



**OFFICE OF CRIMINAL INJURIES COMPENSATION**

DEPARTMENT OF JUSTICE

WESTERN AUSTRALIA

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**Chief Assessor's Report**  
**2017 / 2018**

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## CRIMINAL INJURIES COMPENSATION

The Honourable John Quigley, MLA  
Attorney General of Western Australia  
5<sup>th</sup> Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6000

Dear Attorney General

### **STATUTORY REPORT - CRIMINAL INJURIES COMPENSATION 2017/18**

Pursuant to section 62 of the *Criminal Injuries Compensation Act 2003* I submit my report on the operation of the Office of Criminal Injuries Compensation for the year ending 30 June 2018.

Yours faithfully

A handwritten signature in blue ink, appearing to read "H L Porter".

**H L Porter**  
**CHIEF ASSESSOR OF CRIMINAL INJURIES COMPENSATION**

26 September 2018

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## OVERVIEW

The Office of Criminal Injuries Compensation (OCIC) is established pursuant to the *Criminal Injuries Compensation Act 2003* (the Act) to compensate applicants for injuries and some losses suffered as a consequence of an offence. Compensation can be awarded for bodily harm, mental and nervous shock and pregnancy suffered as a consequence of an offence. Compensation is available for pain and suffering, loss of enjoyment of life, loss of income, the cost of reports, some personal items damaged in the commission of the offence, and treatment expenses. The maximum amount payable is \$75,000.00 for an offence committed in Western Australia after 1 January 2004, and lesser amounts for offences prior to that.

## STAFF

The team at the OCIC consists of 3 full time assessors and 15.7 full time equivalent administrative (FTE) employees, including staff working on recovery of compensation payments from convicted offenders (the Recoveries Office). The number of staff had been a total of 17.2 FTE from June 2009 until March 2018, when the office surrendered 1.5 FTE pursuant to the voluntary redundancy scheme. There has therefore been a recent reduction in staff numbers which was otherwise static during the previous nearly 9 years, in which time the case load has increased from 750 applications to 4,188.

## KEY DATA FOR 2018

3,173 new applications for compensation were received.

2,640 applications were accepted for processing, a decrease of 16.7%.

2,104 applications were finalised, a decrease of 18.6%.

1,526 awards were made to a total value of \$28,552,413.00, a decrease of 33%.

The average award was \$18,711.00.

168 applications were refused.

7 hearings were held into applications for compensation.

The caseload increased by 875 to 4,188 applications on hand, an increase of 20.9%.

\$1,558,577.00 of debt owed to the State was recovered, a decrease of 12.3%.

867 finalised applications arose from offences involving family and domestic violence, being 41.2% of the finalised applications.

## STATISTICAL PROFILE

	<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>
New applications received	2391	2700	2769	3189	3173
Accepted applications	2342	2765	2734	3167	2640
Rejected applications	694	687	707	762	463
Resubmitted applications	477	490	557	699	279
Awards granted	1679	1789	1987	2279	1526
Applications refused	180	189	222	226	177
Applications closed or discontinued	68	79	53	80	116
Applications outstanding at 30 June	1556	2261	2731	3313	4188

## **IMPLEMENTATION OF ICMS**

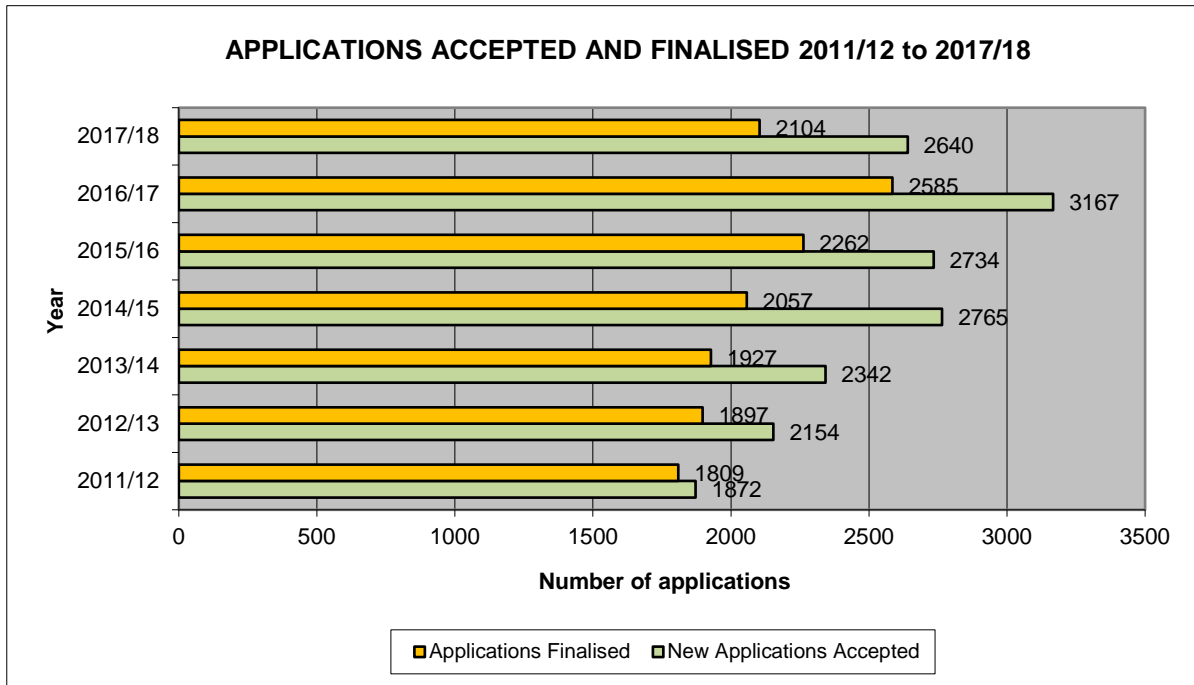
Beginning in early 2016 the Integrated Courts Management System (ICMS) was implemented in the OCIC. The system went live on 27 November 2017. ICMS is an electronic file management system which requires all paper applications to be sorted, scanned and uploaded into the database before processing work can commence. Applications can also be received electronically as attachments to emails, but these still require sorting and uploading into the ICMS file. Once data has been uploaded, the database provides access to the records of any Court proceedings and, on those applications where an offender was charged, results in some processes being completed more quickly. ICMS does not yet include the facility for e-lodgement of an application, although work was done during the design phase on an application form suitable for such a system. It is hoped this may be implemented in a later release of ICMS.

The design and adaptation of ICMS to suit the requirements of the OCIC was assisted by the input of an experienced former OCIC staff member who was familiar with the framework and procedures of the business area and took the role of Business Representative from February 2016 until January 2018. In addition, from March 2017 the office made available to the ICMS team a very experienced case manager, to test the functions and applicability of ICMS to the OCIC. This officer worked full time on ICMS design and implementation until March 2018, and was replaced during some of the secondment by an officer working at .7 FTE. The Department of Justice made available additional resources for weekend overtime after the system went live, which was used primarily to catch up the processing and inputting into ICMS of the backlog of new applications which had accumulated while testing and training was under way. Significant hardware difficulties were encountered in December 2017 and January 2018, with scanners of sufficient capacity to handle the volume of applications being finally operational in early February 2018. In February and March staff undertook a major project of data input to bring the backlog of new applications into the system. I wish to express my thanks to the staff involved at this stage, some of whom worked a part of most weekends in February and March 2018. Solicitors for applicants whose applications were delayed showed patience and understanding of the delays, for which all staff are very grateful.

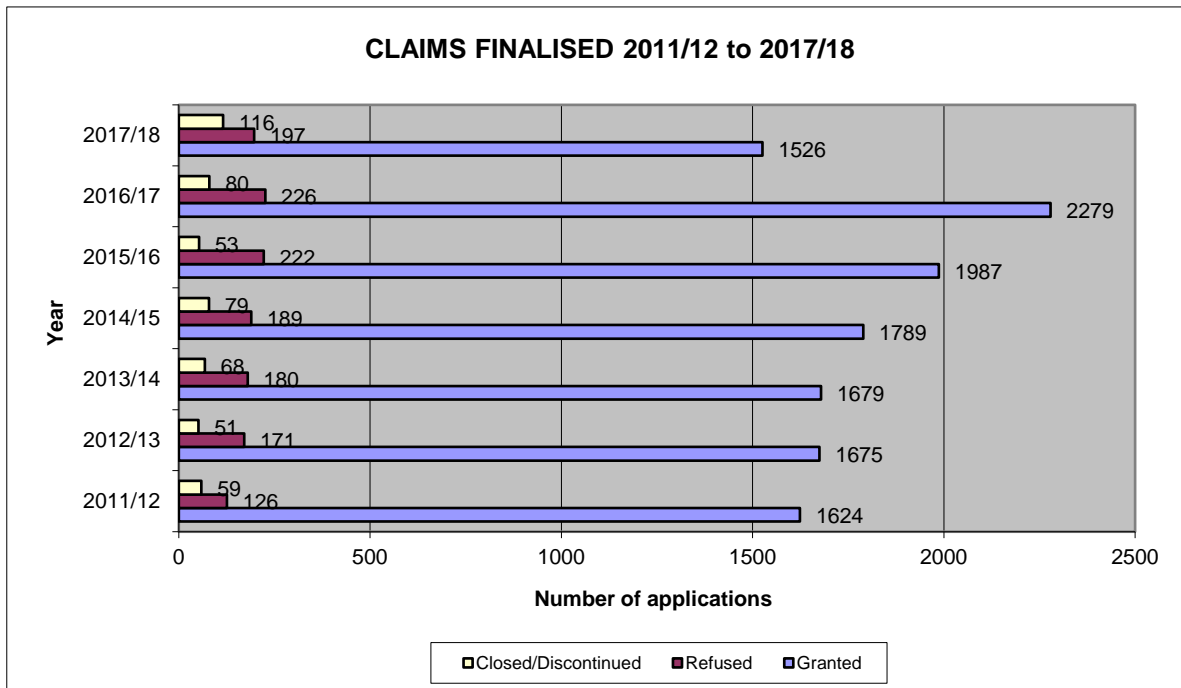
The Chief Assessor, the other assessors, the Manager and all staff of the OCIC and the Recoveries Branch were significantly involved in the work required to produce an iteration of ICMS which was suitable to the OCIC. All staff attended testing and training sessions in groups beginning on 7 August 2017 and continuing in a formal way until 5 December 2017. In the 4 months after implementation, significant disruption occurred to processing applications and finalising compensation payments. As can be seen from the statistics presented in this Report, there was a significant impact on the productivity of the office in all areas. It is to be hoped that ICMS will contribute to improvement in timeliness and output in the next year.

## NEW APPLICATIONS RECEIVED

During 2017/18, 2,640 new applications were accepted for processing, 527 less than in the previous year and less than in any year since 2014. In 2017, 2,585 applications were finalised, and in 2018, 2,104 were finalised, a drop of 481, which is the first annual decrease in finalisations since 2009. These figures reflect the impact on output of the ICMS implementation. The case load increased this year by 875 applications. Although the case load has been consistently increasing in past years, the size of this increase is approximately 3 times that of the previous year, and reflects the slowed processing caused by ICMS implementation.

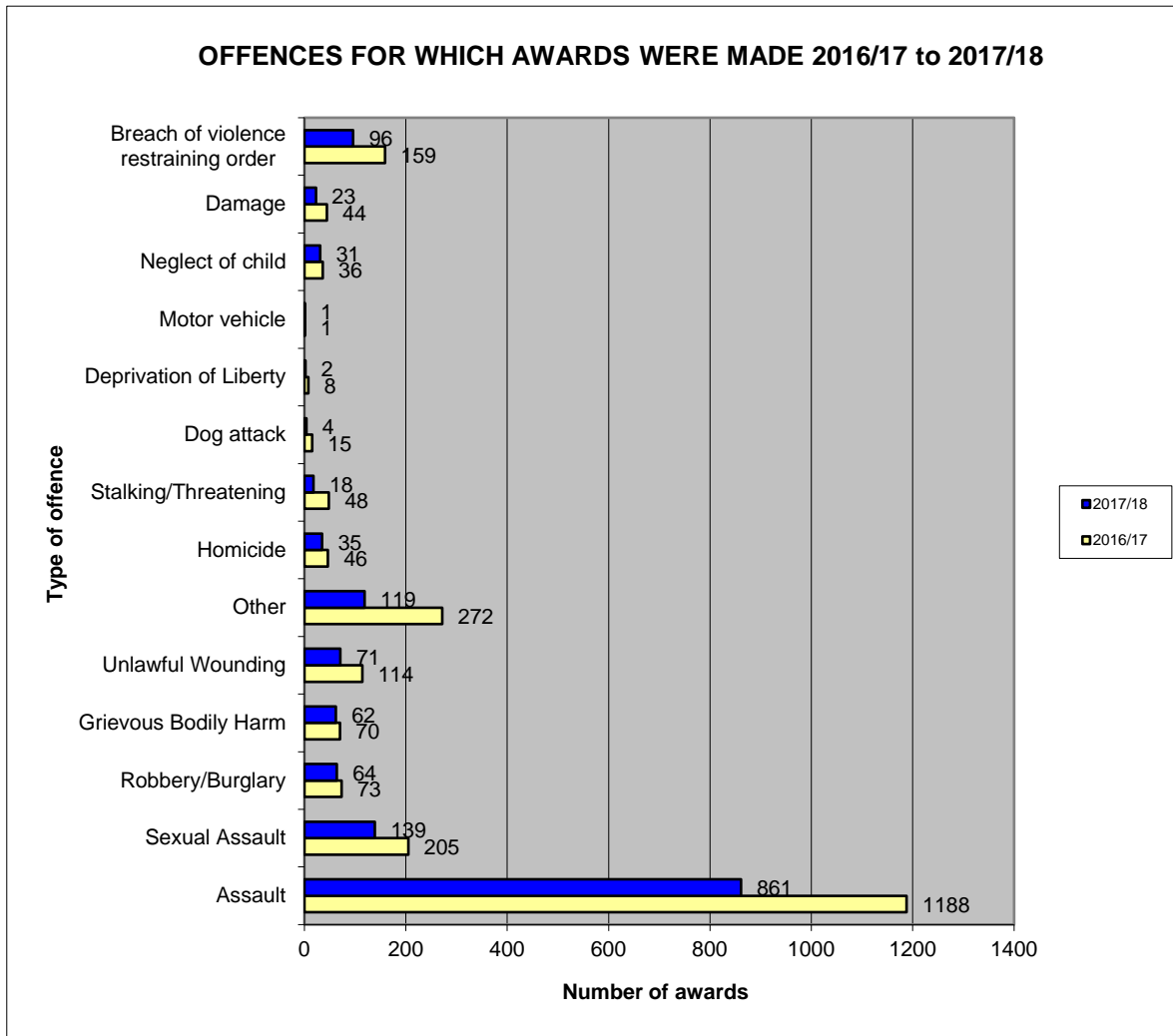


## CLAIMS FINALISED



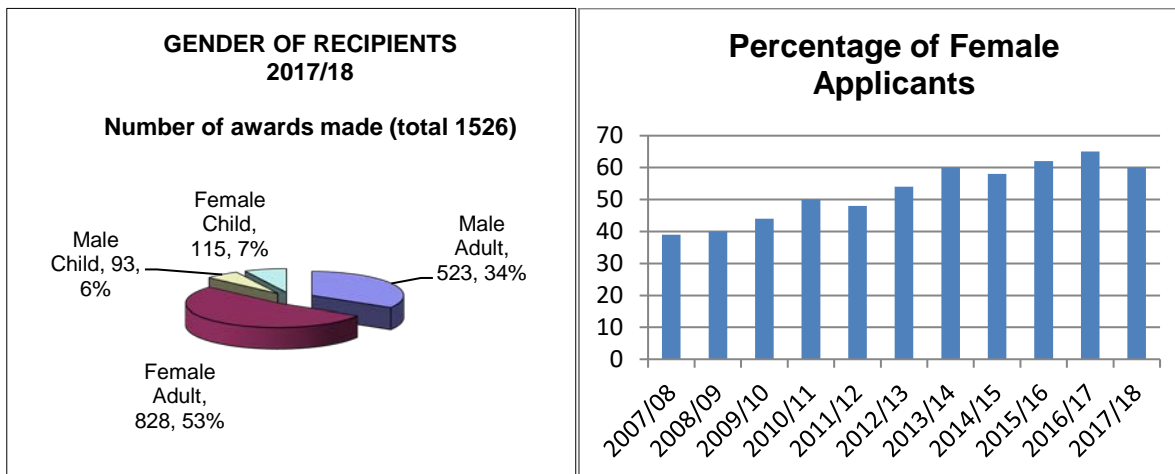
## NATURE OF OFFENCES INVOLVED

The chart below illustrates the types of offences for which awards were made, with a comparison between 2016/17 and 2017/18.



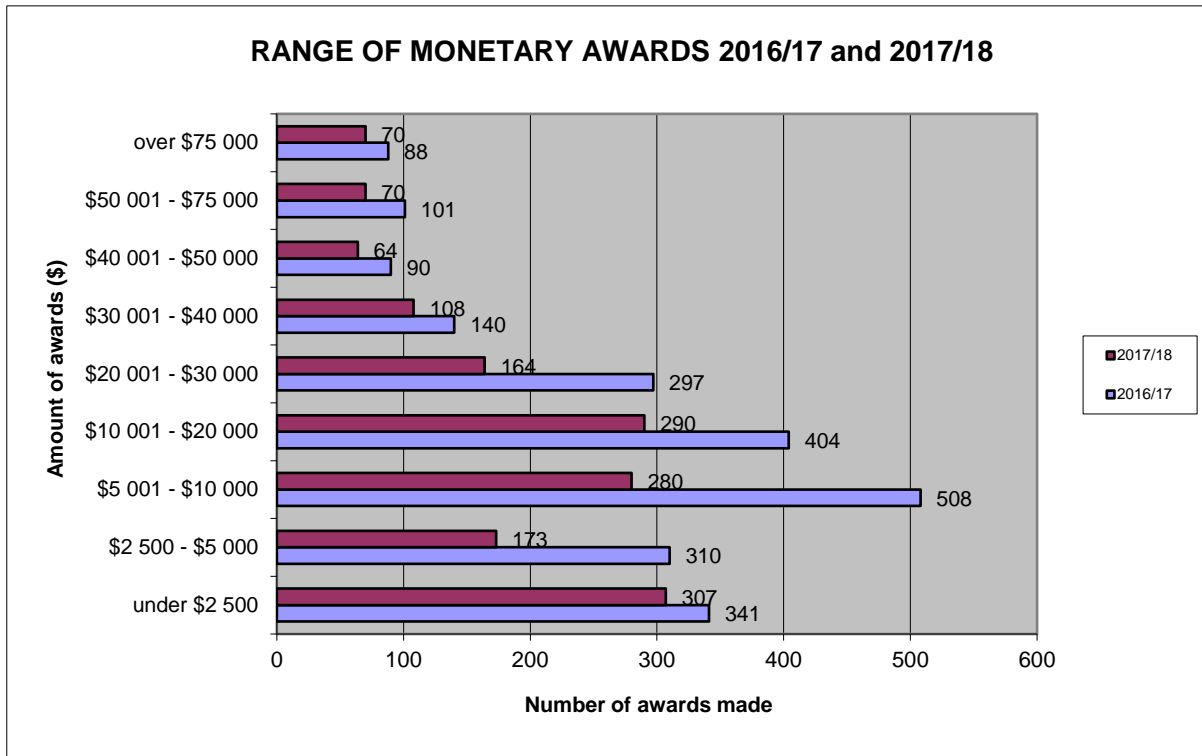
## NUMBER OF MALES & FEMALES TO WHOM AWARDS WERE MADE

The following chart shows the gender of persons to whom awards were made and the number of adults and children involved. Overall, 40% of recipients were male and 60% female, a slight reduction in the number of female applicants over the previous year.



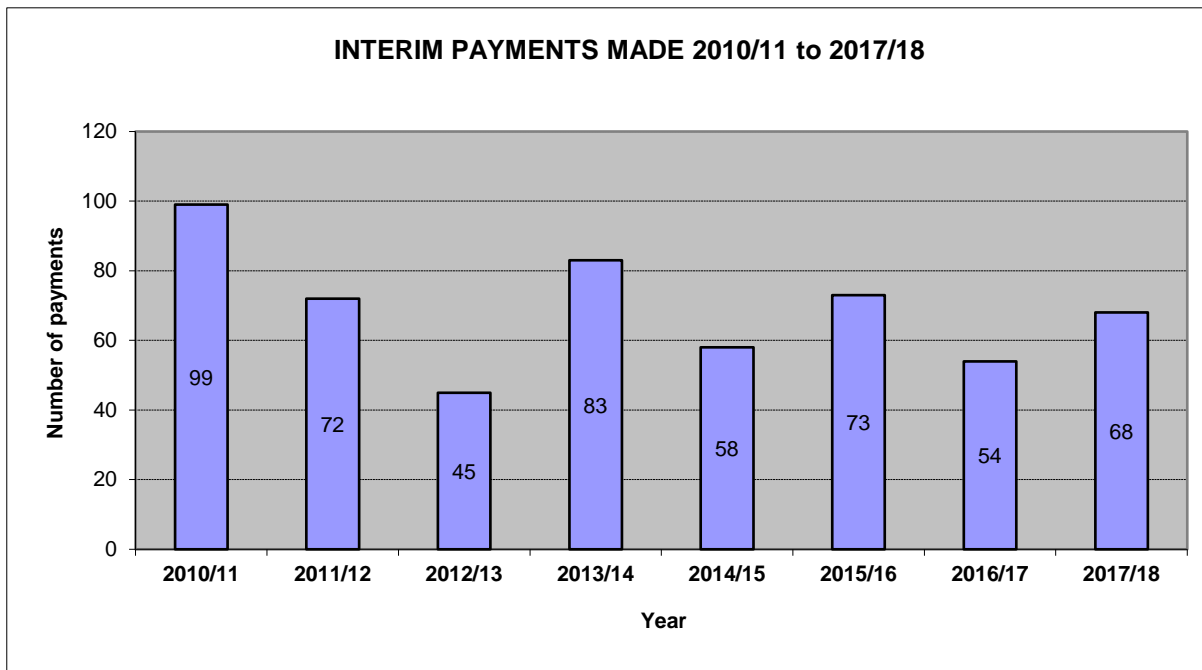
## RANGE OF AWARDS MADE

The chart below illustrates the monetary range of awards made, with a comparison between 2016/17 and 2017/18. The fact the significant majority of applicants are compensated at a figure below the available maximum indicates the scheme is adequately compensating the majority of applicants.



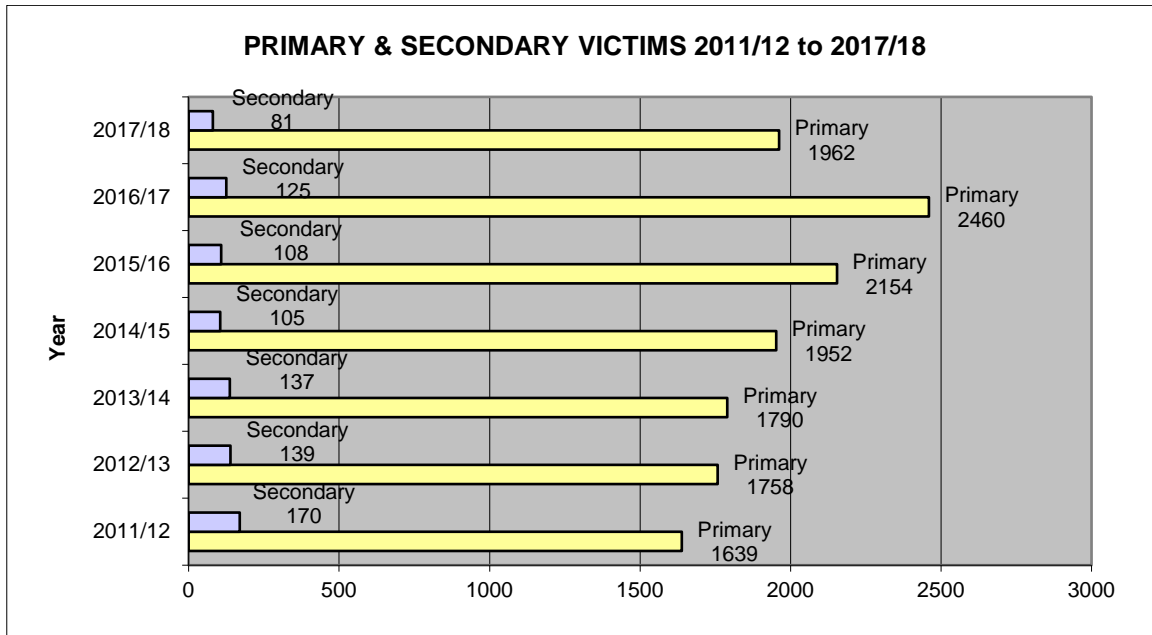
## INTERIM PAYMENTS

An Assessor may authorise an interim payment before the finalisation of a claim, to a maximum of \$2,250.00 for expenses incurred as a consequence of a death or injury. The table below shows the number of applicants to whom interim payments were made.





## PRIMARY & SECONDARY VICTIMS

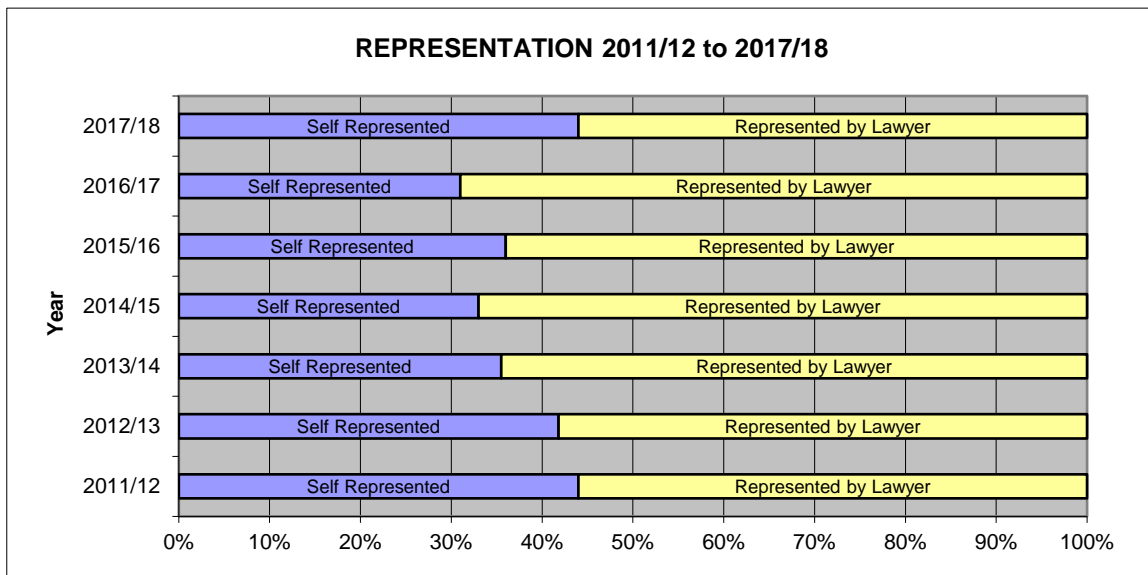


## FUNERAL EXPENSES

In 2016/17 the OCIC received 69 applications arising from a homicide, and in 2017/18 there were 40 applications. In 2016/17, 11 applications for compensation for funeral expenses were received and compensation totalling \$104,203.07 was paid, at an average of \$9,473 per claim. In 2017/18 there were 8 claims for compensation for funeral expenses and compensation totalling \$82,160.88 was paid, at an average of \$10,270 per claim.

## REPRESENTATION

The last 12 months has seen a reduction in the proportion of applicants having legal representation, with 56% of applicants being represented, compared to 69% in the previous year.



## APPEALS

22 appeals were lodged with the District Court following the determination of a compensation application. 21 appeals were finalised and of these 9 were successful, 1 was unsuccessful, 1 was abandoned and 10 were discontinued.

## REFUSALS

Awards were refused on 186 applications, for the reasons detailed below. Of these refusals, 76 (40.9%) relate to matters involving allegations of family and domestic violence. This represents a slight drop in the percentage of refusals relating to family and domestic violence from 46% in the previous year.

<b>Section of Act</b>	<b>No of Refusals</b>	<b>Family and Domestic Violence Matters Refused</b>	<b>Reason for Refusal</b>
9	51	26	Time expired, extension of time refused*
10	11	6	Entitlement ceases on death of victim
12	3	1	Assessor not satisfied applicant injured in the commission of a proved offence
13	14	3	Alleged offender acquitted
16	2	0	Alleged offender acquitted due to unsoundness of mind
17	39	21	Assessor not satisfied applicant injured in the commission of an alleged offence
21	0	0	Applicant required to enforce other remedies
35	9	2	Limitation of compensation for mental and nervous shock
36	18	5	No award if compensation likely to benefit offender
37	1	0	Injury caused by a motor vehicle
38	15	7	Applicant did not assist investigation, apprehension or prosecution of offender
39	12	5	Victim engaged in criminal conduct
40	3	0	Compensation previously awarded or refused
41	2	0	Behaviour etc of victim to be considered
42	6	0	Insurance payment deducted from award

\*An extension of time was granted on 138 applications.

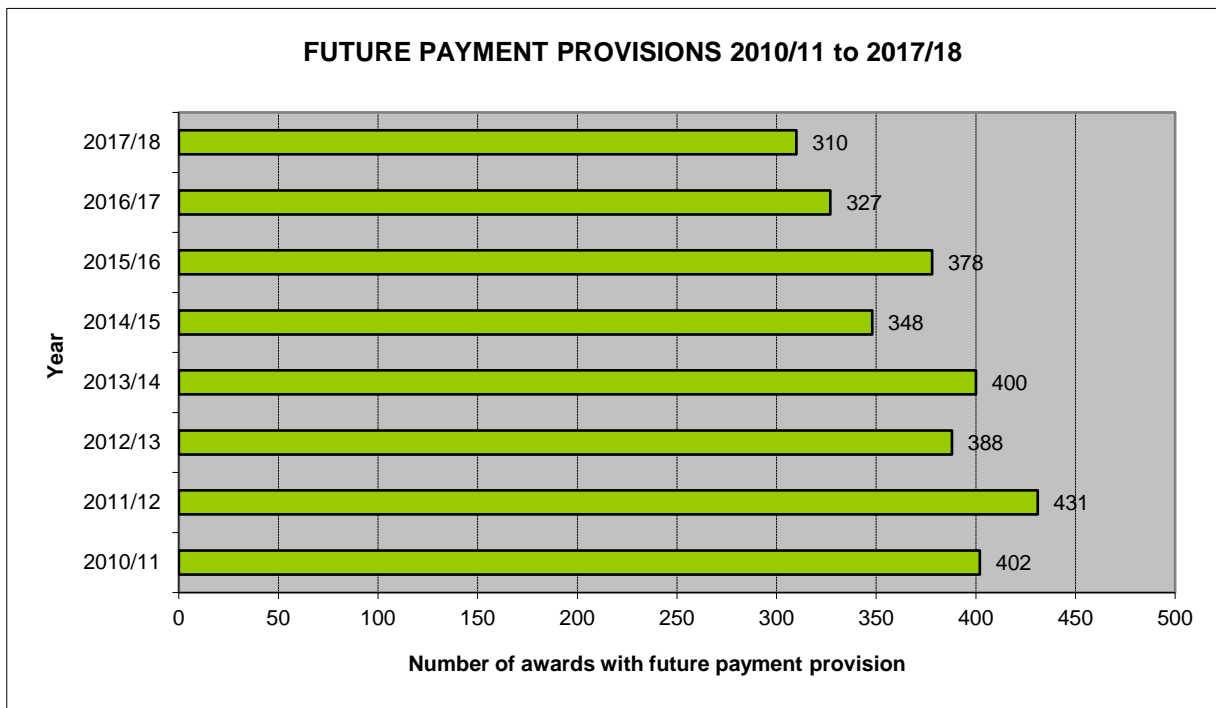
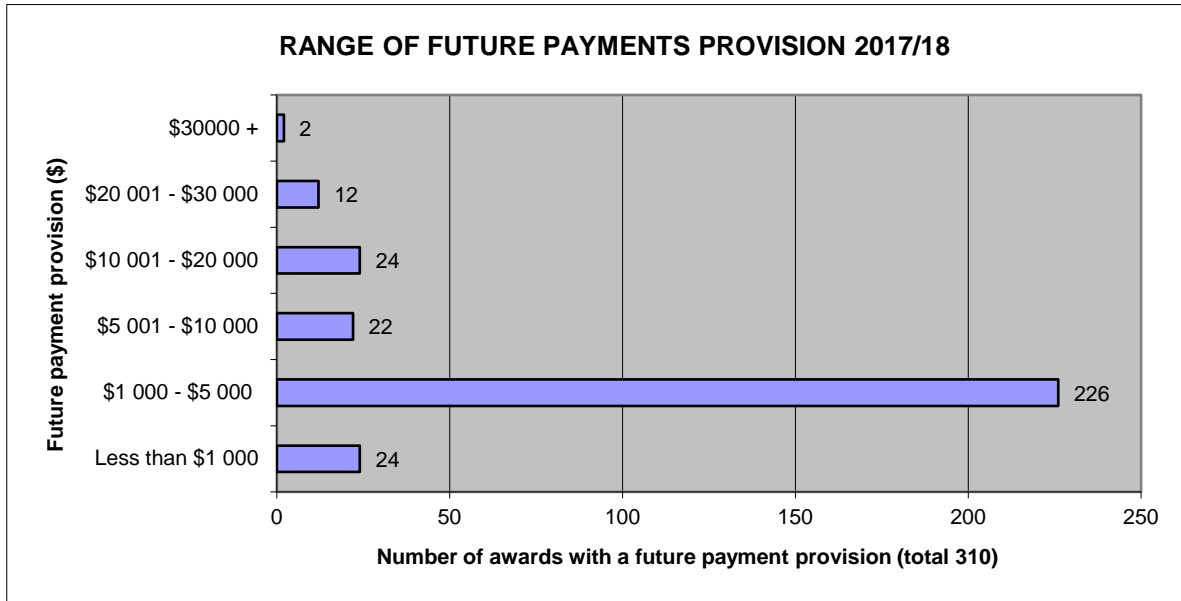
## REDUCTIONS TO AWARDS FOR CONTRIBUTION

Section 41 of the Act requires that regard be had to “any behaviour, condition, attitude, or disposition of the victim that contributed, directly or indirectly, to the victim’s injury or death”, and authorises the assessor to refuse or reduce the award. Reductions for contributory behaviour, ranging from 10% to 50%, were made in 17 awards during 2017/18. Of these, 9 awards were reduced by 20% or less and 8 awards were reduced by over 20%. No application was refused for contributory behaviour. One of the applications on which a reduction was made for contributory behaviour involved family and domestic violence.

## FUTURE PAYMENTS PROVISION

As part of an award, an Assessor may make provision for future treatment costs, which can be claimed by the applicant when relevant costs are incurred within 10 years of finalisation of the application. Pursuant to section 48 of the Act, payment is not made until expenses have been incurred and any available Medicare or private health insurance rebate has been claimed. Payment may only be authorised by an assessor if the expense was incurred before the expiry of 10 years after the date of the award or after the date the applicant reached 18 years of age, whichever is the later. The amendment to the Act which introduced the 10 year limit on claims against a future treatment provision came into effect on 31 July 2008, and therefore began to have an effect on entitlement to claim from 31 July 2018.

In 2017/18 provision was made in 310 awards for future treatment expenses totalling \$1,272,376.00, increasing the total provision made under the Act since 1 July 2004 to \$15,291,911.00. Of this, \$360,804.20 was paid out in 2017/18 bringing the total paid since the commencement of the Act on 1 July 2004 to \$2,675,402.20.



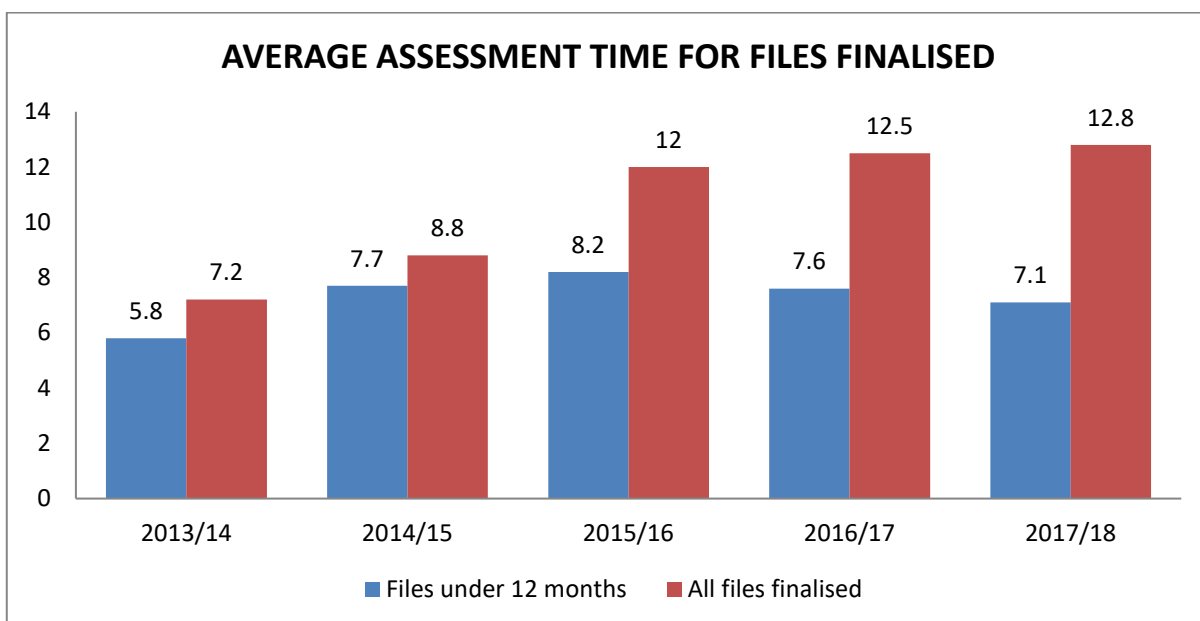
## PERFORMANCE MEASURES

The Table below records the quarterly and end of year statistics reported to the Department of Justice.

	July - Sep 17	Oct - Dec 17	Jan - Mar 18	Apr - Jun 18	Annual
Lodgements accepted	635	700	595	710	2640
New applications	750	685	579	880	2894
<b>Finalisations</b>	<b>458</b>	<b>572</b>	<b>451</b>	<b>623</b>	<b>2104</b>
39 weeks & less	179	143	69	196	587
39 to 52 weeks	92	143	92	59	386
More than 52 weeks	187	286	290	370	1133
Listings matters heard	2	1	1	3	7
<b>Cases on hand</b>	<b>3492</b>	<b>3451</b>	<b>3945</b>	<b>4188</b>	<b>4188</b>
Less than 39 weeks	2289	1860	1928	1867	1867
39 to 52 weeks	490	726	750	749	749
More than 52 weeks	713	865	1267	1572	1572
Applications New & Resub	915	770	596	892	3173
Applications Rejected	219	98	3	143	463
Applications Resubmitted	165	85	17	12	279

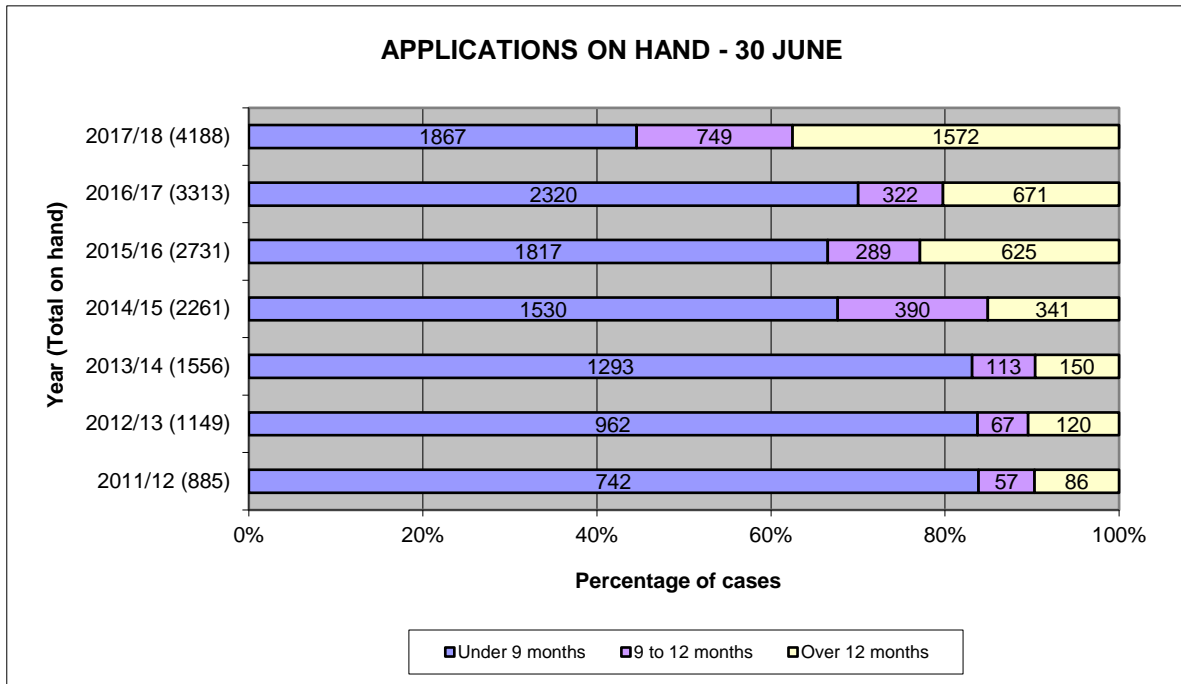
## ASSESSMENT TIME

The calculation of the average time taken to finalise an application has in the past been made based only on those applications finalised *in less than 12 months from receipt*. This assumption reflected the likelihood that, in cases which take more than 12 months to finalise, the delay is usually caused by external factors such as ongoing treatment, finalisation of the prosecution, and resolution of other avenues for compensation. On this basis, the assessment time during 2017/18 was 7.1 months, a decrease from 7.6 months in 2016/17. However, the assessment time over *all applications finalised in the financial year* was 12.8 months. The table below compares the assessment time of applications determined in less than 12 months for the years 2013/14 to 2017/18, with *all applications* determined in those years. The increased time taken to finalise applications continues to be significantly contributed to by the volume of the work of the office and this year has also been impacted upon by the ICMS implementation.



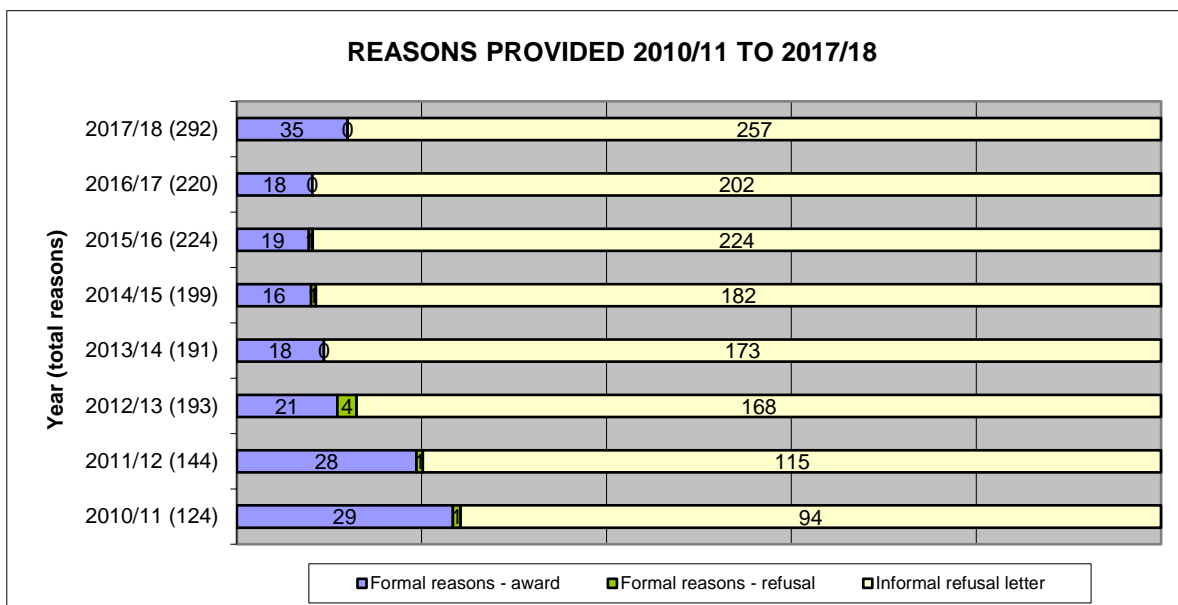
## OUTSTANDING APPLICATIONS

On 30 June 2018, 4,188 applications were on hand, an increase of 875, or 26.4%, over the preceding 12 months. The breakdown of the age of the cases on hand in the table below shows that the number of applications which have been in the Office for more than 12 months has increased by 134.3%.



## PROVISION OF REASONS

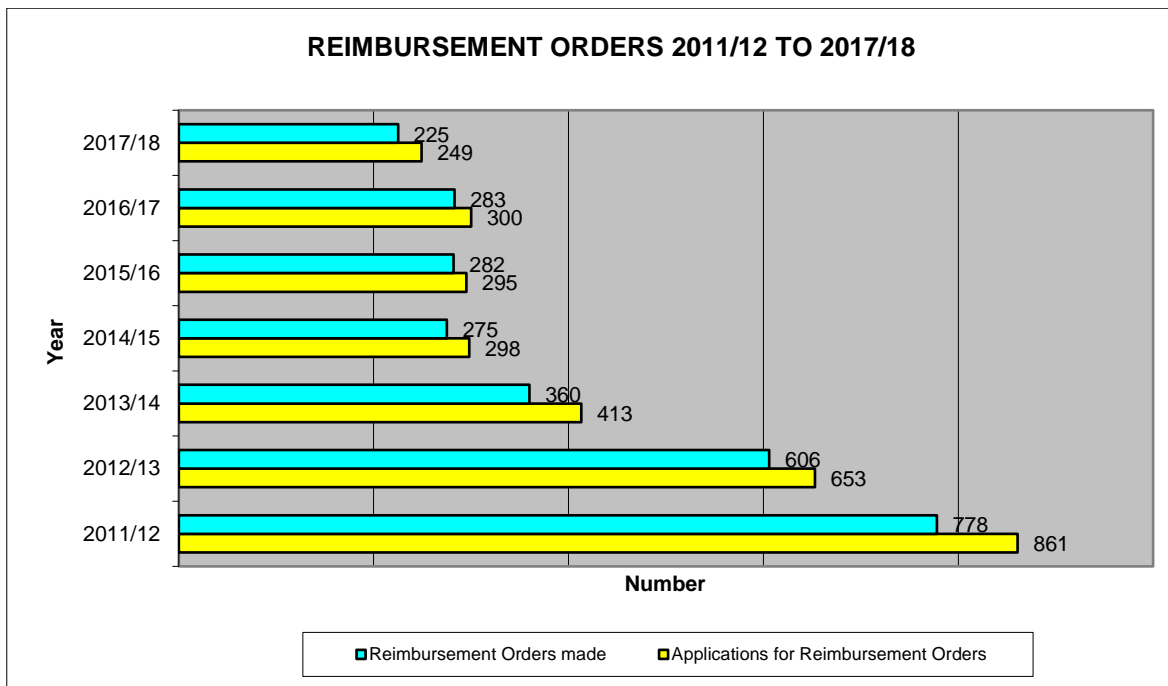
An Assessor is required to give written reasons for the making of an award when requested to do so, and in all cases where the making of an award is refused. Where an Assessor forms the view that by reason of the operation of the legislation an applicant is ineligible for compensation, the applicant may be advised by letter of the reasons for that outcome, rather than in formal written reasons. During 2017/18, formal reasons for decision were provided in 35 cases and in total reasons were provided in 292 cases, an increase of 90 over the previous year. The chart below sets out the breakdown of these reasons.



## RECOVERY OF DEBT

When a compensation award is made in a case where an offender was convicted, the State may apply to an assessor for a Compensation Reimbursement Order (CRO) to determine whether the offender should be required to repay the amount awarded, to fix the amount of the debt and in an appropriate case to provide for the method of repayment of the debt to the State. The application is listed before an assessor and the offender is served with a notice advising the date, time and purpose of the application. The State's opportunity to take action to recover compensation paid to a victim of crime from a convicted offender depends on the determination of the assessor of the appropriate amount of recovery, taking into account all of the circumstances. Issues which are relevant to this determination include, for example, the offender's assets, the impact on the offender's earning capacity of a period of imprisonment and issues relating to the offence itself. Although there is no recoverable debt until a CRO is made, some offenders voluntarily make payment on demand under the Act without the requirement of a CRO.

The Table below represents the number of applications for a CRO brought before an Assessor in each of the years listed, and the number of orders made. The number of applications was reduced after 2013 because of the demand on the Assessors' time brought about by the increasing caseload, but has been stable for the last three years.



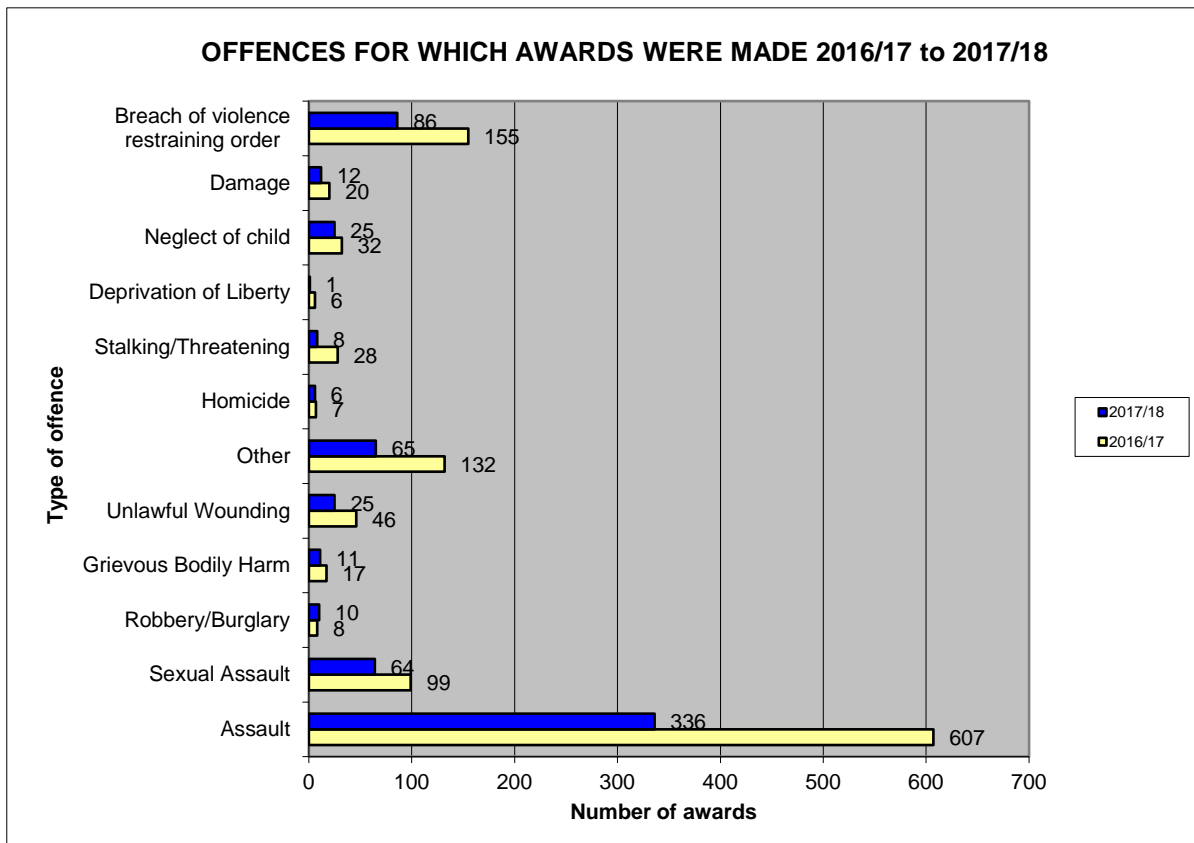
In 2017/18, \$1,558,577.00 of debt owed to the State was recovered, compared to \$1,778,330.00 in the previous year. This represents a 12.3% decrease in the amount recovered.

## FAMILY AND DOMESTIC VIOLENCE

As a result of the recommendations of the Law Reform Commission of Western Australia in the Final Report on Enhancing Laws Concerning Family and Domestic Violence, June 2014, the OCIC began collecting data concerning applications arising from allegations of family and domestic violence. The data below relates to the 867 applications finalised this year involving family and domestic violence, compared to the data from 2016/17.

### NATURE OF OFFENCES INVOLVED

The chart below illustrates the types of offences for which awards were made during 2016/17 and 2017/18 for offences committed in the context of family and domestic violence.



In the previous year, 1,308 applications were finalised for incidents of family and domestic violence. The number of finalised applications relating to incidents of family and domestic violence in the current year represents a decrease of 33.7% over the previous year, reflecting the overall decrease in finalisations as discussed above. Of the 867 applications finalised, 771 were brought by the primary victim, and 54 by a secondary victim, such as a child of the primary victim who witnessed the incident. Applications were refused in cases involving family and domestic violence in 76 cases, of which 49 claimed to be primary victims and 1 a secondary victim. Of the victims of family and domestic violence to whom awards were made, 99 (11.4%) were male and 768 (88.6%) were female.

### COMMUNITY SERVICE

As usual, during the year Assessors have participated in a number of public speaking engagements and education and training opportunities, including at the John Curtin Institute of Public Policy, Curtin University, the Aboriginal Family Law Service CLE day, Community Legal Services' Quarterly CLE day, the SCALES Community Legal Centre seminar series, the ANZAPPL seminar series, the Legal Aid Commission of WA CLE day and the LegalWise Seminar series. In addition ongoing support had been provided in training with the Victim Support Services and the Citizen's Advice Bureau. Assessor Guthrie contributed a chapter to the Sussex Street Community Law Service Online Law Handbook. The OCIC continues to provide opportunities by way of internships for Murdoch University Law Students to complete research work in the area of criminal injuries compensation law, to contribute to the degree program.

## **ACKNOWLEDGEMENTS**

The statistics measuring the performance of the OCIC in 2017-18 reveal a continued increase in the caseload which, together with the impact of the ICMS implementation, has placed increased pressure on all staff to meet the needs and expectations of the community. Further, in March 2018 the OCIC surrendered 2 staff members (1.5 FTE) under the voluntary redundancy scheme, placing further pressure on the remaining staff. It is to be hoped ICMS will assist staff to cope with the demands of the workload and consequently assist the community in providing more timely outcomes for criminal injuries compensation applications. In addition, the provision of additional resources to the office has become critically important in order to maintain the standard of this important service to victims of crime.

All members of staff have continued to produce excellent output in the face of the continued very high workload. All are to be commended for the work done in the ICMS implementation, alongside already very demanding workload pressure. On behalf of the community I congratulate and thank each of the officers concerned.



**H L Porter**  
**CHIEF ASSESSOR OF CRIMINAL INJURIES COMPENSATION**

26 September 2018