



Victims Compensation Tribunal
New South Wales

Chairperson's Report
2012/2013



Victims Services
Attorney General & Justice

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(VCT 2012/13 • 12/2013)



**Victims Compensation
Tribunal**
of New South Wales

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

2 December 2013

Dear Attorney

As required by section 83(1) of the repealed *Victims Support and Rehabilitation Act 1996*, I submit my final Chairperson's Report on the work of the Tribunal and Compensation Assessors for the period 1 July 2012 to 2 June 2013.

With the commencement of the *Victims Rights and Support Act 2013* on 3 June 2013, the Victims Compensation Tribunal was abolished and became a Division of the Administrative Decisions Tribunal.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'B. A. Lulham'.

B. A. Lulham
Chairperson

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OVERVIEW

The Victims Compensation Tribunal (the Tribunal) was established under the *Victims Compensation Act 1987* and continued under the *Victims Support and Rehabilitation Act 1996*.

On 7 May 2013 the NSW Government introduced the *Victims Rights and Support Bill 2013* and on the 3 June 2013 the *Victims Rights and Support Act 2013* was assented to, establishing the Victims Support Scheme.

The Tribunal was abolished under the *Victims Rights & Support Act 2013*, with many of its functions transferred to the Victims Support Division of the Administrative Decisions Tribunal.

Victims Services continues to operate out of Level 1 and 4 at Justice Precinct Offices, 160 Marsden Street, Parramatta. With the commencement of the *Victims Rights and Support Act 2013* appeal and restitution hearings ceased to be heard before a Tribunal member. Under the new legislation, the appeals function has now moved to the newly formed Victims Support Division of the Administrative Decisions Tribunal.

I considered that as the Tribunal was abolished from 3 June 2013, this report will only cover the period from 1 July 2012 to 2 June 2013.

Independent assessment of the Victims Compensation Scheme

The NSW Attorney General, the Honourable Greg Smith SC MP, announced on 11 August 2011 that the Government had ordered an independent assessment of the Victims Compensation Scheme with a view to delivering faster and more effective financial support to victims of violent crime. As indicated in last year’s report, PricewaterhouseCoopers (PwC) was appointed to undertake the review and in their report dated 12 July 2012 recommended a new approach to delivering services to victims of crime.

On 3 June 2013 the *Victims Rights and Support Act 2013* commenced. It was based on recommendations made in the report by PwC. The composition of support available to a victim of crime is:

- ♦ up to 22 hours of counselling
- ♦ a package of support worth up to \$5,000, individually tailored to address victims’ urgent needs
- ♦ up to \$8,000 to cover funeral expenses of homicide victims
- ♦ longer term financial support of up to \$30,000
- ♦ a recognition payment of between \$1,500 and \$15,000 to acknowledge victim trauma.

The new Victims Support Scheme seeks to provide a coordinated approach to information, support and referral for victims with an emphasis on immediate assistance and access to free counselling. Victims will be allocated a support coordinator and receive information, referrals to other services and ongoing support to access the services they need, when they need them most. The support coordinator will conduct a needs assessment of the victim’s situation, develop a package of care and guide victims through the criminal justice and human services systems.

Applications for statutory compensation which were lodged but not finally determined under the repealed Act before the 7 May 2013 are to be dealt with under the *Victims Rights and Support Act 2013*. However, the provisions of section 36 of the *Victims Support and Rehabilitation Act 2013* still applies to an Assessor’s determination served before the repealed legislation and where the notice of appeal is lodged within the provisions of section 36(3) of that Act.

A Commissioner of Victims Rights was established under the Act to administer the requirements contained within the *Victims Rights and Support Act 2013*. Ms Mandy Young was appointed as the inaugural Commissioner of Victims Rights on 19 June 2013. Ms Young has taken up the position for a term of one year to oversee the transition from the old scheme to the new and is responsible for starting the implementation of the reforms, overseeing support services for victims of crime and ensuring compliance of government and non-government agencies with the Charter of Victims Rights. Ms Young brings a great depth of experience to the role and has been a strong and effective advocate for the rights of victims. I congratulate Ms Young on her appointment.

The Commissioner of Victims Rights is also responsible for the implementation and promotion of the NSW Code of Practice for the Charter of Victims Rights which sets standards for the provision of service and support to victims of crime.

NSW framework of rights and services

The NSW framework identifies the principles underpinning an effective service system and instruments of victims’ rights. The NSW framework seeks to identify the type of services required by victims, the financial assistance models that are in place, and the actions required to be implemented by stakeholders involved in the delivery of services to victims of crime.

The purpose of this framework is to:

- ♦ support a coordinated approach to providing services to victims of crime in NSW;
- ♦ identify principles underpinning state and national approaches to supporting the rights of victims and delivering services in line with the national framework;
- ♦ promote an improved level of collaboration between agencies in addressing the needs of victims of crime including priority areas for future work and identification of gaps.

NSW Code of Practice

The Charter of Victims Rights sets out 18 rights which victims can reasonably expect from each agency involved as they progress through the Criminal Justice System from the reporting of a crime through a prosecution. The purpose of the NSW Code of Practice is then to assist victims to understand how to access these rights as well as assisting service providers in identifying their responsibilities under the Charter of Victims Rights to victims of crime.

The NSW Code of Practice supporting the Charter sets minimum standards of service provision and support to victims of crime and clarifies how service providers meet their obligations under the Charter. It also aims to provide victims of crime with a better understanding of what to expect from service providers. Work has commenced on a holistic reporting framework around the Code of Practice. The framework contains agreed key performance indicators and measures based on the obligations of agencies outlined in the Code of Practice.

ABOUT THIS REPORT

Due to the legislative changes which took place during the year, this report has been divided into six parts as follows:

Part One

Applications received and determined under the repealed *Victims Support and Rehabilitation Act 1996* for the period of the financial year from 1 July 2012 to 2 June 2013.

Part Two

Applications received under the repealed *Victims Support and Rehabilitation Act 1996* and to be determined under the *Victims Rights and Support Act 2013* (transitional claims)

Part Three

Summary of the changes pursuant to the *Victims Rights and Support Act 2013*.

Part Four

Appeals to the Tribunal and District Court, the Approved Counselling Service and Restitution for the period 1 July 2012 to 2 June 2013.

Part Five

Applications received for the period 1 July 2012 to 2 June 2013 where the applicant has identified as Aboriginal and/or Torres Strait Islander.

Part Six

Applications received from family members of homicide victims for the period 1 July 2012 to 2 June 2013.

SUMMARY OF IMPORTANT STATISTICS

- ♦ Staff numbers increased slightly during the period under review from 87 to 91 positions. Employee-related expenses increased from \$6.51m to \$6.74m as at 2 June 2013. Operational expenses have slightly decreased during the year from \$2.79m to \$2.40m.
- ♦ A total of \$57.89m (statutory compensation awarded by Assessors and Tribunal Members on appeal, professional costs, financial assistance, disbursements and Approved Counselling) was paid as at 2 June 2013.

Under the repealed *Victims Support and Rehabilitation Act 1996*:

- ♦ Applications for statutory compensation received during the year under the *Victims Support and Rehabilitation Act 1996* totalled 6,660.
- ♦ Assessors determined a total of 4,358 claims under the *Victims Support and Rehabilitation Act 1996*.
- ♦ Pending claims have increased from 21,911 to 23,698 as at 2 June 2013.

Appeals, Approved Counselling and Restitution:

- ♦ The number of appeals to the Tribunal totalled 520, and 573 were determined. There were 149 appeals pending as at 2 June 2013.
- ♦ Under the Approved Counselling Scheme, 5,723 applications for initial counselling were received during the period under review. There were 73,330 counselling hours approved for victims of crime in initial and further applications for counselling. A total of \$3.99m was paid to Approved Counsellors.
- ♦ Online applications for initial counselling have increased. There were 5,213 online applications received for the period under review compared to 3,306 in 2011/12 and 3,811 in 2010/11.
- ♦ A total of \$3.73m was collected from convicted offenders as at 2 June 2013.
- ♦ Electronic payment options are available for defendants who are liable to pay restitution. 5,308 debtors had taken up this option by 2 June 2013.

PART ONE

Up until 2 June 2013, Assessors determined claims for statutory compensation and applications for leave to file claims out of time under delegation from the Director. Pursuant to the repealed *Victims Support and Rehabilitation Act 1996*, Assessors dealt with applications for statutory compensation without conducting a hearing (section 27). An act of violence was 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 *Victims Support and Rehabilitation Act 1996* were made. Clause 8 of Schedule 1 was designed to cover those injuries not specifically mentioned in the table.

The standard amount of compensation for such compensable injury was the amount, or an amount within the range of amounts, specified in the table. The *Victims Support and Rehabilitation Act 1996* compensated the three most serious compensable injuries:

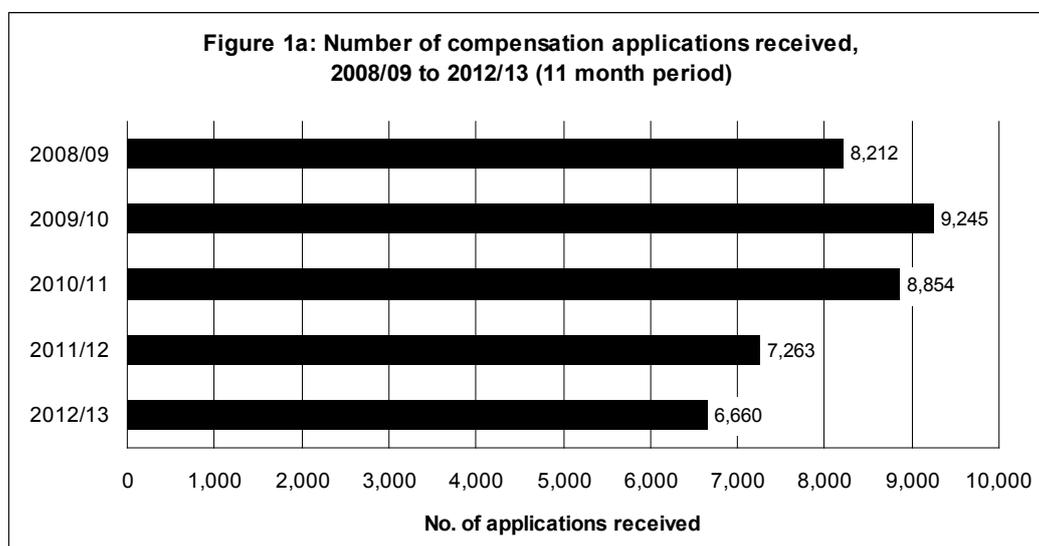
- (a) the full standard amount for the most serious injury
- (b) ten per cent of the standard amount for the second most serious injury and
- (c) five per cent of the standard amount for the third most serious injury.

Notwithstanding the finding of an act of violence and any compensable injury, section 30 of the *Victims Support and Rehabilitation Act 1996* provided that the amount of compensation payable may be reduced or no award made in certain circumstances. Section 24 provided that certain persons were ineligible to receive statutory compensation.

Applications lodged

Last year I reported that the number of applications for statutory compensation lodged during that year decreased by approximately 18 per cent to 7,263. For the 11-month period from 1 July 2012 to 2 June 2013, 6,660 applications for compensation were received, representing a very slight decrease of approximately 0.4 per cent over the same period in the previous year. There has been a decrease of just under 2,000 in the number of claims lodged in the past two years.

Figure 1a below shows the number of compensation applications received, 2008/09 to 2012/13 (11 month period).



As the figures show, the number of applications received this year under the repealed *Victims Support and Rehabilitation Act 1996* was 6,660. The number pending (as set out in Table 1) has also increased, from 21,911 to 23,698 as at 2 June 2013.

Figure 1b below shows the number of compensation applications received from primary victims by gender and age of the applicant at time of the act of violence, 2012/13 (11 month period). Claims by females continue to outnumber those by males.

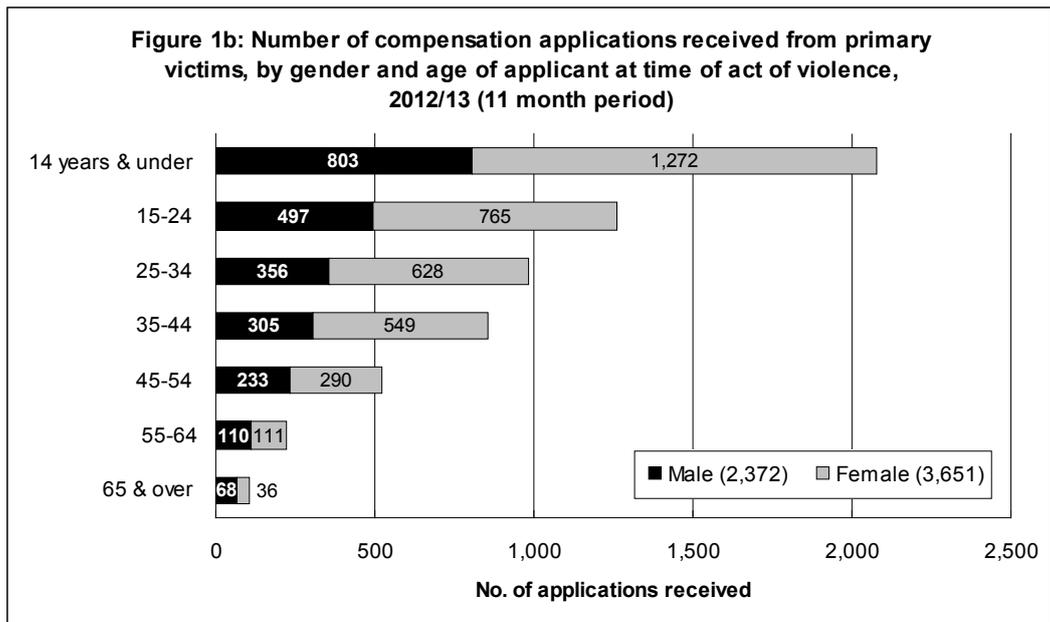


Figure 1c below shows the percentage of offences alleged in compensation claims lodged, 2011/12 and 2012/13 (11 month period). The figure highlights that domestic violence, sexual assaults and assaults continued to be the most prevalent range of offences for which statutory compensation was claimed.

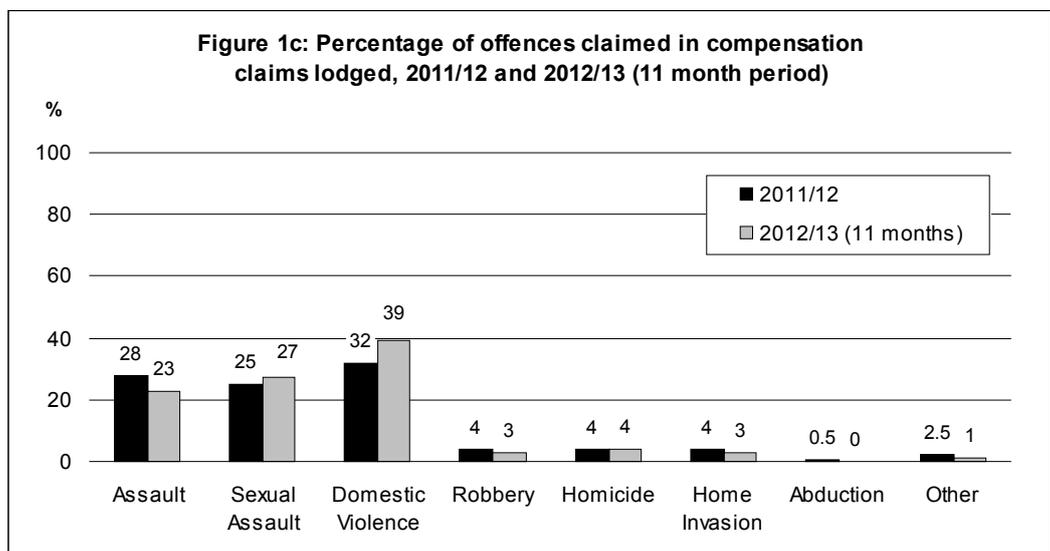


Table 1: Summary of compensation applications, 2011/12 and 2012/13[#]

	2011/12	2012/13[#]
Received	7,263	6,660
Pending	21,911	23,698
Awards	3,297	2,561
Dismissals	2,432	1,797
Withdrawn (s26A)	251	209
Lapsed (s26B)	851	374
Total determinations	5,729	4,358
Total money paid	\$63.0m*	\$57.9m*

[#] To 2 June 2013.

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

Lapsed and withdrawn claims

In the period under review, 209 claims were withdrawn and 374 claims were lapsed.

Pursuant to the repealed *Victims Support and Rehabilitation Act 1996*, Section 26A allowed for an applicant for statutory compensation to withdraw his or her application at any time prior to the claim being determined, by providing a written notice to the Director.

Section 26B allowed Victims Services to administratively finalise these claims to assist in reducing the number of pending claims.

Applications for statutory compensation lodged out of time

Pursuant to the repealed *Victims Support and Rehabilitation Act 1996*, Section 26 provided that an application for statutory compensation must be duly lodged within two years after the relevant act of violence occurred or in the case of a family victim, within two years after the death of the primary victim. The Director had discretion to accept applications that were lodged out of time. The section provided that in the case of sexual assault, domestic violence or child abuse, leave would be granted unless the Director was satisfied that there was no good reason to do so. In all other cases leave would not be given unless the applicant established that there was good reason to do so.

During the period under review, 2,713 claims were lodged out of time under the repealed *Victims Support and Rehabilitation Act 1996* compared to 2,437 in the previous year and 2,956 in 2010/11.

Table 2 below sets out the number of late applications filed, the result and the offence alleged. The total number of sexual assault claims lodged out of time was 1,221 and the total number of domestic violence claims lodged out of time was 1,217.

Table 2: Compensation claims lodged, leave matters, 1 July 2012 to 2 June 2013

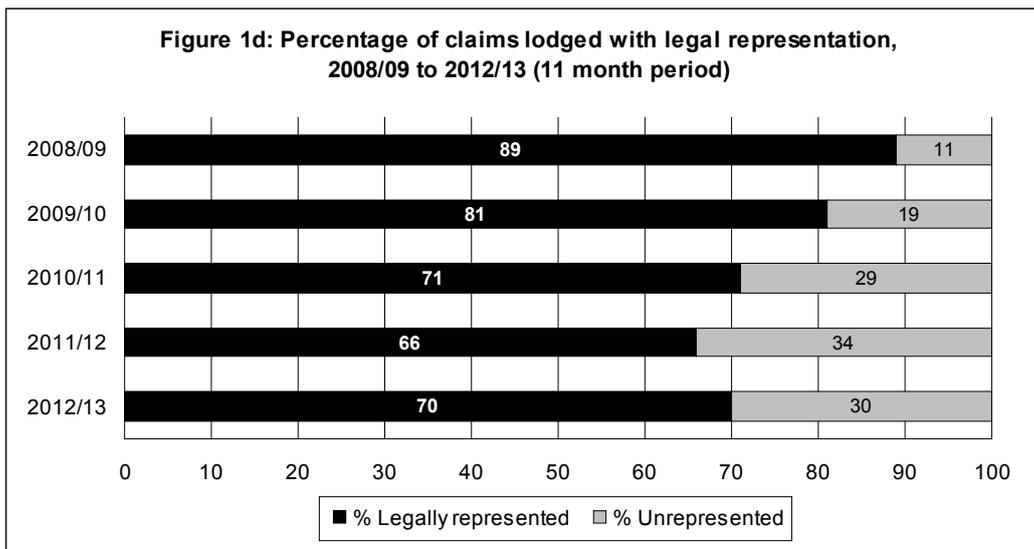
	<i>Granted</i>	<i>Refused</i>	<i>Deferred</i>	<i>Decision pending</i>	<i>Total</i>
Sexual Assault	1,201	18	1	1	1,221
Domestic Violence	1,211	5	0	1	1,217
Assault	127	34	0	0	161
Robbery	16	7	0	0	23
Homicide	20	11	4	0	35
Home Invasion	23	7	0	0	30
Other	20	6	0	0	26
Total	2,618	88	5	2	2,713*

* 41 per cent of claims lodged in that period.

Legal representation

The proportion of unrepresented applicants lodging applications for statutory compensation slightly decreased from 34 per cent in 2011/12 to 30 per cent in the period under review.

Figure 1d below shows the percentage of claims lodged with legal representation, 2008/09 to 2012/13.



Determinations

During the period under review, Assessors determined 4,358 applications under the repealed *Victims Support and Rehabilitation Act 1996*.

Figure 1e below shows the average payment in Assessor determinations, 2008/09 to 2012/13 (11 month period).

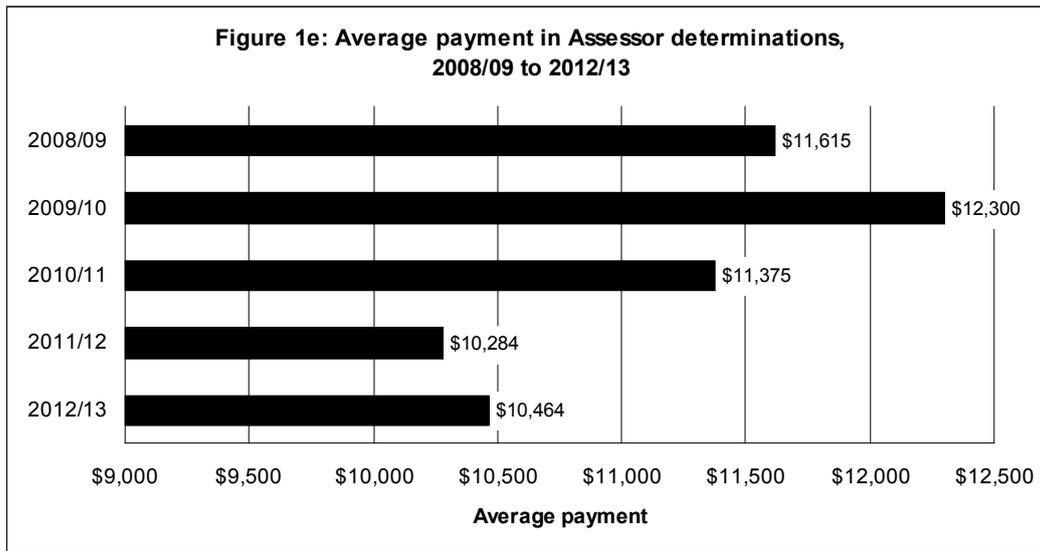
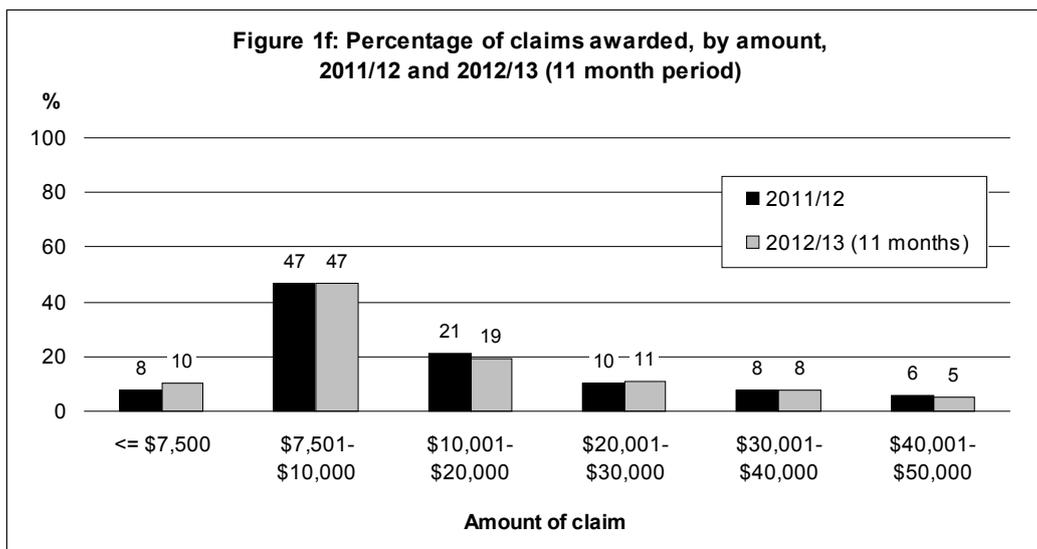


Figure 1f below shows the percentage of claims awarded by amount, 2011/12 and 2012/13 (11 month period).



Compensable injury of sexual assault

From 1 July 2012 to 2 June 2013, Assessors determined 1,170 claims where sexual assault was alleged as the offence.

The range for the compensable injuries of sexual assault was:

- ♦ Sexual assault category 1 – \$7,500 - \$10,000
- ♦ Sexual assault category 2 – \$10,000 - \$25,000
- ♦ Sexual assault category 3 – \$25,000 - \$50,000

A number of applicants claiming the compensable injury of sexual assault also claimed the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling (where kidnapping related to the sexual assault) or a category 2 disorder that is severely disabling. An award could be made for one of these compensable injuries, as a discrete injury having regard to section 11 of the *Victims Support and Rehabilitation Act 1996*, in lieu of a sexual assault category, if such award will result in a higher payment to the applicant.

Awards were made in 721 cases as follows:

- ♦ Sexual assault category 1 (112 awards)
- ♦ Sexual assault category 2 (164 awards)
- ♦ Sexual assault category 3 (436 awards)
- ♦ Psychological or psychiatric disorder category 1 (1 award)
- ♦ Psychological or psychiatric disorder category 2 (8 award)

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

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

Compensable injury of domestic violence

Domestic violence was alleged as the offence in 1,459 claims determined from 1 July 2012 to 2 June 2013. There has been a steady rise in the number of claims lodged for the offence of domestic violence.

Under the *Victims Support and Rehabilitation Act 1996*, like victims of sexual assault, victims of domestic violence were able to claim the offence-based injury of domestic violence, or in the alternative physical injuries, or the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling (in the case of kidnapping) or category 2 disorder that is severely disabling.

Awards were made in 1,087 cases as follows:

- ♦ Compensable injury of domestic violence (1,025 awards)
- ♦ Psychological or psychiatric disorder category 1 (5 awards)
- ♦ Psychological or psychiatric disorder category 2 (19 awards)
- ♦ Physical injuries (38 awards)

Of the total number of awards for statutory compensation made during the period under review, 38 per cent were for victims who established domestic violence as the act of violence.

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

Pursuant to the repealed *Victims Support and Rehabilitation Act 1996*, victims seeking to claim the compensable injury of a chronic psychological or psychiatric disorder category 1 that is moderately disabling or category 2 that is severely disabling must provide a report from an ARW approved by the Director. Under clause 5 of Schedule 1 of the *Victims Support and Rehabilitation Act 1996*, category 1 disorder was only available where the act of violence had apparently occurred in the course of the commission of the offences of armed robbery, abduction or kidnapping.

The nominated injury may be changed at any time prior to determination by the Assessor and it may be that a different compensable injury was awarded – see earlier for remarks on claims for sexual assault and domestic violence.

Of the 4,358 claims for statutory compensation determined during the period under review, 2,330 claims (49%) were accompanied by an ARW report. In those 2,330 claims accompanied by an ARW report, the compensable injury of a chronic psychological or psychiatric disorder category 1 was awarded in 168 claims and category 2 was awarded in 58 claims. Authorised Report Writer reports were filed in claims where other compensable injuries such as sexual assault and domestic violence were awarded. The expense incurred for ARW reports for the period 1 July 2012 to 2 June 2013 was \$1,405,253.

Dismissals

For the period under review, 1797 claims were dismissed by Assessors. This represents 41 per cent of claims determined for this 11month period (see Figure 1g).

Figure 1g below shows the percentage of claims dismissed by Assessors, 2008/09 to 2012/13 (11 month period).

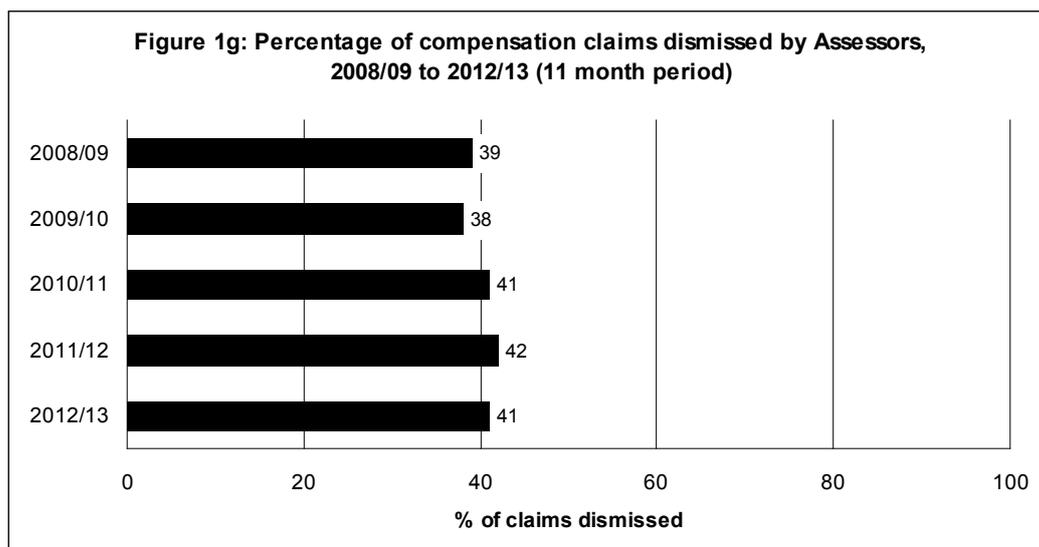


Table 3 below shows the main reasons for dismissal of applications under the repealed *Victims Support and Rehabilitation Act 1996* related to the failure of the victim to establish an act of violence; or to establish a compensable injury; or that the amount of statutory compensation for the established compensable injury, and any deduction pursuant to section 30, did not meet the threshold of \$7,500.

Table 3: Summary of reasons for dismissal, by percentage, 1 July 2012 to 2 June 2013	
Reason	claims dismissed (%)
No act of violence	47.5
No compensable injury	12.0
Category 2 psychological not established	10.0
Below threshold	9.7
Related acts	4.8
Not an eligible victim	2.7
Death or claim withdrawn	2.9
Other	2.7
S30 – Assistance to police and contributory behaviour	2.2
Received other entitlements	2.2
S23 – A previous claim awarded	1.2
Secondary victim and maximum award paid to primary	1.0
Award to dependent family member	0.9
Not an eligible family victim	0.2
Total	100.0

Victims Assistance Scheme (VAS) – Statutory compensation for expenses

A total of \$60,299 was paid out for the period up to 2 June 2013 in relation to 63 claims. This included 32 payments for dental expenses and 17 payments for ambulance.

Whilst the maximum recoverable under the VAS was \$1,500, dental expenses frequently exceeded that sum. The maximum award of \$1,500 was paid in relation to 16 claims for dental expenses. A number of claims were dismissed because no compensable injury was nominated or established, which was a requirement under the VAS. It should be noted that these applicants incurred the expenses but were not able to be reimbursed.

Convicted inmates

Section 24(4) of the repealed *Victims Support and Rehabilitation Act 1996* provided that convicted inmates were 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) provided that the Tribunal may make an award if the Tribunal was satisfied that special circumstances existed including if the convicted inmate was seriously and permanently injured as a result of the act of violence.

For the period up to 2 June 2013, the Tribunal dealt with nine applications by convicted inmates. Statutory compensation was awarded in three claims and six claims were dismissed. In the previous year the Tribunal dealt with nine applications and made an award in five claims and dismissed four claims.

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

Budgetary considerations

Table 4 below details the number of claims lodged and the number of claims outstanding from year ending 30 June 2009 to 2 June 2013.

<i>Year ending</i>	<i>Received</i>	<i>Determined</i>	<i>Outstanding</i>
30 June 2009	8,212	4,893	13,328
30 June 2010	9,245	4,374	18,030
30 June 2011	8,854	4,973	21,610
30 June 2012	7,263	5,729	21,911
02 June 2013	6,660	4,358	23,698

The time between lodgement and determination of a claim has extended from 31 months to 32 months as at 2 June 2013, under the repealed *Victims Support and Rehabilitation Act 1996*.

PART 2

Transitional claims

With the introduction of the *Victims Rights and Support Act 2013*, victims who have already lodged their claims under the previous scheme will have their claims determined under the new scheme (transitional claims). Assessors will consider their eligibility to receive a recognition payment and an entitlement to an additional \$5,000 special grant. This special grant applies to victims who have lodged their claim within two years of the incident or of turning 18 years of age.

As at 2 June 2013, there were 23,698 pending applications. These claims will now be determined under the *Victims Rights and Support Act 2013*. Transferring existing claims to the new scheme will allow for speedier resolution of those claims. NSW Treasury will provide Victims Services with additional funding over the next two financial years to ensure that all unfinalised applications from the old victims compensation scheme are resolved by 30 June 2015. This will be reported by the Commissioner of Victims Rights in the 2013/14 report.

Pursuant to the *Victims Rights and Support Act 2013*, there are four recognition payment categories which are based on the offence and the nature of the act of violence:

- Category A: \$15,000 – financially dependent family of homicide victim
\$7,500 – non-financially dependent parents of homicide victim
- Category B: \$10,000 – sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by two or more persons; sexual assault, indecent assault or attempted sexual assault involving violence that is one of a series of related acts.
- Category C: \$5,000 – sexual assault other than one referred to above; an attempted sexual assault resulting in serious bodily injury; assault resulting in grievous bodily harm; physical assault of a child that is one of a series of related acts.
- Category D: \$1,500 – indecent assault; attempted sexual assault involving violence other than one referred to in category C above; robbery involving violence; assault not resulting in grievous bodily harm.

PART 3

Victims Support Scheme summary

On 3 June 2013 the Victims Support Scheme commenced. It replaces the Victims Compensation Scheme.

The new scheme seeks to result in victims of violent crime receiving faster and more effective assistance and support. It provides a coordinated approach to information, support and referral, with an emphasis on immediate assistance and access to free counselling. Under the new scheme, each victim has an individual comprehensive needs assessment and is assigned a support coordinator to assist with his or her application for support and to assist in obtaining evidence.

With the introduction of the *Victims Rights and Support Act 2013*, Assessors determine victims support applications under the delegation of the Commissioner of Victims Rights. Under the *Victims Rights and Support Act 2013*, there is no longer a Schedule of Injuries or minimum threshold. The new scheme is based on the nature of the offence and victims only need to show that they have received either physical or psychological harm. As such, there is no longer the need to obtain a report from an ARW to prove psychological injury, a report from their counsellor is now sufficient. This reflects a shift from a legal compensation-based scheme to an administrative person centric based scheme.

The new scheme has four types of support for victims of violent crime:

1. **Counselling** (to assist victims of crime in their recovery)
2. **Immediate Needs** (support that directly addresses the urgent need of victims)
3. **Economic Loss** (targeted needs-based assistance to aid victims in their rehabilitation and recovery following a violent crime)
4. **Recognition Payment** (a moderate lump sum payment to victims to acknowledge the violence and trauma they have suffered). As mentioned previously under Part 2 of this report, there are four categories of recognition payments.

Pursuant to the *Victims Rights and Support Act 2013*, victims are now able to apply for support for immediate needs to cover such things as relocation, changing of locks and emergency medical and dental expenses or funeral expenses. The immediate needs category is capped at \$5,000 while funeral costs are capped separately at \$8,000. Victims are also able to apply for financial assistance for economic loss suffered as a direct result of the act of violence. Expenses which may be considered under economic loss include the following: cost of living expenses, medical and dental expenses, justice-related expenses, loss of actual earnings and other expenses such as damage to clothing. The total limit for this category is \$30,000 however, the justice-related expenses are capped at \$5,000, loss of actual earnings are capped at \$20,000 and other expenses such as damage to clothing are capped at \$1,500.

Time for lodging applications under Victims Rights and Support Act 2013

Section 40 of the *Victims Rights and Support Act 2013* provides that an application for financial support and/or recognition payment must be duly made within two years after the relevant act of violence or, if the victim was a child when the act of violence occurred, within two years after the day on which the child concerned turns 18 years of age. In the case of a family victim, the application must be duly lodged within two years after it is established that the primary victim died as a direct result of the relevant act of violence or, if the applicant was a child when the act of violence occurred, within two years after the day on which the child concerned turns 18 years of age.

In situations involving domestic violence, child abuse or sexual assault, the application for a recognition payment must be duly made within 10 years after the relevant act of violence or, if the victim was a child when the act of violence occurred, within 10 years after the day on which the child concerned turns 18 years of age. Section 40(7) provides that there is no time limit for applications for financial support and/or recognition payment by sexual assault victims who are under 18 years of age at the time of the offence.

Withdrawal of applications

Pursuant to Section 41 of the *Victims Rights and Support Act 2013*, an applicant for victims support may withdraw his or her application at any time before the application is determined by written notice to the Commissioner of Victims Rights. I note that the withdrawal of an application under this section does not prevent the applicant from making another application for support.

PART 4

Appeals to the Tribunal against determinations of Assessors

The repealed *Victims Support and Rehabilitation Act 1996* provided for an appeal from an Assessor to the Tribunal. During the period 1 July 2012 to 2 June 2013, the number of appeals lodged with the Registry was 520, a decrease on the 667 appeals lodged in the previous year. Eighty per cent of those appeals were against dismissals of the claims by Assessors, 16 per cent against quantum and the balance of four per cent against the Assessor under delegation refusing leave to lodge applications out of time.

The Tribunal determined 573 appeals. Of the appeals determined, approximately 40 per cent were successful. The Tribunal made an award in 231 matters and remitted 33 matters to an Assessor for re-determination. Included in those 573 appeals were 14 appeals against refusal to grant leave to file applications for statutory compensation out of time. Of the appeals against refusal to grant leave, four appeals were allowed and leave was given. In appeals against the refusal to grant leave, appellants were able to file further evidence for the delay as of right.

Appeals were listed for call over within two to three weeks of lodgement. The average time for an appeal to be finalised during the year from lodgement to determination was three months. In May 2013 the Tribunal members were generally dealing with appeals lodged in April and May 2013, which, in my view is within the optimum period. Table 5 below shows the number of appeals pending at 2 June 2013 was 149, a decrease of 53 on the figure of 202 outstanding at 30 June 2012.

Table 5: Summary of appeals, 2011/12 and 2012/13*

	2011/12	2012/13*
Appeals lodged	667	520
Appeals determined	719	573
Pending	202	149

* To 2 June 2013.

Appeals from the Tribunal

District Court

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

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

Eight appeals were finalised in the District Court including matters that were commenced in the previous year. Two matters were remitted to the Tribunal by consent. One matter was withdrawn by the appellant by consent. The Tribunal’s decisions were upheld in four defended hearings and overturned in one.

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

Supreme Court

The Fund was the respondent in one application to the Supreme Court in this reporting period. The applicant ultimately withdrew the application following discussions between the parties.

Court of Appeal

At the time of writing the previous report, the NSW Court of Appeal had reserved judgment in the matter of Victims Compensation Fund Corporation v Lynch. This was an appeal lodged by the Fund against the decision of His Honour Levy DCJ of the District Court.

The NSWCA upheld the Fund’s appeal and overturned the decision in the District Court. In doing so, His Honour Meagher JA confirmed that the Tribunal is not bound by the rules of evidence and consideration of hearsay material is permissible provided that it has some probative value. The probative value of material is determined by whether it tends logically to show the existence or non-existence of a fact. It may be of lesser weight than non-hearsay material, but that is a matter for the Tribunal to decide. His Honour further confirmed that if it is reasonably open, in light of material received, that on the balance of probabilities a fact or set of facts exists, then the Tribunal will not have erred in law or in its determination on that standard of proof.

The respondent sought special leave to appeal the decision in the High Court of Australia. Special leave was refused.

The Fund has been represented by Mr Matthew Ting, the Senior Advocate and Solicitor on the Record. The Crown Solicitor’s Office was instructed in two matters, with Mr Chris Lonergan of Garfield Barwick Chambers being instructed in the NSWCA and HCA appearances in Lynch.

Subpoenas

Fifty-five subpoenas were served on the Director during the period under review. Of this total, nine related to proceedings in the criminal divisions of the Supreme, District or Local Court and thus production was opposed pursuant to section 84 of the repealed *Victims Support and Rehabilitation Act 1996*. Section 84 has been broadened under the *Victims Rights and Support Act 2013* (now section 113). This will no doubt have a significant effect on the number of matters in which the Commissioner of Victims Rights must produce documents in the future.

Review of decision under the new Victims Support Scheme

The Victims Support Scheme removes the right of victims to appeal to the Tribunal by replacing it with a prompt and accessible internal review process conducted by Senior Assessors on delegation from the Commissioner of Victims Rights.

A written request, without the need for a prescribed form or format, can be used to lodge an internal review of the Assessor’s decision for financial support. The application for an internal review is to be received within 28 days of receiving the notice of the Assessor’s decision. There is no fee for lodging an internal review.

Division 7 of the *Victims Rights and Support Act 2013* provides for a Senior Assessor to conduct an internal review and make a new decision as if the application for support was originally received. The victim is to be notified of the outcome of the internal review within 42 days from lodgement of the request ensuring an expedient internal review process.

An applicant who is aggrieved by the Senior Assessor’s decision with respect to a recognition payment has a right of review to the Victims Support Division of the Administrative Decisions Tribunal. This is expected to provide an expedient outcome for victims compared to the previous process of appealing to the District Court on questions of law.

Approved Counselling Service

The Approved Counselling Scheme was established under the *Victims Support and Rehabilitation Act 1996* and continues under the *Victims Rights and Support Act 2013*. It is now known as the Approved Counselling Service. During the period 1 July 2012 to 2 June 2013 the number of applications received for initial counselling was 5,723. The initial number of counselling hours approved for primary and secondary victims is generally 10 hours with a preliminary report required from the Approved Counsellor after the first two hours of counselling. Counselling may be authorised for a total of 22 hours and the number of hours can be further increased if exceptional circumstances are established.

During the period under review 73,330 counselling hours were approved for victims of crime in initial and further applications for counselling.

Figure 2a below shows the number of initial counselling applications received, 2008/09 to 2012/13 (11 month period).

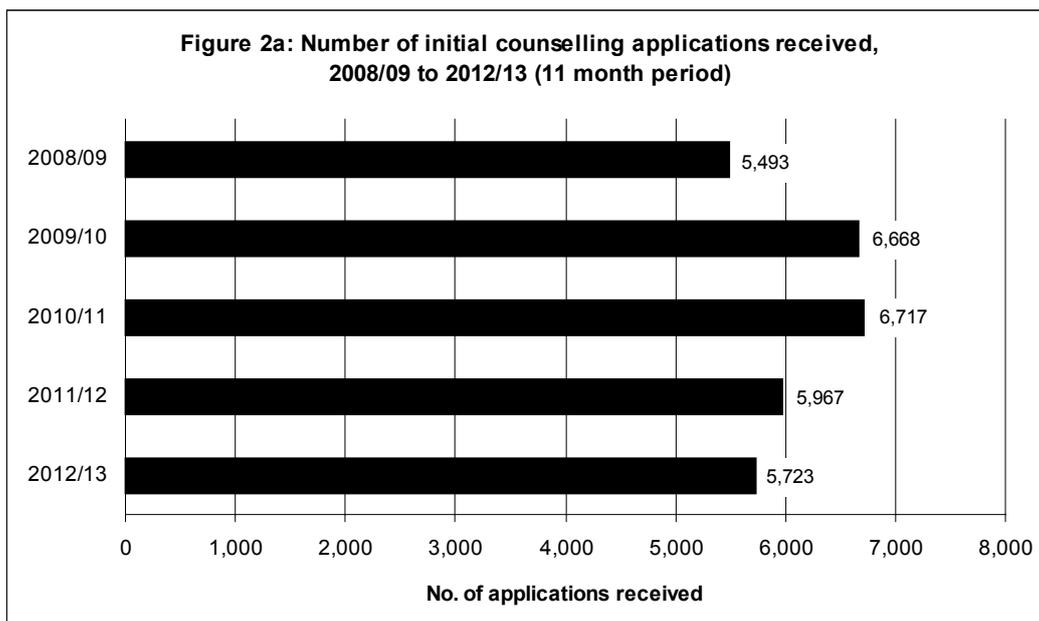


Figure 2b below shows the number of counselling applications received, by gender and age of applicant at time of act of violence, 2012/13 (11 month period).

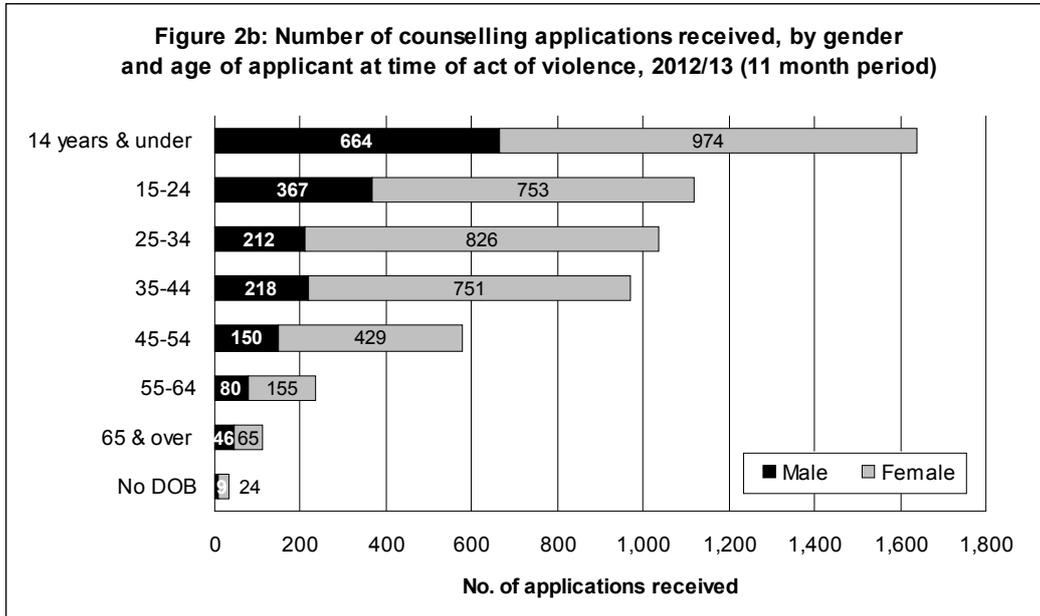
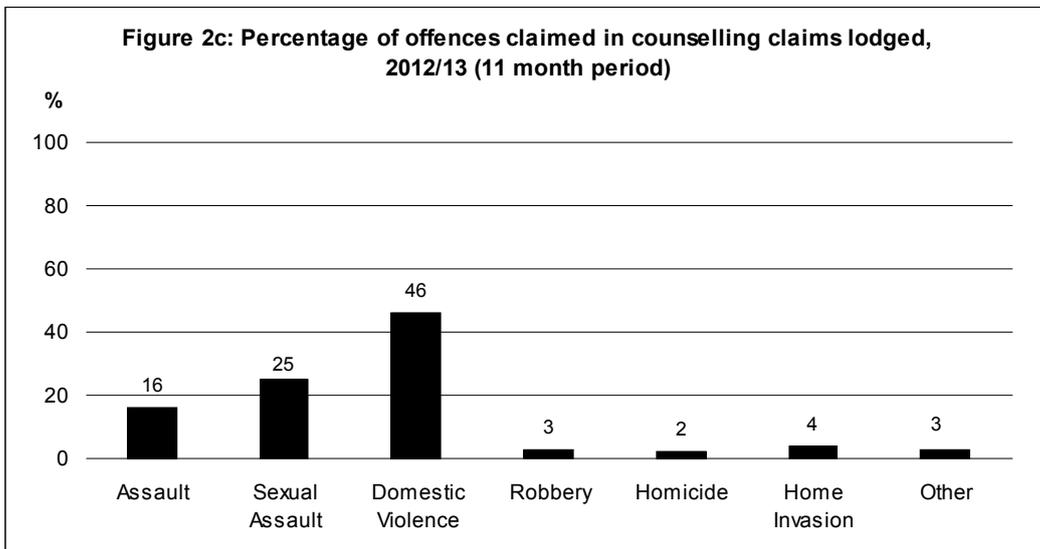


Figure 2c below shows the percentage of offences claimed in counselling claims lodged, 2012/13 (11 month period). The figure highlights that domestic violence, sexual assaults and assaults are the most prevalent range of offences for which counselling is claimed.



Client satisfaction survey

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

During the period under review 274 responses were received which show a positive experience with the Service:

- ♦ 97 per cent of respondents found their counsellor helpful and supportive.
- ♦ 97 per cent of respondents found their counsellor flexible in appointment time offered.
- ♦ 96 per cent of respondents found the counselling worthwhile.

Revenue

Revenue comes from four sources:

- ♦ Restitution from defendants
- ♦ Court levies
- ♦ Other revenue (proceeds of crime/confiscation)
- ♦ Unexplained Wealth Orders

In the period under review, revenue totalled \$12.15m as against \$11.98m for the same period in the previous year. The revenue was received as follows:

- ♦ \$3.73m was recovered from convicted offenders as against \$4.12m in the previous year.
- ♦ Court levies amounted to \$7.08m as against \$7.43m for the previous year.
- ♦ Other revenue totalled \$1.34m as against \$1.29m for the previous year.

During the year the compensation levy payable pursuant to section 79(1)(a) of the *Victims Support and Rehabilitation Act 1996* for indictable matters was \$156 and for other matters pursuant to section 79(1)(b) of the *Victims Support and Rehabilitation Act 1996* was \$69.

The levy is adjusted annually on the basis of increases in the CPI (all groups index) for Sydney and extends to cover all offences (except for classes of offences prescribed by regulation).

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

Restitution recovery

The *Victims Support and Rehabilitation Act 1996* provided that the Director may make a provisional order for restitution where a person had been convicted of a relevant offence. A relevant offence included an offence arising from substantially the same facts as those constituting the act of violence in respect of which an award of statutory compensation was made.

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

At the end of the period under review, recovery action was commenced approximately 12 months after the award date. This reflects a decrease of one month when compared with the previous year.

Pursuant to the *Victims Support and Rehabilitation Act 1996*, Restitution action could only be taken where an offender had 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 could only be pursued against convicted offenders. Conviction included 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 could be paid to victims of an act of violence in circumstances where there was no identifiable offender or where the charge against the alleged offender was dismissed. In those cases where the offender was either unidentified or criminal proceedings had resulted in acquittal or dismissal, payments of statutory compensation could not be the subject of restitution action. Restitution action was possible in approximately 48 per cent of cases in which awards of statutory compensation are made.

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

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

The amount recovered from convicted offenders during the period under review totalled \$3.73m compared with \$4.12m recovered in the previous year. During the period 1,934 provisional orders valued at approximately \$32.4m were made by the Director.

Restitution debtor management

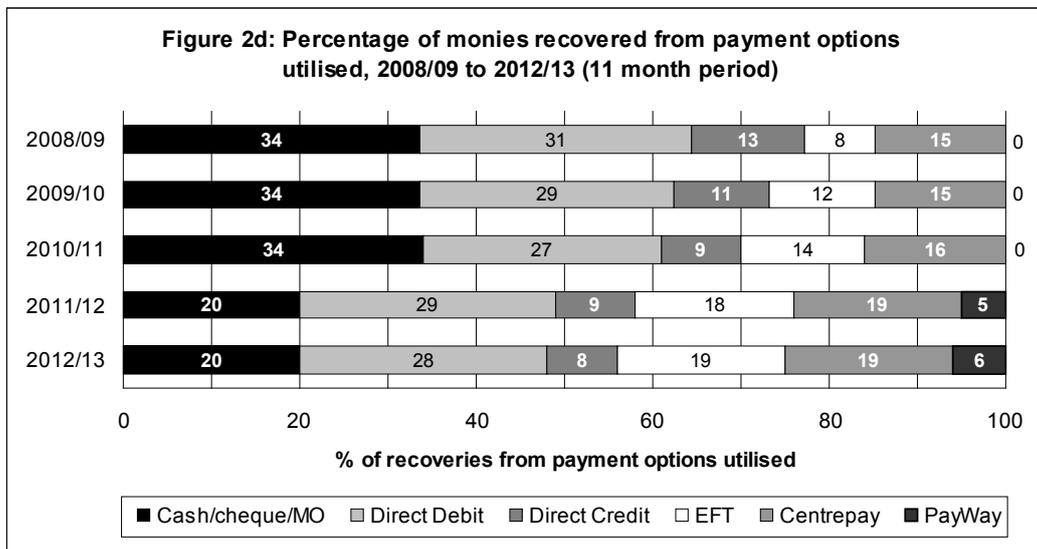
Over the years a number of payment options have been introduced. These include direct debit from a financial institution account, deduction from Centrelink social security payments through Centrepay, direct payments by the offender into the Department’s bank account using a provided deposit book and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

In June 2011, further methods of payment were introduced including payments at an Australian Post Office using a provided PayWay payment card by cash, BPAY, or EFT from a financial institution account and payment online using credit cards.

As at 2 June 2013 approximately 5,308 offenders were using one of the new payment options which do not require the payment of fees. Previously many offenders paid using money orders costing \$6.95 per payment. Payment of the outstanding amounts by the new methods has considerably lessened the amount of cash, cheques and money orders received by Victims Services and provides a much more efficient method of collection. As at 2 June 2013, only three per cent of the number of payments made were by cash, cheque or money order.

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

Figure 2d below shows the distribution of the monies recovered from payment options utilised from 2008/09 to 2012/13 (11 month period).



Set off of awards against restitution (contras)

Section 31 of the repealed *Victims Support and Rehabilitation Act 1996* provided that a determination for restitution against a convicted offender may be set off against an award of compensation to the same offender. The amount set off is included in the total amount of restitution revenue that is reported each year. For the period under review, \$192,189 was set off under section 31.

Arrangements with the Director

Section 50 of the repealed *Victims Support and Rehabilitation Act 1996* provided that the Director and the defendant may enter into an arrangement with respect to payment under a provisional/confirmed order. The section provided 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 283 arrangements amounting to approximately \$3.39m were entered into against provisional orders. A further 234 arrangements amounting to \$2.17m were entered into against confirmed orders made by the Tribunal. The amount agreed upon to be paid represented an average of 61 per cent of the amount provisionally ordered. Payment is generally made by monthly instalments.

Hearings before the Tribunal

Approximately 1,645 matters were listed for hearing or confirmation by the Tribunal during the period under review. Orders resulting in approximately \$17.74m to be paid were made. The amount ordered to be paid represented an average of 85 per cent of the amount provisionally ordered. The orders made by the Tribunal generally required the amounts to be paid by monthly instalments.

Pursuant to the repealed *Victims Support and Rehabilitation Act 1996*, where a defendant had filed an objection to a provisional order, the matter was listed for hearing before a Tribunal Member. There was an appearance of defendants or their representative in approximately 22 per cent of these matters.

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

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

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

Under the *Victims Rights and Support Act 2013*, matters are listed for determination of objection, by the Commissioner of Victims Rights. There are no longer oral hearings and the determination is based on written submissions. The Commissioner of Victims Rights must make a determination on the objection within 90 days of receipt of the objection.

No response orders

When a convicted offender fails to respond to a provisional order, the Tribunal may confirm the order. The Tribunal made 768 such orders in the period under review under review.

Under the new legislation, the Commissioner of Victims Rights makes restitution orders and confirms provisional orders where the defendant has not filed a response. All provisional orders issued under the repealed *Victims Support and Rehabilitation Act 1996*, where a defendant had not yet lodged an objection or where an objection had been lodged but not dealt with as at 2 June 2013, will now be dealt with by the Commissioner of Victims Rights pursuant to the *Victims Rights and Support Act 2013*.

PART 5

Claims received from Aboriginal and/or Torres Strait Islander persons

There is a special focus on issues and priorities relating to Aboriginal and/or Torres Strait Islander people in the NSW Government State Plan.

Figure 3a below shows the number of compensation claims from Aboriginal and/or Torres Strait Islander victims received over the past five years as a percentage of all claims received and the total number of claims received from Aboriginal and/or Torres Strait persons over the same period. That information is obtained from applicants who identify that they are Aboriginal and/or Torres Strait Islander in the application form.

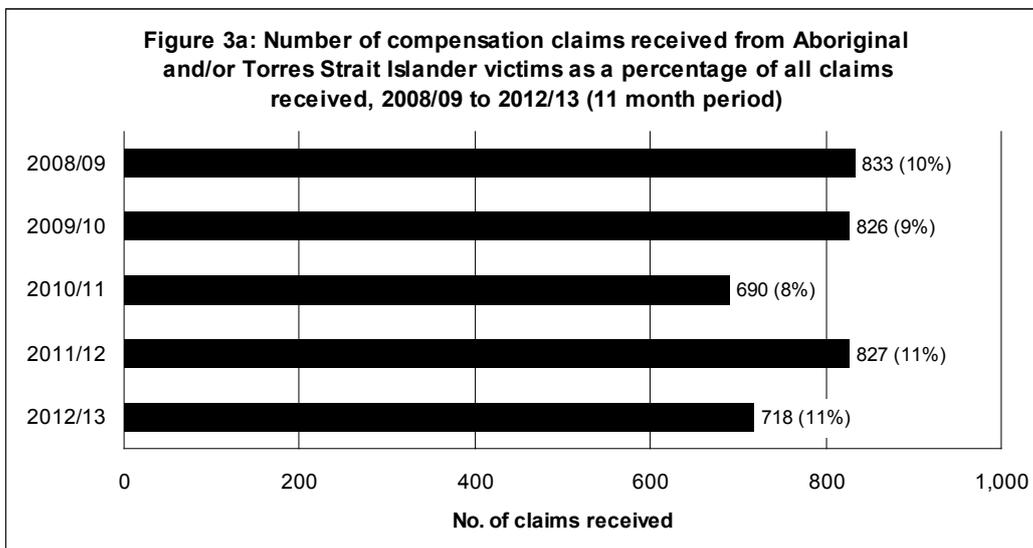
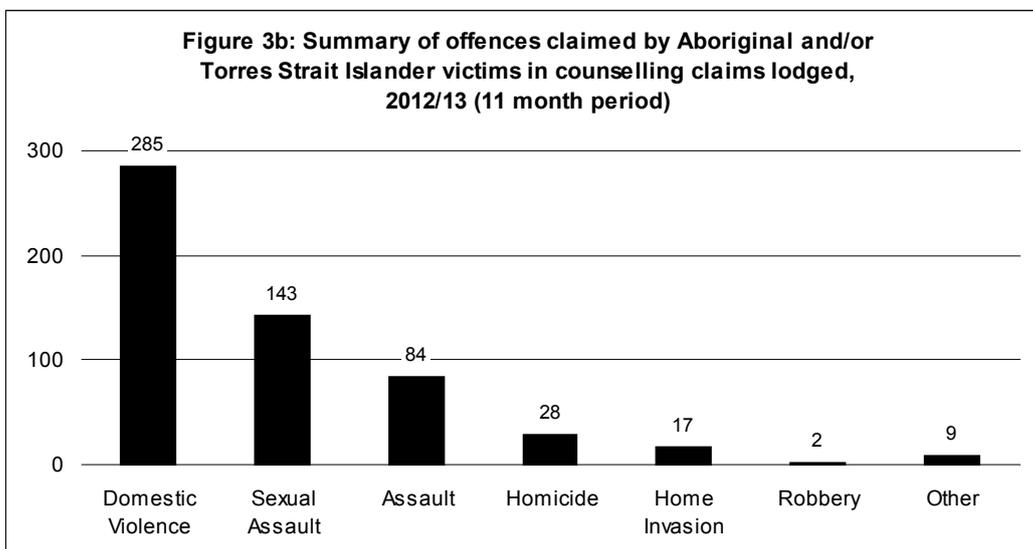


Figure 3b below shows the offences giving rise to applications for counselling from Aboriginal and/or Torres Strait Islander persons. The most common offences giving rise to applications are domestic violence, sexual assault and assault in that order.



PART 6

Family victims

The Tribunal received 259 claims from family members in relation to 130 deceased victims for the period 1 July 2012 to 2 June 2013.

Leave was refused in 11 claims. Total payments, including interim payments of \$632,284 for funerals, amounted to \$2.63m. The number of claims awarded was 127 and 56 claims were dismissed. Most dismissals arose because the claimant was not dependant on the deceased at the time of the death, whereas another applicant or applicants were. Dependent claimants succeeded to the exclusion of all other claimants. In some matters claimants were unable to establish that they were a family victim and in a small group of matters the death was ruled to be accidental or occurred in unknown/unclear circumstances.

Under the *Victims Rights and Support Act 2013*, an amount of up to \$8,000 is now payable for funerals provided that substantiating evidence to show that the person died as a result of a homicide is provided by the applicant. Non-financially dependent parents are now eligible to a recognition payment of \$7,500 and financially dependent family of a homicide victim are eligible to a \$15,000 recognition payment.

Family members can apply for 20 hours of approved counselling if the victim’s death occurred as a result of a homicide. They may also apply for further hours of counselling if required. A total of 141 applications for counselling by family members were received for the period 1 July 2012 to 2 June 2013 and 3,125 hours of counselling approved.

ACKNOWLEDGEMENTS

I gratefully acknowledge the assistance of the staff of Victims Services to victims of crime and to the public generally. I acknowledge and thank the Commissioner of Victims Rights, Ms Mandy Young and Ms Mahashini Krishna, Manager Service Delivery, for their leadership, direction and support during the year. Ms Krishna was a power of strength during the drafting, preparation and implementation of the *Victims Rights and Support Act 2013* and deserves great credit for her outstanding work in very difficult circumstances. I acknowledge and appreciate the continued support and cooperation of the Chief Magistrate of the Local Court, His Honour Judge Henson DCJ. I acknowledge the dedication and skill of the Assessors, Mses. Baker, Bell, Gupta, Humphreys, Krishna, Madison and Srikanth and Messrs De Mayo, Tilley, Ting and Walker and I thank them for their contribution.

I particularly thank the staff in the Appeals section. Ms Colleen Frazer is an extremely competent and conscientious manager of Appeals. I thank her for her outstanding contribution. I also acknowledge the valuable support provided by her assistant, Mr Suresh Vichur. I acknowledge and thank Ms Carol Renotte, Data Reporting and Policy Officer, Victims Services for her expertise and support in the preparation of this report. Mr Matthew Ting continues to be an excellent Advocate for the Fund. He provides excellent advice to Victims Services and is invariably complimented by District Court Judges for his assistance to them in the conduct of matters before the Court. Ms Parama Srikanth, Legal Officer, has looked after the difficult recovery work of Victims Services in a most commendable manner.

I have singled out the members of staff with whom the Tribunal Members have most contact and upon whom we particularly rely. I acknowledge, however, the very considerable contribution made by all members of staff and I appreciate and thank all of them for their contribution to the efficient and effective administration of Victims Services.

I thank my Magisterial colleague, His Honour Crawford LCM for his dedication, loyalty and friendship. He is an outstanding lawyer with a great ability to research and resolve difficult legal and factual issues. He contributed much to the judicial knowledge and standing of the Tribunal.

Consequent upon the abolition of the Tribunal by the *Victims Rights and Support Act 2013*, this will be the final annual report from a Chairperson of the Victims Compensation Tribunal. I acknowledge the dedication and skill of the many Local Court Magistrates who presided at the Tribunal since 1987 and the outstanding contributions made by previous Chairpersons especially His Honour Brahe LCM whose report was the foundation and basis for the introduction of the *Victims Support and Rehabilitation Act 1996*. They can all look back on their contribution to the support and relief of victims of crime with much pride and satisfaction.

