Victims Compensation Tribunal
New South Wales

Chairperson’s Report
2005/2006
The Hon. Bob Debus MP
Attorney General
Level 36
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

5 October 2006

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 2006.

Yours faithfully

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*.

Pursuant to the Act only magistrates are eligible to be appointed as members of the Tribunal. Magistrate Brahe, Chairperson reached the retiring age for Magistrates in March 2006. Following the passing of the *Courts Legislation Amendment Act 2006*, amending section 13 of the *Local Courts Act 1982*, the age limit for magistrates of limited tenure was extended. Magistrate Brahe was re-appointed Chairperson until 30 June 2007. During the period under review he, together with Magistrates Gilmore and Cleary, exercised powers of the Tribunal. All members hold office on a part time basis.

The Tribunal continues to operate out of levels 4, 5 and 6 at 299 Elizabeth Street Sydney.

STAFFING

Staff numbers remained constant during the year at 80 personnel. Employee-related expenses increased from $4.26 million for 2004/05 to $4.58 million in the year under review.

Operational expenses fell from $2.63 million to $2.45 million.

STAFF TRAINING

All Victims Services staff attended various training courses throughout the year. Those courses included:

- Privacy Legislation.
- Performance Management.
- Issues relating to service provision for victims of sexual assault.
- Charter of Victims Rights.

KEY FACTS

Applications for statutory compensation received during the review period totalled 5,054.

A total of $61.82 million (statutory compensation, professional costs and fees for authorised report writers) was paid in respect of the 5,342 claims for statutory compensation that were determined.

Pending claims have been further reduced from 6,599 to 6,246 and finalising compensation claims achieved a 108% clearance ratio down slightly from the previous year.

Pending appeals have fallen to 162.

Under the Approved Counselling Scheme, 4,277 applications for initial counselling were approved in 2005/06. 44,015 counselling hours were approved for victims of crime for initial and further applications for counselling and over 25,000 hours were used resulting in payment of $2.49 million. Almost 400 approved counsellors are utilised for this service.

Applications for initial counselling lodged online continued to increase. 1,161 online applications were received in 2005/06.

A victim survey of the Approved Counselling Scheme conducted during the year found that 99% of respondents were helped and supported by their counsellor and 98% said their counselling was worthwhile.
Victims Services received over 40,000 calls in 2005/06 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 $4.08 million was collected from convicted offenders. This is the highest amount ever recovered in one year.

Electronic payment options are available for defendants who are liable to pay restitution. At the end of 2005/06 over 3,100 debtors had taken up this option.

Total revenue amounted to $7.69 million including $2.73 million from court levies and $0.88 million from proceeds of crime/asset seizure.

To ensure compliance with the Charter of Victims Rights, nine key government agencies were reviewed with special focus on Indigenous issues. An Indigenous version of the Charter of Victims Rights was developed to improve access to information and support for Indigenous victims of crime. A copy of the Charter can be found on the website.

Victims Services hosted a conference for Approved Counsellors in October 2005 to examine best practice issues in counselling and supporting victims of crime. 210 counsellors from metropolitan and rural regions attended.

The Families and Friends of Missing Persons Unit (FFMPU) provided funds to Link-Up to enhance their search database in relation to missing Aboriginal people. Link-Up advises 39 family reunions have resulted from this initiative directly affecting 372 people. The FFMPU and NSW Police jointly produced a DVD “Missing” to raise awareness of issues related to missing persons in Aboriginal communities.

**Victims Support and Rehabilitation Act 1996**

During the period under review the following compensation assessors determined claims under the Act – Messrs, Hipwell, Keays-Byrne, De Mayo, Baron, McAteer and Ms Humphreys, Ms Madison, Ms Bell and Ms Meyer. Mr McAteer is the legal officer and Acting Fund Advocate and apportions his time between Fund work and Victims Services work.

**Applications**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Received</td>
<td>5,098</td>
<td>5,054</td>
</tr>
<tr>
<td>Pending</td>
<td>6,599</td>
<td>6,246</td>
</tr>
<tr>
<td>Determinations</td>
<td>5,616</td>
<td>5,342</td>
</tr>
<tr>
<td>Dismissals</td>
<td>2,887</td>
<td>2,210</td>
</tr>
<tr>
<td><strong>Total awards</strong></td>
<td><strong>$61.56 million</strong></td>
<td><strong>$61.82 million</strong></td>
</tr>
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*Includes statutory compensation, professional costs and fees for authorised report writers.

The flow of applications for statutory compensation has steadied around the 5,000 per year mark. Of interest is the fall in the number of claims that were dismissed by the compensation assessors. In the year 2003/04, 3,411 applications were dismissed, in 2004/05, 2,887 and in the year under review, 2,210. This fall in the number of dismissals may be as a result of changes to the legislation, the fact few of the older claims remain to be determined and the better preparation of more recently lodged claims.
Figure 1a shows the number of applications received from 2003/04 until 2005/06. As I have indicated the graph shows a decline in the number of applications being lodged – a trend that is continuing. Figure 1b shows the applications received over the same period on a monthly basis. Figure 1c shows the age of the victim at the time of the act of violence for compensation applications received in 2005/06.

![Figure 1a: Number of compensation applications received, 2003/04 to 2005/06](image)

![Figure 1b: Number of compensation applications received, by month, 2003/04 to 2005/06](image)

![Figure 1c: Compensation applications received, by age of applicant at time of act of violence, 2005/06](image)
Figure 2 shows the percentage of claims lodged by region – Sydney Metropolitan, Central & South, Far North, Far West, North and South East. It is remarkable that the percentage from each area over the last three years has been constant.

**Indigenous claims**

Because of the special focus on Indigenous issues in the past year the following figure shows the number of Indigenous claims received over the past three years as a percentage of all claims received. That information is obtained from applicants who identify that they are Indigenous in the application form. Figure 3 shows a steady rise in the number of claims from Indigenous victim applicants – 209 in 2003/04 to 334 in 2005/06 – 7% of the total number of claims lodged.
**Family victims**

The Tribunal received 305 claims from family members in relation to 171 deceased victims. During 2004/05, 245 claims were determined in relation to 115 deceased victims. Interim awards (generally for funeral expenses) were made in 68 cases. Total payments including interim payments amounted to $4.7 million. 66 claims were dismissed. A total of 244 applications for counselling by family members were received and 4,482 hours approved.

**Cold cases**

Advances in forensic evidence through the use of DNA databases have led to convictions in a number of unsolved murder 'cold cases' resulting in the lodging of applications by family victims of homicide.

In 2004 applications were received from eligible family victims in relation to the murder of a 21-year-old mother in 1990 at Liverpool. The offender became the first person in NSW to be convicted through the mandatory testing of prisoners and the DNA database.

**Case 1**

The victim had been bashed and murdered in her flat in Liverpool on 10 July 1990.

The case was unsolved and a coronial inquest returned an open finding. The offender was never a suspect in the original investigation. In 1993 the police re-examined the murder file and a scientist matched blood from a pillowcase in the victim's flat to the offender's DNA, which was held in a prison database.

It was only when the offender went to kill again, and was caught, that DNA tied him to the earlier murder. Crime scene evidence from the attempt on his then current girlfriend's life in 1998 was alarmingly similar to that of the murder in 1990. Faced with overwhelming evidence, he pleaded guilty to assault with intent to have sexual intercourse and was sentenced to three years' non-parole at the end of 1998. While in prison he was subjected to mandatory DNA testing but was released in 2001 and moved to a small farm in Tasmania.

During a cross-reference of the database, the offender's DNA matched that of the offender in the 1990 murder. There was closure after 14 years for the family of the victim. The victim's daughter was awarded $50,000 as a dependent family member.

**Case 2**

In another case a young woman aged 25 years of age was found deceased at Spain's Lookout, Neutral Bay on 18 February 1984.

It appears she had parked her car adjacent to the park after returning home from work during the night. Her home was approximately 100 metres from where her car was parked. The crime scene was approximately 30 metres from where she parked her car.

An examination of the crime scene located a number of white fibres on the victim and in the vegetation around where the body was located.

Results of the post mortem investigation revealed that the victim had been strangled and then sexually assaulted. Forensic evidence (semen) located during investigations at the crime scene and post mortem examinations could not be subjected to analysis to identify the blood type of the offender because it was placed in the wrong medium for storage. The forensic evidence was re-submitted for analysis in 1989 but no attempt was made to identify DNA evidence at that time.
The exhibits were resubmitted for DNA examination in May 2004. The Analytical Laboratory was able to identify a DNA profile for a male person from a vaginal swab taken from the deceased. The DNA profile was compared to the NSW DNA Database without success.

The offender was a suspect in the initial investigations and was living approximately 700 metres from the location of the murder. The offender had come to the notice of investigators due to an unrelated incident in a nearby suburb. Police noticed that the offender in this matter walked with a limp due to having a stiff leg, the result of a gunshot wound received in the 1970s. As a result of this injury his leg was bandaged. Investigators seized a number of bandages from the offender and submitted them, along with the fibres located at the crime scene and on the body of the victim, for analysis and comparison. Analysis of the fibres proved inconclusive.

The investigation of the murder was reopened after the receipt of the result of the DNA analysis. One person of interest in the case was identified and a DNA profile obtained from him. This DNA did not match the DNA taken from the deceased.

The offender was identified as living in Victoria. The Victorian police assisted in obtaining a covert sample of DNA from the offender. This sample was submitted for analysis in December 2004.

The DNA came back indicating that only one person in 39,000,000 would match the DNA profile located on the vaginal swabs taken from the body of the deceased.

In January 2005 the offender was arrested.

Twenty-one years after their daughter was murdered, an award of $50,000 was divided equally between the parents of the deceased.

**Missing persons**

The Tribunal currently has claims for family members in respect of eight missing persons. The claims are awaiting the result of coronial inquests to determine the status of the claims.

**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.

The Tribunal dealt with 14 applications by convicted inmates and dismissed seven – the same as in the previous year. During the year under review one application was withdrawn and in six cases awards were made. 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.
**Unrepresented Applicants/Appellants**

I indicated in last year’s report that there is an increasing trend for litigants to appear unrepresented. In this jurisdiction the number of unrepresented applicants lodging claims for statutory compensation is slowly falling from 17% in 2003/04 to 15% for 2005/06. However there continues to be an increasing number of unrepresented victims appealing to the Tribunal against the assessors’ determination. In many cases victims are legally represented up to the time of the assessor’s determination but in any subsequent appeal are unrepresented.

Staff in the appeals section and elsewhere assist represented and unrepresented victims. However it is difficult to explain to some unrepresented appellants the difficulty they may face in filing fresh material for an appeal because of section 38(3). I made special reference to that provision in last year’s report. As foreshadowed in the 2004/05 report the trend toward unrepresented litigants also continued in appeals to the District Court during the reporting period. Figure 4 below shows the three year summary of legal representation of claims lodged.

![Figure 4: Legal representation of claims lodged, by percentage, 2003/04 to 2005/06](image)

**Determinations**

During the year under review the number of applications determined by compensation assessors decreased from 5,616 in 2004/05 to 5,342 in 2005/06. The decrease was for various reasons including a greater number of adjournments in sexual assault matters for further medical evidence. There was a significant rise in the average payment from $8,928 to $10,738. The increase in the average payment is significant and it seems that legislative changes are taking effect in that those acts of violence carrying high compensable injury awards are being determined in circumstances where they are better prepared. I have already noted a decline in the rate of dismissals for similar reasons.

The next three figures set out the following material:

- Figure 5a: Summary of average payments – 2003/04 to 2005/06
- Figure 5b: Summary of percentage of claims dismissed – 2003/04 to 2005/06
- Figure 5c: Offences in compensation claims lodged – 2005/06
Figure 5a: Average payment in determinations, 2003/04 to 2005/06

- 2003/04: $8,442
- 2004/05: $8,928
- 2005/06: $10,783

Figure 5b: Percentage of compensation claims dismissed, 2003/04 to 2005/06

- 2003/04: 55%
- 2004/05: 52%
- 2005/06: 41%

Figure 5c: Offences in compensation claims lodged, by percentage, 2005/06

- Assault: 57%
- Sexual Offences: 26%
- Robbery: 9%
- Homicide: 6%
- Abduction/Kidnapping: 1%
- Other: 1%
- Motor Vehicle: 0.5%
- Arson: 0.5%
COMPENSABLE INJURY OF SEXUAL ASSAULT

In the year 2005/06, 896 claims for sexual assault were determined. Awards were made in 687 cases and 209 were dismissed. A total of $19,254,850 was paid to victims of sexual assault in the year as shown in Figure 6a. The various categories of sexual assaults are:

Category 1: 119 claims ................................................................. $1,169,922
Category 2: 171 claims ................................................................. $3,370,664
Category 3: 397 claims ................................................................. $14,714,264

The next three figures set out the following material:
Figure 6a: Summary of sexual assault awards – 2005/06
Figure 6b: Summary of sexual assault determinations, by category – 2003/04 to 2005/06
Figure 6c: Summary of sexual assault awards – 2003/04 to 2005/06
Compensable Injury of Domestic Violence

Claims for domestic violence where awards were made during the year totalled 705 as against 583 for the previous year. There has been a steady rise in the number of claims lodged where the applicant is asking for the compensable injury of domestic violence. A total of $6.3 million was awarded.

Persons falling within section 4 of the Crimes Act 1900 tend to claim the compensable injury of domestic violence because physical injuries may not reach the threshold of $7,500. Where the physical injuries exceed the threshold those applicants are not able to claim both for the physical injuries and domestic violence because of section 11. Similarly if applicants successfully claim domestic violence and a chronic psychological/psychiatric disorder category 2 that is severely disabling they must make an election pursuant to section 11.

In last year’s report I recommended that the range of persons presently eligible to claim the compensable injury of domestic violence should be restricted. I referred to the broad definition in section 4 of the Crimes Act and particularly to section 4(1)(d) – “a person who is living or who has lived in the same household or other residential facility as the person who committed the offence” and section 4(1)(e) “a person who has or has had an intimate personal relationship with the person who commits the offence whether or not the intimate personal relationship involves or has involved a relationship of a sexual nature”. I also referred to the wide range of relatives covered by section 4(6).

Claims continue to be lodged (a) by persons who are assaulted and who resided in the same residential facility years prior to the act of violence and who claim pursuant to section 4(1)(d) and (b) by persons, usually school children, who are assaulted and rely on section 4(1)(e) because the physical injuries do not reach the threshold of $7,500.

I adhere to the view that the definition in the Crimes Act is far too broad and consider that the wide scope of persons covered by section 4 was not in the contemplation of the Legislature when domestic violence was added to the Table of Compensable Injuries in the 1998 Amendments effective from 7 April 1999.
The next two figures present the following material:

Figure 7a: Summary of domestic violence determinations – 2003/04 to 2005/06
Figure 7b: Summary of domestic violence awards – 2003/04 to 2005/06

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**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/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) kept by the Director. The Director approves the victim’s nomination of an ARW for this purpose. As a result of amendments that became effective on 31 May 2000, a category 1 disorder is only available for the offences of armed robbery, abduction and kidnapping.

As a result of that amendment, 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 28% to 36%. That increase is very significant and impacted on the increase in the average award for the past year.
Figure 8a shows the number of claims awarded from 2003/04 to 2005/06 where the compensable injury of a chronic psychological/psychiatric disorder category 2 that is severely disabling is claimed. Figure 8b shows a three year summary of awards for that compensable injury. The increase in the number of successful claims may be as a result of appeal decisions giving some guidance and also better preparation by applicants’ legal representatives.

**Figure 8a: Percentage of category 2 psychological claims awarded, 2003/04 to 2005/06**

- 2003/04: 23% awarded, 77% dismissed
- 2004/05: 28% awarded, 72% dismissed
- 2005/06: 36% awarded, 64% dismissed

**Figure 8b: Number of awards of psychological disorder, 2003/04 to 2005/06**

- 2003/04: 644 awards
- 2004/05: 775 awards
- 2005/06: 933 awards

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**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 638, against quantum 134 and refusal to give leave to file applications out of time 31.

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<tbody>
<tr>
<td>Appeals lodged</td>
<td>961*</td>
<td>803</td>
</tr>
<tr>
<td>Appeals determined</td>
<td>909*</td>
<td>889</td>
</tr>
<tr>
<td>Pending</td>
<td>211*</td>
<td>162</td>
</tr>
</tbody>
</table>

* Past figures included S37(2) reviews and appeals to the District Court under 1987 legislation and as a result the figures do not reflect the actual appeals to the Tribunal.
As the earlier figures show, the rate of dismissal by compensation assessors has fallen and that has had some impact on the number of appeals lodged. The number of appeals lodged has been steadily declining from 1,643 in 2001/02 to 803 in 2005/06. Awards made above the assessor’s determination during the reporting period amounted to $6,944,994.55.

**Appeal determinations**

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<tr>
<td>Allowed</td>
<td>425</td>
<td>413</td>
</tr>
<tr>
<td>Dismissed</td>
<td>367</td>
<td>343</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>12</td>
<td>18</td>
</tr>
<tr>
<td>Remitted to Assessor</td>
<td>64</td>
<td>76</td>
</tr>
<tr>
<td>Leave appeals-leave given</td>
<td>18</td>
<td>14</td>
</tr>
<tr>
<td>Refused</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>909</strong></td>
<td><strong>889</strong></td>
</tr>
</tbody>
</table>

Appeals are listed for call over within two to three weeks of lodgement and there are approximately 100 matters in the call over list at any one time. The average time for an appeal to be finalised from lodgement to determination is three months.

**Review of determinations**

Section 37(2) provides that if the Chairperson of the Tribunal considers that an application for statutory compensation that has been determined by a compensation assessor should be reviewed by the Tribunal, 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 26 matters. The review mechanism as opposed to the appeal provisions is generally used where there is an administrative error.

**Appeals to the district court on point of law**

During the year under review 26 appeals were lodged in the District Court on a point of law. In the preceding year 31 appeals had been lodged. The Court dealt with 34 matters during the year and the results are as follow:

<table>
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<tr>
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<tbody>
<tr>
<td>Remitted to Tribunal</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Dismissed</td>
<td>11</td>
<td>16</td>
</tr>
<tr>
<td>Discontinued</td>
<td>8</td>
<td>6</td>
</tr>
</tbody>
</table>

One appeal to the Court of Appeal against a District Court decision dismissing the appeal was determined in favour of the Victims Compensation Fund Corporation. The victim has lodged special leave application with the High Court of Australia against the Court of Appeal decision. That matter is pending.

**Appeals against tribunal determinations pursuant to section 26**

There were two Supreme Court appeals pending at the end of the last reporting period. Those appeals related to the Tribunal’s refusal to give leave to lodge a claim for statutory compensation outside the two-year period proscribed by section 26(1). No appeal lies to the District Court from a refusal by the Tribunal to grant leave – any appeal is direct to the Supreme Court. One further appeal to the Supreme Court against the Tribunal’s refusal to grant leave was lodged in the period under review. The three appeals failed in the Supreme Court.
In all of the Supreme Court and Tribunal appeals, the Director and Tribunal were represented individually by the Legal Officer, Victims Services. In the District Court and the Court of Appeal the Victims Compensation Fund Corporation was represented by the Acting Fund Advocate. The Crown Solicitor’s Office currently represents the Fund in the pending High Court appeal.

**APPROVED COUNSELLING SCHEME**

The scheme was established under the 1996 Act. Applications for 2 hours of counselling received increased from 3,900 to 4,431. Of the total received 4,277 applications were approved. Counselling payments totalled $2.49 million as against $2.26 million for the previous year.

The next three figures present the following material:

- Figure 9a: Summary of initial 2 hour counselling applications received – 2003/04 to 2005/06
- Figure 9b: Summary of initial 2 hour counselling applications received monthly – 2000/01 to 2005/06
- Figure 9c: Summary of initial 2 hour counselling applications lodged online – 2003/04 to 2005/06
- Figure 9d: Summary of further counselling applications approved – 2003/04 to 2005/06
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 2006 175 responses were received and the results were overwhelmingly positive. In response to the question “Did you find your counsellor helpful and supportive?”, 99% 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?”, 98% 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 $7.69 million as against $7.14 million for the previous year: $4.08 million was recovered from convicted offenders as against $3.64 million the previous year. Court levies amounted to $2.73 million as against $2.61 million for the previous year and other revenue totalled $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 2005 restitution action was being commenced approximately five months after the date of the award. As at June 2006 this period has increased slightly to approximately eight months.

During the year under review 1,669 provisional orders valued at approximately $27 million were made by the Director as against 2,041 valued at approximately $34 million the previous year. The reduced level of provisional orders mirrors the reduction in the number of applications for statutory compensation being registered over recent years. Restitution action may only be taken where there is a convicted offender, which is in approximately 50% of cases where awards of statutory compensation are made.

One provisional order was issued under section 46A against the spouse of a defendant resulting in the secondary defendant – the spouse – settling the primary defendant’s debt.

**Restitution recovery**

The amount recovered from convicted offenders totalled $4.08 million – an increase on the $3.64 million recovered in the previous year. The amount recovered is the highest in any year since the inception of the statutory scheme.

This increase has resulted from a more proactive approach to debtor management and introduction of new payment options for restitution debtors. Debtors are notified by mail-outs of any default on an arrangement with the Director or order by the Tribunal and advised of the introduction of new payment options. Those options include: direct debit from a financial institution account, deduction from Centrelink social security payments through Centrepay and direct payment by the offender into the Department’s bank account. As at 30 June 2006 approximately 3,100 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 is paid to victims of an act of violence in circumstances where there is no known offender, where the charge against the alleged offender is dismissed and where the offender is convicted. In those cases where the offender is either unknown or criminal proceedings have been dismissed, payments of statutory compensation can never 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 511 arrangements amounting to approximately $4 million were entered into. The amount agreed upon represented an average of 54% 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 identify and 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 obligations.

Arrangements are initiated by the offender who usually acknowledges liability and seeks to settle the matter rather than become involved in a formal hearing. 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 2,000 matters were listed for hearing or confirmation by the Tribunal during the year resulting in orders amounting to approximately $31 million; this represents an average of 69% 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 in approximately 20% 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% of defendants who attend hearings or make formal written submissions state 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.

During the review period one Supreme Court appeal was filed against the decision of a Tribunal Member pursuant to section 55 of the Act. That matter is listed for hearing in November 2006.

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 1,855 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 $2.15 million against 95 offenders since the enactment of this provision. The action has resulted in the payment of approximately $371,000.

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 Land and Property Information Database for this purpose.

**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. No circumstances were identified during the year where such action was required. The Director concluded one matter where restraining orders were in place under section 58E of the Act.

All pre-existing restraining orders have been finalised. The Director did not commence any proceedings for restraining orders under section 58E of the Act in the reporting period.

**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 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 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 206 matters where follow-up action is in hand. A large number of repayments have resulted from the Director becoming aware of victims receiving money through civil action. In a majority of instances the repayments are made as a result of investigations carried out on behalf of the Director, rather than by the applicants providing information as is required of them under the legislation.

**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. Recent and ongoing enhancements to Victims Services CARES workflow information system and its interface with the Attorney General’s Department SUN financial system are providing improvements to the financial information necessary to determine a debtor’s compliance.

**Subpoenas**

Some 94 subpoenas were served on the Tribunal under review. Of this total 11 related to proceedings in the criminal divisions of either the Supreme, District or Local Court where production was opposed successfully pursuant to section 84. Despite the amendment to section 84 having been made as long ago as 2001 it appears that some practitioners are unaware of its provisions.

**Uniform Civil Procedure Act 2005**

This Act commenced in August 2005. In the first instance the Act and Rules do not apply to the Victims Compensation Tribunal in respect of its statutory compensation functions under the Victims Support and Rehabilitation Act. However the Uniform Civil Procedure Act 2005 affects the following matters under the Victims Support and Rehabilitation Act 1996: restitution (recovery) proceedings under Division 8; appeals to the Supreme Court under sections 26 (leave) and 55 (restitution); and appeals from the Tribunal to the District Court under section 39. Whether some of the Rules under the Uniform Civil Procedure Act 2005 should be applied to processes and procedures under the Victims Support and Rehabilitation Act 1996 is presently being considered.

**Review of the Victims Support and Rehabilitation Act 1996**

I indicated in previous reports that a Review of the Act was published in June 2004 and that the Department had received a number of responses. The Attorney General has given consideration to the various recommendations and hopes to introduce amendments to the Act in late 2006.

**Acknowledgements**

I thank my magisterial colleagues, Director and Registrar for their continued valuable assistance and support. I acknowledge the assistance of all staff of Victims Services to victims of crime. I acknowledge the services of Mr. McAteer, Acting Fund Advocate and the continuing high level of assistance provided to Tribunal Members and appellants by staff of the appeals section.