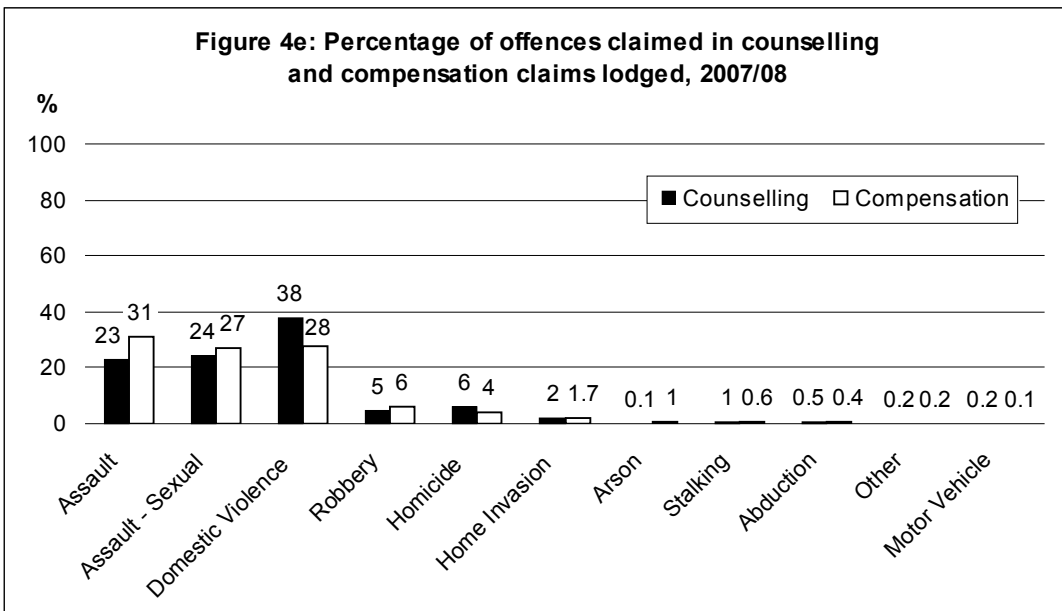
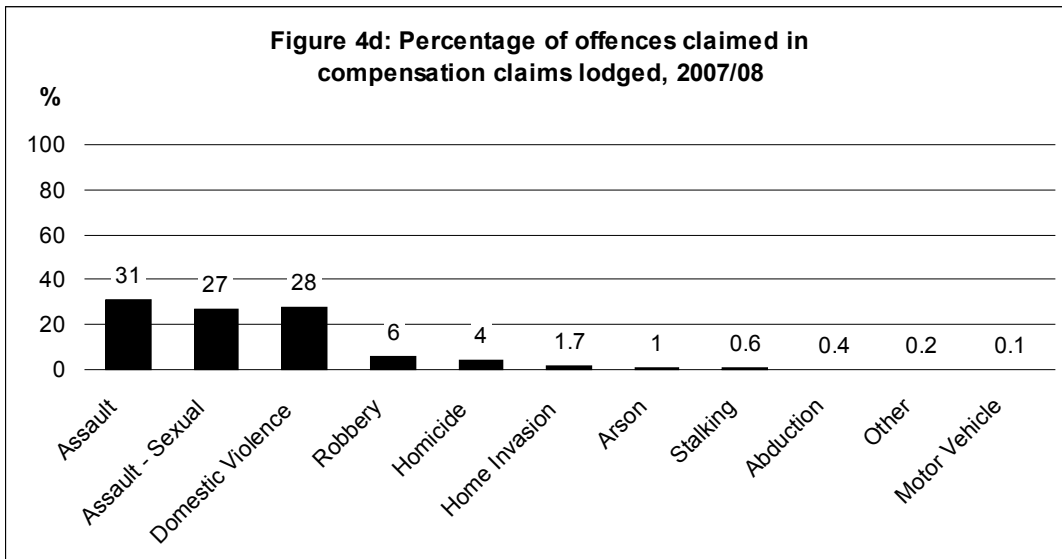
Figure 4b shows the percentage of claims awarded by amount, 2007/08.

Figure 4c shows the percentage of claims dismissed by assessors, 2003/04 to 2007/08.

Figure 4d shows the percentage of offences claimed in compensation claims lodged, 2007/08. This figure highlights that assaults, sexual assaults and domestic violence are the most prevalent range of offences for which statutory compensation is claimed. In counselling claims the prevalent offences relate to domestic violence, assaults and sexual assaults.

Figure 4e shows the percentage of offences claimed in counselling and compensation claims lodged, 2007/08.





### COMPENSABLE INJURY OF SEXUAL ASSAULT

In the year 2007/08, compensation assessors determined 1044 claims where sexual assault was recorded as the offence. Awards were made in 722 cases. The various categories of compensable injuries of sexual assaults where awards were made are:

- Sexual assault category 1 – 97 awards
- Sexual assault category 2 – 149 awards
- Sexual assault category 3 – 397 awards

The range for the compensable injuries of sexual assaults is:

- Sexual assault category 1 – \$7500 - \$10 000
- Sexual assault category 2 – \$10 000 - \$25 000
- Sexual assault category 3 – \$25 000 - \$50 000

A number of applicants claiming the compensable injury of sexual assault claim in the alternative the compensable injury of a chronic psychological or psychiatric disorder category 1 moderately disabling (where kidnapping is related to the sexual assault) or a category 2 disorder that is severely disabling. The range of statutory compensation for these compensable injuries ranges from \$7500 to \$15 000 for a category 1 disorder that is moderately disabling to \$30 000 to \$50 000 for a category 2 disorder that is severely disabling.

It is not uncommon for an award to be made for one of those compensable injuries in lieu of for a sexual assault category because the award will result in a higher payment to the applicant.

- Chronic psychological or psychiatric disorder category 1 (5 awards)
- Chronic psychological or psychiatric disorder category 2 (73 awards)

In one case of sexual assault with violence, the award was made for the physical injury sustained by the victim in lieu of the compensable injury of a sexual category 3.

Of the total awards for statutory compensation made in the year under review 27 per cent related to victims of sexual assault.

### **COMPENSABLE INJURY OF DOMESTIC VIOLENCE**

Awards for the compensable injury of domestic violence made by compensation assessors totalled 638. Domestic violence is recorded as the offence in 963 claims. There has been a steady rise in the number of claims lodged where the applicant applies for statutory compensation for the compensable injury of domestic violence.

Like sexual assault victims, domestic violence victims may claim the offence-based compensable injury of domestic violence or in the alternative physical injuries or the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling (in the case of kidnapping) or category 2 disorder that is severely disabling. The range for the compensable injury of domestic violence is \$7500 to \$10 000 whilst that for a category 1 psychological disorder is \$7500 to \$15 000 or \$30 000 to \$50 000 for a category 2 disorder.

Awards were made for domestic violence victims as follows:

- Domestic violence – 638
- Chronic psychological or psychiatric disorder category 1 that is moderately disabling – 12
- Chronic psychological or psychiatric disorder category 2 that is severely disabling – 62
- Physical injuries – 33

Of the total awards of statutory compensation made in 2007/08, 28 per cent were for victims of domestic violence (domestic violence incident).

### **COMPENSABLE INJURIES OF CHRONIC PSYCHOLOGICAL OR PSYCHIATRIC DISORDER CATEGORY 1 (MODERATELY DISABLING) OR CATEGORY 2 (SEVERELY DISABLING)**

Victims seeking to claim the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling or category 2 that is severely disabling must provide a report from a list of Authorised Report Writers (ARWs) 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 and 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 4013 claims for statutory compensation determined in 2007/08, 2402 (60%) were accompanied by an ARW report. In those 2402 claims accompanied by an ARW report, the compensable injuries of a chronic psychological or psychiatric disorder category 1 or category 2 were awarded in 460 claims. ARW reports were filed in claims where other compensable injuries such as sexual assault and domestic violence were awarded. (See Recommendations 6 and 7).

### APPLICATIONS TO FILE APPLICATIONS FOR STATUTORY COMPENSATION OUT OF TIME

Section 26 provides that an application for statutory compensation must be duly lodged within two years after the relevant act of violence occurred or in the case of a family victim, within two years after the death of the primary victim. Notwithstanding, the Director may accept applications that are lodged out of time. In the case of sexual assault, domestic violence or child abuse, leave should be granted unless the Director is satisfied that there is no good reason to do so. In all other cases leave should not be given unless the applicant establishes that there is good reason to do so.

During 2007/08, 2272 claims were lodged out of time as against 1527 in the previous year.

Table 2 sets out the number filed, result and offence claimed. The total number of sexual assaults 1235 included 944 claims where the applicant was a child – under 18 years – at the time of the sexual assault.

**Table 2: Compensation claims lodged, leave matters, 2007/08**

	<i>Granted</i>	<i>Refused</i>	<i>Deferred</i>	<i>Decision pending</i>	<i>Total</i>
Sexual Assault	1018	15	6	196	1235
Domestic Violence	550	4	4	110	668
Assault	127	59	10	63	259
Robbery	21	9	4	2	36
Family	13	12	-	38	63
Other	5	6	-	-	11
<b>Total</b>	<b>1734</b>	<b>105</b>	<b>24</b>	<b>409</b>	<b>2272*</b>

\* 32 per cent of claims lodged.

**Table 3: Primary victims 18 years and under at time of incident (sexual assault), 2007/08**

<i>Age when claim lodged</i>	<i>Number of claims</i>
0-18	215 (23%)
19-20	56 (6%)
21-30	202 (21%)
31-40	250 (26%)
41-50	142 (15%)
51-60	65 (7%)
61-70	14 (2%)
<b>Total</b>	<b>944 (100%)</b>

Table 3 shows the age of the applicant at the time of lodgement of the claim and number of claims. What is of significance is the number of claims lodged by persons aged over 40 years in respect of sexual assaults as children. Those historical sexual assault claims give rise to difficulties both for the applicant and the assessor/Tribunal dealing with them because of the time lapse (See Recommendation 4).

Family members of homicide victims lodged 63 leave applications in 2007/08 going back to homicides that occurred as long ago as 1969 (See Recommendation 1).

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

The Act provides for an appeal from a compensation assessor to the Tribunal. During the year 639 appeals were lodged with the Registry. Of those 73 per cent were against dismissals of the claims by assessors, 21 per cent against quantum and the balance of six per cent against the assessor under delegation refusing leave to lodge applications out of time.

Of the 563 appeals determined approximately 55 per cent were successful where the Tribunal either made an award or remitted the matter to a compensation assessor. Included in those 563 appeals were 29 appeals against refusal to grant leave to file applications for statutory compensation out of time. Of that number 15 appeals were allowed and leave was given. In appeals against the refusal to grant leave, appellants are able to file further evidence for the delay as of right.

Appeals are listed for call over within two to three weeks of lodgement. The average time for an appeal to be finalised from lodgement to determination is three months.

**Table 4: Summary of appeals, 2006/07 and 2007/08**

	<b>2006/07</b>	<b>2007/08</b>
Appeals lodged	587	639
Appeals determined	648	563
Pending	101	177

### **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, as in previous years, the Chairperson considered that the Tribunal should review a number of matters. The review mechanism is generally used where there is an administrative error and may result in an increase or variation of the assessor’s determination.

### **CONVICTED INMATES**

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

For the 2007/08 financial year the Tribunal dealt with six applications by convicted inmates awarding statutory compensation in four claims and dismissing two. In the previous year the Tribunal dealt with seven applications and made an award in five claims dismissing two.

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

## APPEALS FROM THE TRIBUNAL

### *District Court*

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

Between 1 July 2007 and 30 June 2008, 16 new appeals were filed in the District Court of New South Wales against Tribunal determinations under Division 6 of the Act. This compares to the 25 appeals lodged in the last financial year 1 July 2006 to 30 June 2007.

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

- Twenty Matters were heard and finalised in the District Court 1/7/2007 – 30/6/2008. As at 30 June 2008, four matters remain to be heard (or otherwise disposed of) in the District Court.
- Sixteen new appeals were filed in the District Court.
- There were nine matters where the Fund was successful and there were eight matters where the Fund was unsuccessful.
- Three matters remitted by consent (on instructions) including the settling of a matter heard under the former Act.

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

### *Supreme Court*

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

One matter was lodged with the Supreme Court in respect of the Tribunal’s refusal to give leave to bring a claim out of time. That matter remained pending before the Court as at 30 June 2008.

**Other Supreme Court appeals:** An appeal was lodged to the Court seeking prerogative relief setting aside the decision of the Tribunal Member in a compensation appeal. That approach is contrary to the legislative appeal scheme quarantined to questions of law, as provided by section 39 of the *Victims Support and Rehabilitation Act 1996*. That appeal was heard during the reporting period with judgment reserved as at 30 June 2008.

**Recovery proceedings appeals:** An appeal was lodged to the Supreme Court under section 55 of the Act in respect of a determination of the Tribunal Member in recovery proceedings where the perpetrator of the crime was ordered to pay the award made to his victim. That appeal was filed, heard before a Judge, and finalised by the Court during the reporting period. The Senior Advocate/Solicitor for the Director successfully defended the matter in the Supreme Court and the proceedings were dismissed with costs.

### *Court of Appeal*

During the reporting period, no matters were lodged or heard by the Court of Appeal in respect of a Leave to Appeal application, arising from the decision of the District Court.

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

The appeals have been predominantly heard in the Sydney CBD during the period under review with one matter heard at Gosford, three in Wollongong and one matter each at Penrith and Parramatta.

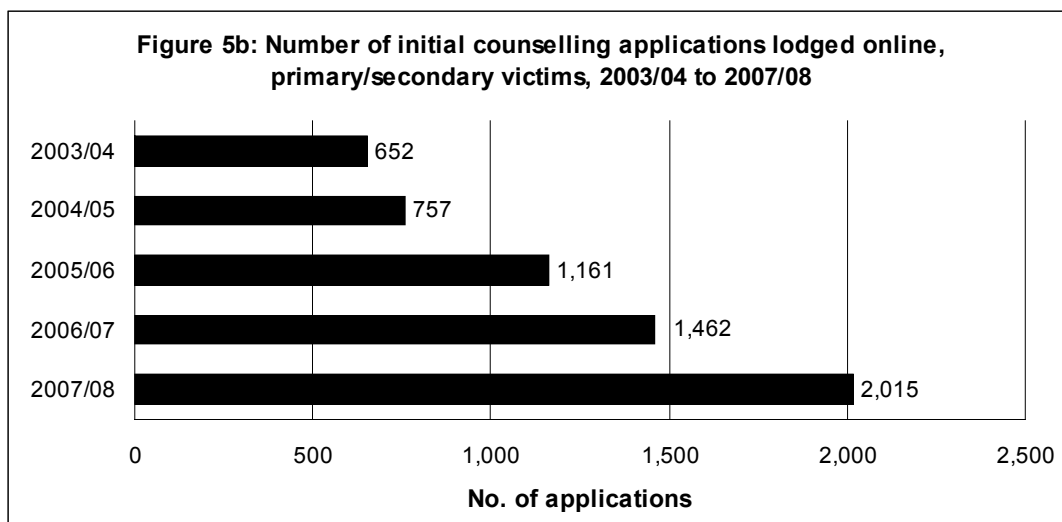
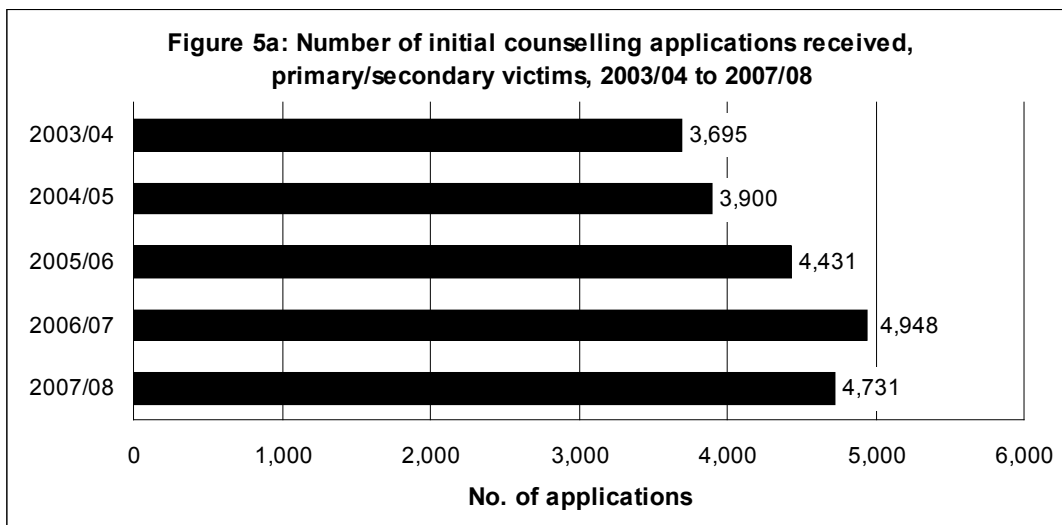
**APPROVED COUNSELLING SCHEME**

The Scheme was established under the 1996 Act. In 2007/08, 4984 applications for initial counselling were received including 4731 primary/secondary victims and 253 family victims.

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

Figure 5a shows the number of initial counselling applications received, primary/secondary victims, 2003/04 to 2007/08.

Figure 5b shows the number of initial counselling applications lodged online, primary/secondary victims, 2003/04 to 2007/08.



## REVENUE

Revenue comes from three sources:

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

In the year under review, revenue totalled \$6.46 million as against \$6.94 million for the previous year: \$3.33 million was recovered from convicted offenders as against \$3.63 million the previous year. Court levies amounted to \$2.84 million as against \$2.70 million for the previous year and other revenue totalled \$0.29 million as against \$0.61 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 2007 restitution action was being commenced approximately eight months after the date of the award. As at June 2008 this period remains the same.

During the year under review 1170 provisional orders valued at approximately \$21 million were made by the Director. Restitution action may only be taken where an offender has been convicted (a) of an offence arising from substantially the same facts as those constituting the act of violence in respect of which an award of statutory compensation was made or (b) any other offence if an offence referred to in paragraph (a) was taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*. Restitution action is possible in approximately 50 per cent of cases where awards of statutory compensation are made.

## RESTITUTION RECOVERY

The amount recovered from convicted offenders totalled \$3.33 million – a slight decrease on the \$3.63 million recovered in the previous year.

Since the inception of the statutory scheme in 1988, more than \$41 million has been recovered from convicted offenders. In excess of \$28 million of this amount has been recovered since 2000.

The continued interest rate increases in the year under review and the flow on effect of higher prices for petrol, goods and services have 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 restitution debtors has seen recovery levels maintained at the average per year of more than \$3.5 million since 2000.

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

Statutory compensation may be paid to victims of an act of violence in circumstances where there is no identifiable offender, where the charge against the alleged offender is dismissed and where the offender is convicted. In those cases where the offender is either unidentified or criminal proceedings have resulted in acquittal or dismissal, payments of statutory compensation cannot be the subject of restitution action.

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.

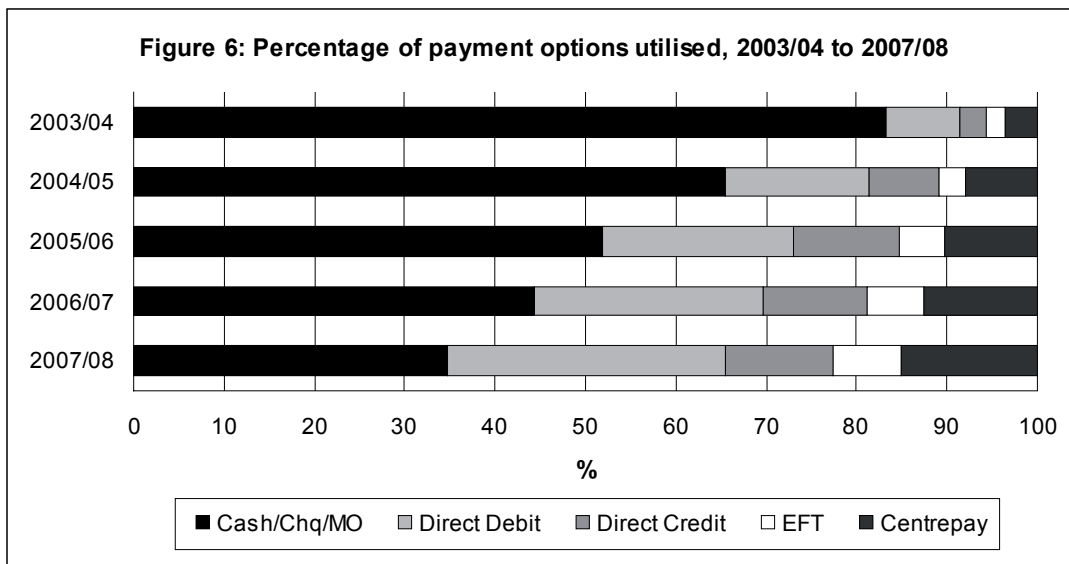
**PAYMENT OPTIONS**

New payment options came into full effect in 2004 and include direct debit from a financial institution account, deduction from Centrelink social security payments through Centrepay, direct payment by the offender into the Department’s bank account using a provided deposit book, and electronic payments made over the internet (EFT). As at 30 June 2008 approximately 3900 convicted offenders were using one of the new payment options. These options were set up without fees being payable by the debtor; this can save up to \$3.00 each month in fees associated with a purchase of a money order.

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

Figure 6 shows the percentage of payment options utilised, 2003/04 to 2007/08

In 2003/04, more than 80 per cent of receipts were made by cash, cheque or money order. This has reduced to 34 per cent in 2007/08. The remainder of receipts have come from direct debit (31%), Centrepay (15%), direct credit (12%) and EFT (8%). Tribunal staff will continue to encourage debtors to access the payment options.



## **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 177 arrangements amounting to approximately \$1.5 million were entered into against provisional orders. A further 122 arrangements amounting to \$923 739 were entered into against confirmed orders made by the Tribunal. The amount agreed upon represented an average of 50 per cent of the amount provisionally ordered and payment generally is by monthly instalments.

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

The offender who usually acknowledges liability 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 \$9 million; this represents an average of 69 per cent of the amount provisionally ordered. The majority of this amount will be paid by monthly instalments.

Where a defendant has filed an objection to a provisional order, the matter is listed for hearing before a Tribunal Member. There was an appearance of defendants or their representative in approximately 23 per cent of these matters.

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

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

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

There is a continued need for security provided by the Sheriff’s Office when dealing with convicted offenders in restitution proceedings because in the main the office is dealing with violent offenders who are often still under the terms of their sentence. Additionally, the very nature of victims compensation and restitution creates strong emotional responses in offenders at the hearing.

## **NO RESPONSE ORDERS**

When a convicted offender fails to respond to a provisional order, the Tribunal may confirm the order. The Tribunal made 232 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 \$2.74 million against 122 offenders since the enactment of this provision. The action has resulted in the payment of approximately \$665 000. A further 37 orders valued at \$978 000 have recently been lodged for registration against offenders’ property.

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

## **RESTITUTION DEBTOR MANAGEMENT**

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

## **REPAYMENTS**

All awards of statutory compensation are paid pursuant to Standard Conditions of the Director (section 34). Where an applicant receives an award and also recovers moneys 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 148 matters where follow-up action is in hand. A significant 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 due to being served with a subpoena or in some instances because of media publicity or from defendants who lodge an objection to a Provisional Order. Where resources permit certain cases are investigated for repayment issues.

## SUBPOENAS

Some 71 subpoenas were served on the Director during the year under review. Of this total, 15 related to proceedings in the criminal divisions of the Supreme, District or Local Court, where production was successfully opposed – pursuant to section 84.

## RECOMMENDATIONS

### *1. Family victims*

Section 26 provides that applicants for statutory compensation lodge their application within two years after the death of the primary victim. There is a presumption against the giving of leave outside that two-year period unless the applicant establishes that there is good reason to do so.

In the year under review claims as long ago as 1969 and 1970 were lodged. In cases where claims by family victims lodged within time had been determined, no funds are available for family victims who lodge late claims. To avoid positions that have arisen, all homicide claims should be excluded from section 26(3)(a) thus requiring all claims by family members to be lodged within the two year period – section 26(1).

A similar situation arises where family victim claims are determined pursuant to section 29(1B). Following an amendment to section 29 in 1999, a compensation assessor may assume that there is no other family victim who is likely to make an application if:

- (a) three months has elapsed since the application being determined was lodged, and
- (b) no other family victim has lodged an application or notified the Director that an application is intended to be made.

Section 29(1B) contrasts with section 26. It is permissible under section 29(1B) to determine a claim or claims and award all available funds three months after the lodging of an application. Where an award was made pursuant to the section there were no funds available for any other family victims applying after the three months period but within the two year period fixed by section 26 (or indeed outside that period subject to section 26(3)(a)). Rarely is it possible to accurately assume that after three months no other claimants will apply as in nearly all matters at an early stage there is clear evidence of other potential claimants. They may or may not claim and if they do claim they may or may not claim within the two-year period. This is a source of contention between claimants and their legal representatives and the Tribunal and Victims Services generally. In cases before the District Court in 2005 and 2006, the Court ruled that dismissing a validly lodged Family Victim claim because there were no funds remaining to award was impermissible. Currently the Tribunal manages urgent requests after three months by way of interim awards under section 33 of the Act.

There should be an amendment to section 26 excluding family victims from section 26(2). Section 29(1B) should be deleted.

### *2. Secondary victims*

Sections 15 and 16 should be amended to add a subsection similar to section 14(2) providing that claims do not survive the death of secondary or family victims.

### ***3. Victims Assistance Scheme (Statutory Compensation for Prescribed Expenses)***

The Victims Assistance Scheme (VAS) should be modified to make it less administratively difficult for applicants and the category of expenses should be expanded. An applicant for VAS needs to go through the steps one would if making an application for statutory compensation. The procedure needs to be made more simple and faster.

### ***4. Limitation of periods***

The time for lodging claims for sexual assaults should be limited. Every State and Territory of the Commonwealth has some time limit on claims for sexual assault, whereas in this State there is a presumption for giving of leave unless the Director is satisfied that there is no good reason to do so.

This report shows that of the 944 claims for child sexual assault lodged out of time, 142 claims were lodged where the applicant is now aged 41-50 years, 65 claims where the applicant is now 51 to 60 years and 14 claims where the applicant is over 61 years.

It is recognised that it is difficult to put a time limit on claims for sexual assault, however State-funded victims compensation commenced in 1968 following the commencement of the *Criminal Injuries Compensation Act 1967* and since that time there have been two other Acts dealing with victims compensation. It is time that the Government limit the time within which claims for sexual assault can be lodged.

### ***5. Multiple claims***

In recent times there has been substantial increase in the number of multiple claims lodged by some applicants – especially where sexual assaults or domestic violence is claimed. At present approximately 1000 victims have multiple compensable claims pending. Generally the claims are historic; the cases are poorly presented and determining the relative facts in each claim and whether section 5(1)(c) is satisfied, present difficulties for an assessor. Moreover it is not unusual to have a “global” ARW report covering all claims and that presents further problems.

The legislature has concluded that limits should be imposed upon, inter alia; the quantum of the compensation victims may receive. This method of limitation of eligibility derives from s 437(2A) of the *Crimes Act* inserted into that Act in 1979. Since that time there have been various legislative amendments. The method of limiting the total compensation payable now provides for related acts to constitute one act of violence – see *Mahoney and Sheller JJA in Director General of Attorney General’s Department v District Court of New South Wales and Stark* (1993) 32 NSWLR 409.

I recommend that section 5(3) be strengthened to provide that an act is related to another act if the acts were committed against the same person by the same perpetrator or perpetrators. It will be noted that section 5(1) refers to offences committed by one or more persons.

### ***6. Compensable injury – chronic psychological or psychiatric disorder category 2***

The range of compensation for this compensable injury is \$30 000 to \$50 000. The range of award for the compensable injury of a chronic psychological/psychiatric disorder category 1 is \$7500 to \$15 000. Victims succeeding in a claim for a category 2 compensable injury must therefore be awarded at least \$30 000 (subject to any clause 4 reduction because of an existing condition). Whilst that figure is appropriate, in some “borderline” claims the minimum amount is too high. It is recommended that the range for this compensable injury be broadened \$20 000 to \$50 000.

### ***7. ARW report and offence-based compensable injuries***

The Compensation Rule requires an applicant to nominate the compensable injuries claimed. Where an offence-based compensable injury is claimed (domestic violence or one of the three categories of sexual assault) a compensable injury of a category 1 or category 2 psychiatric disorder may not be claimed (see section 11) although many applicants claim these latter compensable injuries in the alternative.

The cost of ARW reports is currently over \$2 million per year and is borne out of the general compensation fund. To better manage claims, where offence-based compensable injuries and in the alternative, compensable injuries of a category 1 or category 2 disorder are claimed, I recommend that applicants must nominate at the earliest opportunity whether they wish to proceed with an offence-based compensable injury claim (see section 11) and once this election is made it cannot be altered. The Director therefore will only approve ARW reports after the election and where an offence-based compensable injury is not claimed.

### ***8. Professional costs***

Assessors generally award professional costs irrespective of the outcome of the claim. In 2007/08 approximately \$3.2 million was paid to legal practitioners. It is recommended that section 35 be amended to mandate that professional costs be only awarded in successful claims.

## **ACKNOWLEDGEMENTS**

I gratefully acknowledge the assistance of the staff of Victims Services to victims of crime and the continuing valuable assistance provided to Tribunal Members by staff in the appeals section. In particular, I acknowledge the support given by Louise Lenard, Executive Officer Victims Services, in the preparation of this report and in the reports for previous years, and the professionalism of Ms. Mahashini Krishna acting Legal Officer in restitution matters. To the Acting Director, whose concern for victims is well known, I thank her sincerely for advice and support. To the Registrar, Mr. McAteer for his outstanding advocacy, advice and assistance I am very grateful. To my magisterial colleagues and Tribunal Members Gilmore and Cleary, whose dedication, loyalty and friendship has been ever constant, I express my sincere gratitude.





