



OFFICE OF CRIMINAL INJURIES COMPENSATION

DEPARTMENT OF THE ATTORNEY GENERAL

WESTERN AUSTRALIA

**Chief Assessor's Report
2010/2011**



CRIMINAL INJURIES COMPENSATION

The Honourable C Christian Porter, MLA
Attorney General of Western Australia
Level 21, Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

Dear Attorney General

STATUTORY REPORT - CRIMINAL INJURIES COMPENSATION 2010/11

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 2011.

Yours faithfully

H L Porter
CHIEF ASSESSOR OF CRIMINAL INJURIES COMPENSATION

16 September 2011

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OVERVIEW

The Office of Criminal Injuries Compensation is established pursuant to the *Criminal Injuries Compensation Act 2003* (the Act) to compensate victims for injuries suffered as a consequence of an offence. Compensation can be awarded for bodily harm, mental and nervous shock, or pregnancy, resulting from an offence. Compensation is available for pain and suffering, loss of enjoyment of life, loss of income and treatment expenses. The maximum amount payable is \$75,000 for an offence committed in Western Australia after 1 January 2004 and lesser amounts for offences prior to that.

STAFF

The team at the Office consists of 3 full time assessors and 17.2 full time equivalent administrative employees, including staff working on recovery of the value of awards from convicted offenders (the Recoveries Office).

KEY DATA

During 2010/2011,

1907 new applications for compensation were received, up by 13.5%.

1669 applications were accepted for processing.

1794 applications were finalised, up by 25.4%.

1589 awards were made totalling \$32,675,750, up by \$7,464,232.

The average of the awards was \$20,563.

102 applications were refused.

18 hearings were held into applications for compensation.

The caseload reduced by 130 to 813 applications on hand, down by 13%.

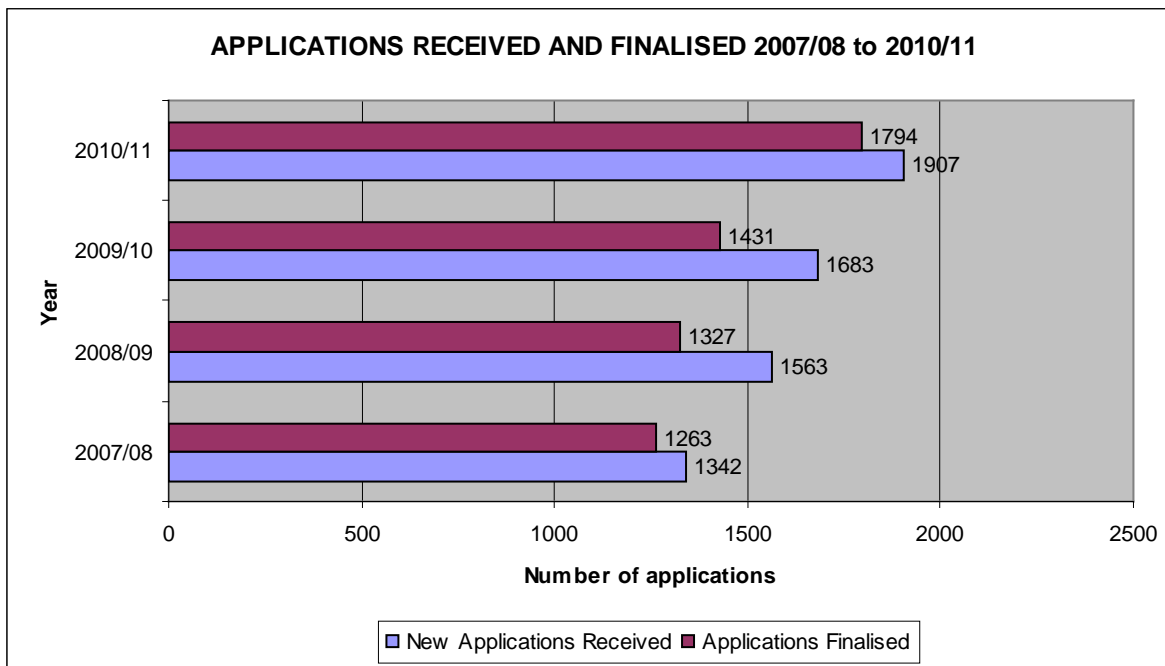
\$1,346,118 of debt owed to the State was recovered.

STATISTICAL PROFILE

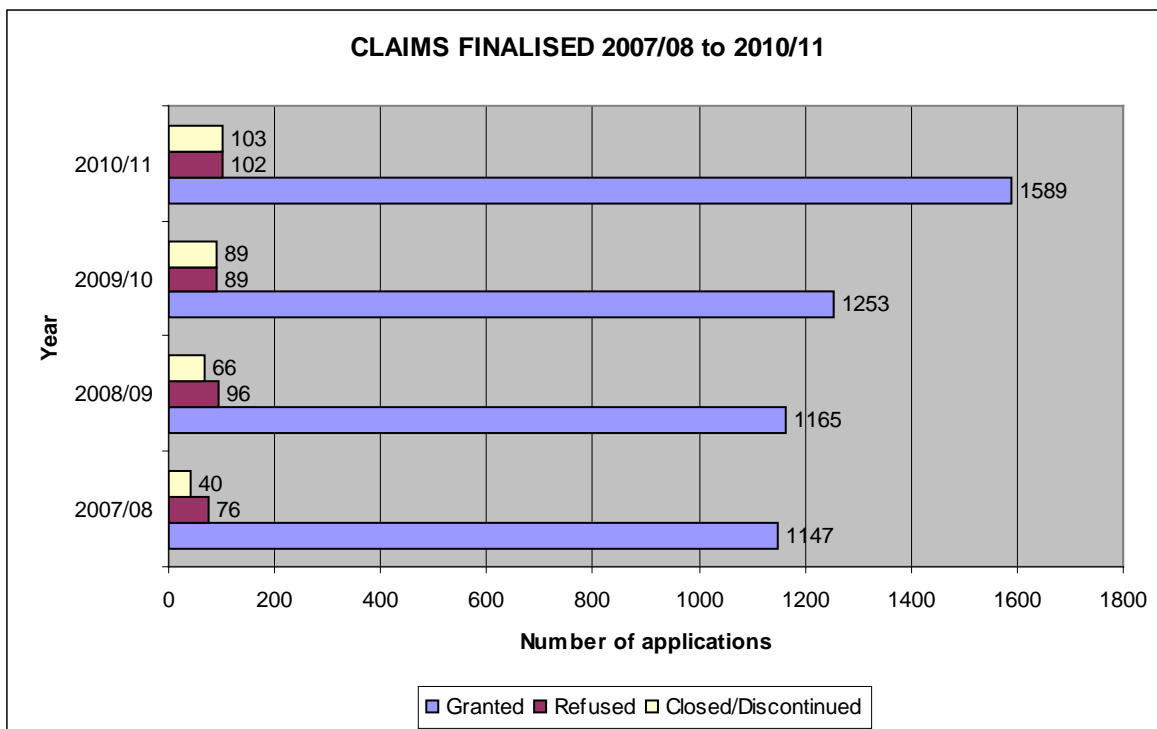
	<u>2007/08</u>	<u>2008/09</u>	<u>2009/10</u>	<u>2010/11</u>
New applications received	1342	1563	1683	1907
Accepted applications	1287	1491	1628	1669
Rejected applications	422	362	362	536
Resubmitted applications	367	290	307	298
Awards granted	1147	1165	1253	1589
Applications refused	76	96	89	102
Applications closed or discontinued	40	66	89	103
Applications outstanding at 30 June	597	750	943	813

NEW APPLICATIONS RECEIVED

During 2010/11 new applications totalling 1907 were received. On 536 occasions applications were returned to the applicant for further work and of the returned applications 298 were resubmitted on at least one occasion.

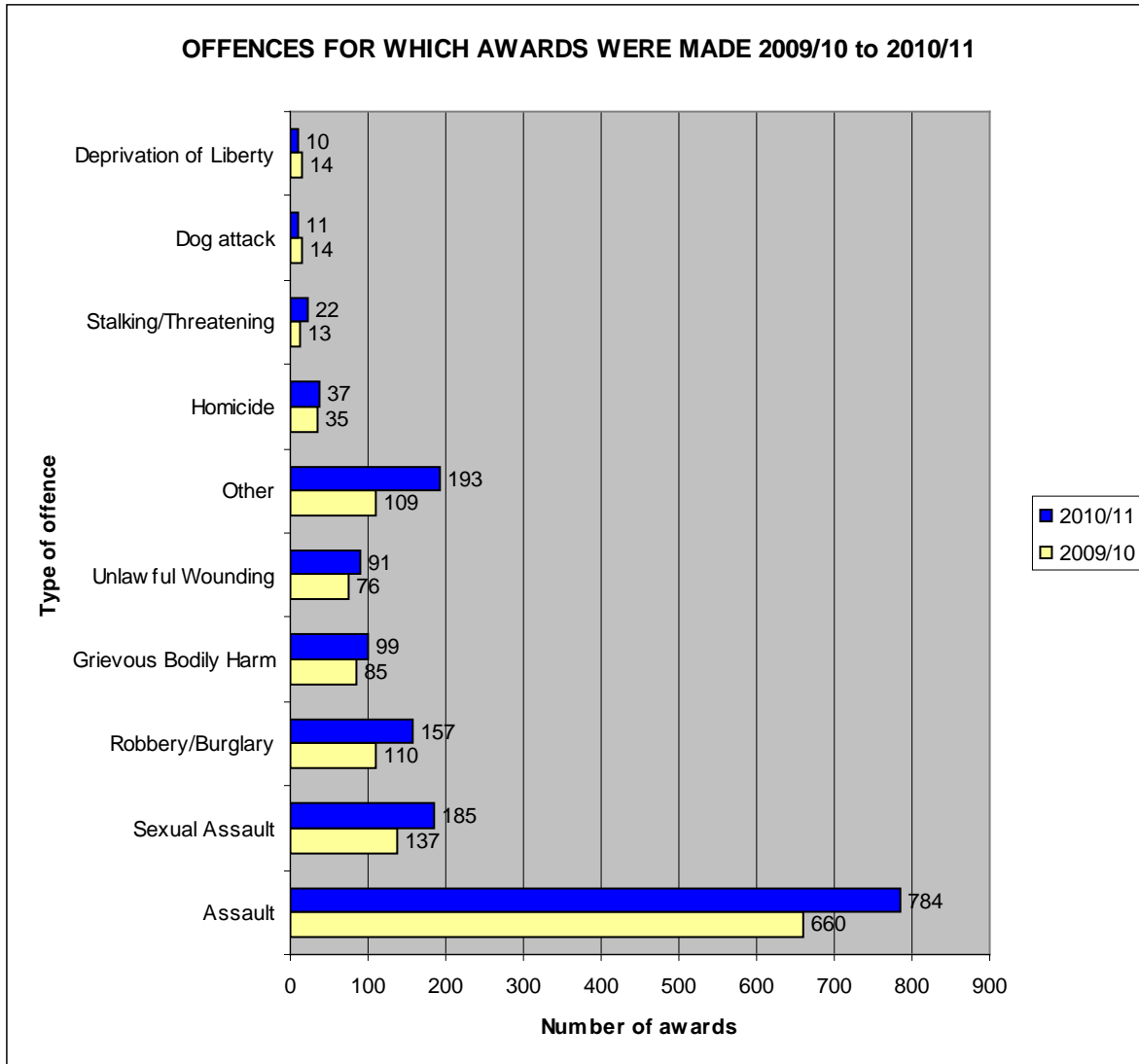


CLAIMS FINALISED



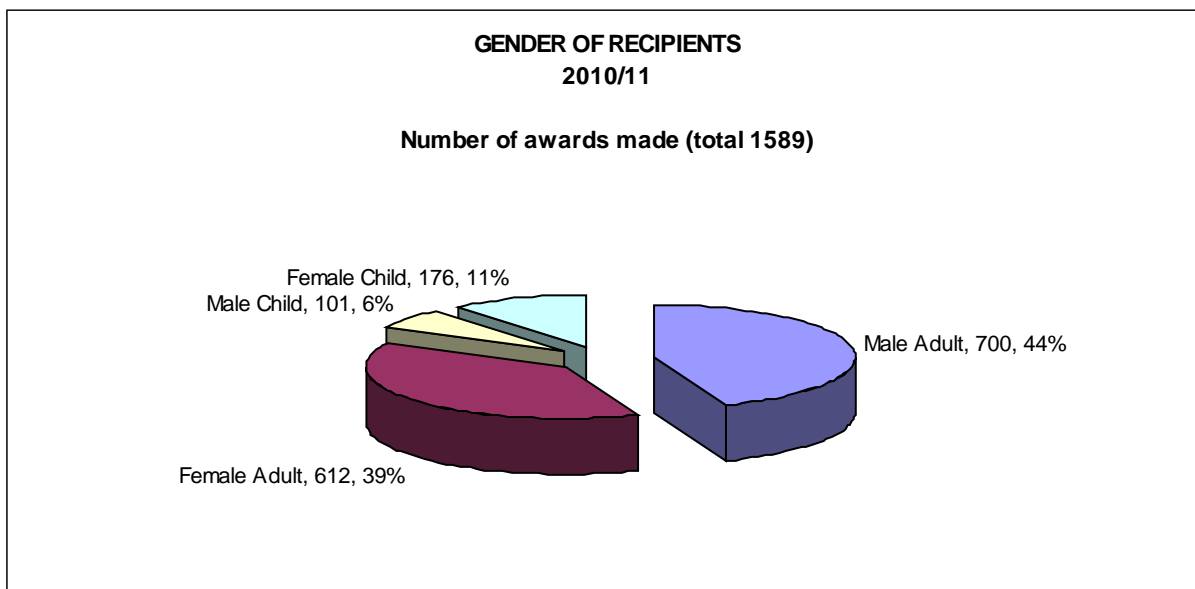
NATURE OF OFFENCES INVOLVED

The chart below illustrates the types of offences for which awards were made between 2009/10 and 2010/11.



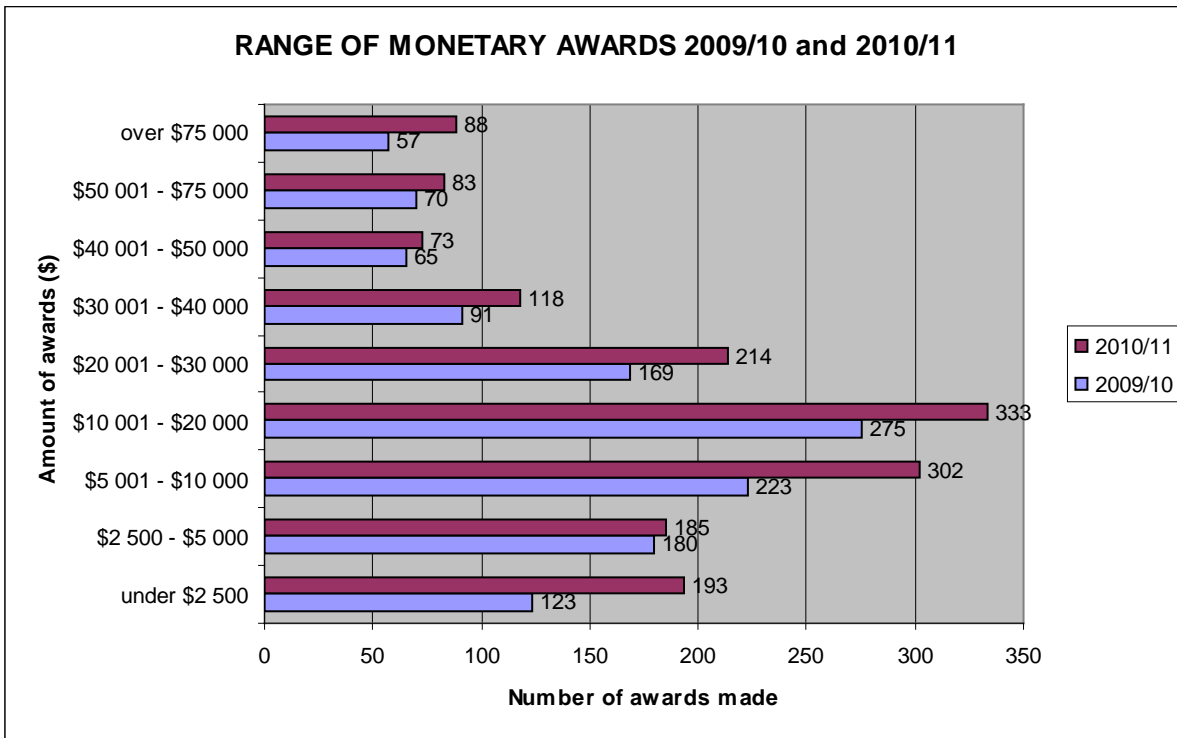
NUMBER OF MALES & FEMALES TO WHOM AWARDS WERE MADE

The following chart shows the gender of persons to whom awards were made and the number of adults and children involved. Overall, 50% of recipients were male and 50% female.



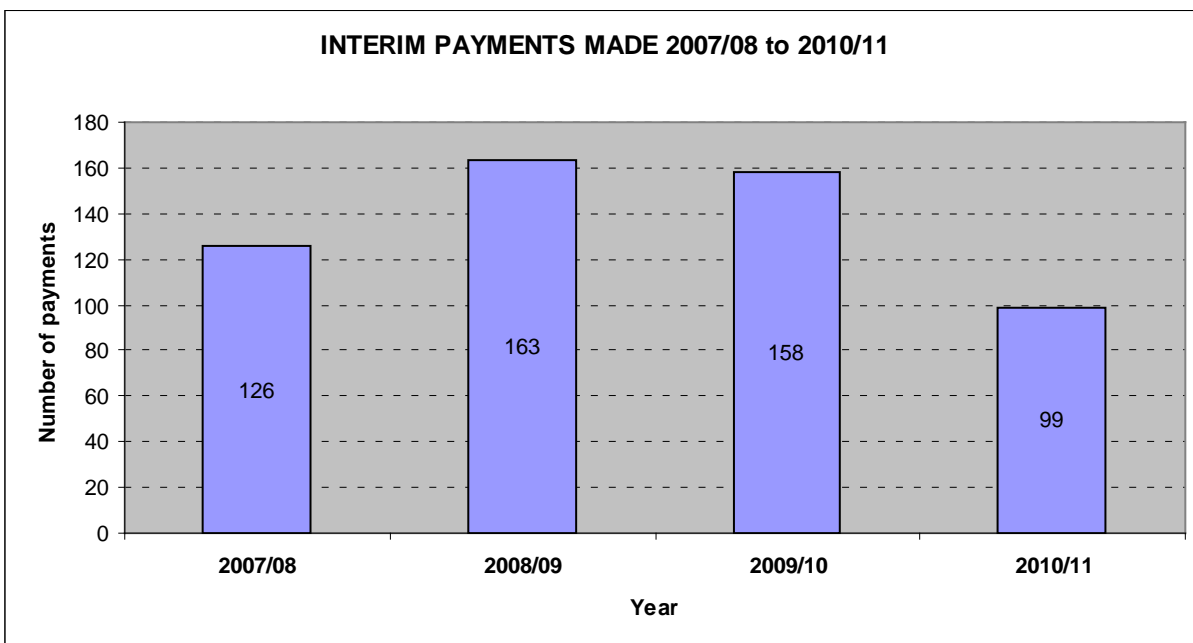
RANGE OF FINALISED APPLICATIONS

The chart below illustrates the monetary range of applications finalised during 2009/10 and 2010/11.

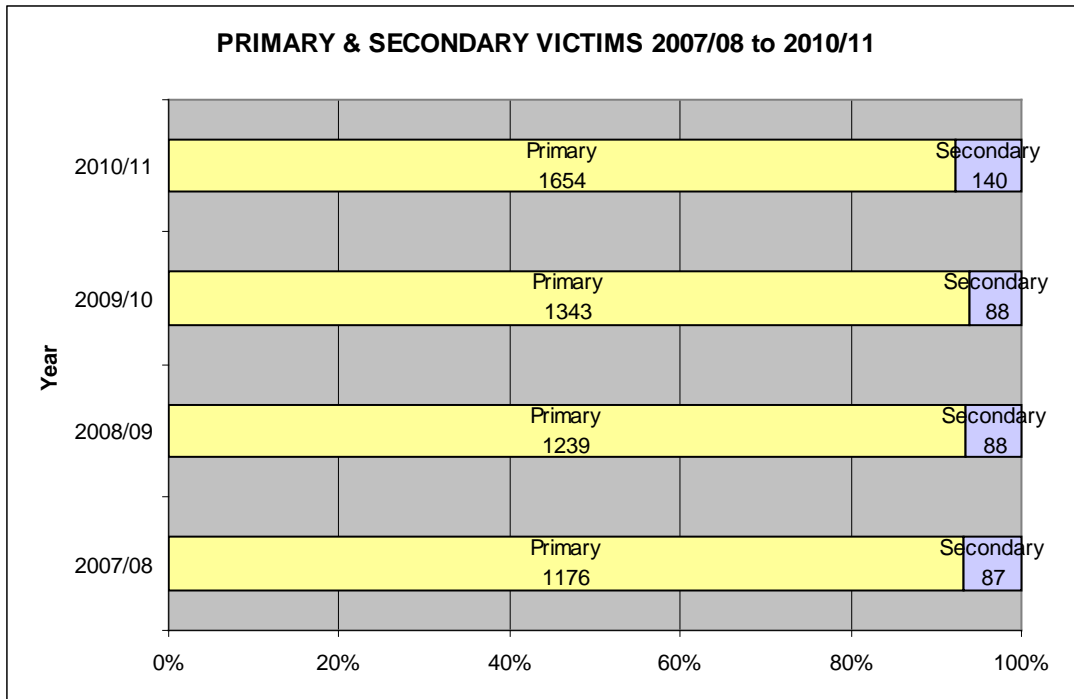


INTERIM PAYMENTS

An Assessor may authorise an interim or “up front” payment up to a maximum of \$2,250 for reimbursement of expenses incurred as a consequence of a death or injury, before the finalisation of a claim. The table below shows the number of applicants to whom interim payments have been made.

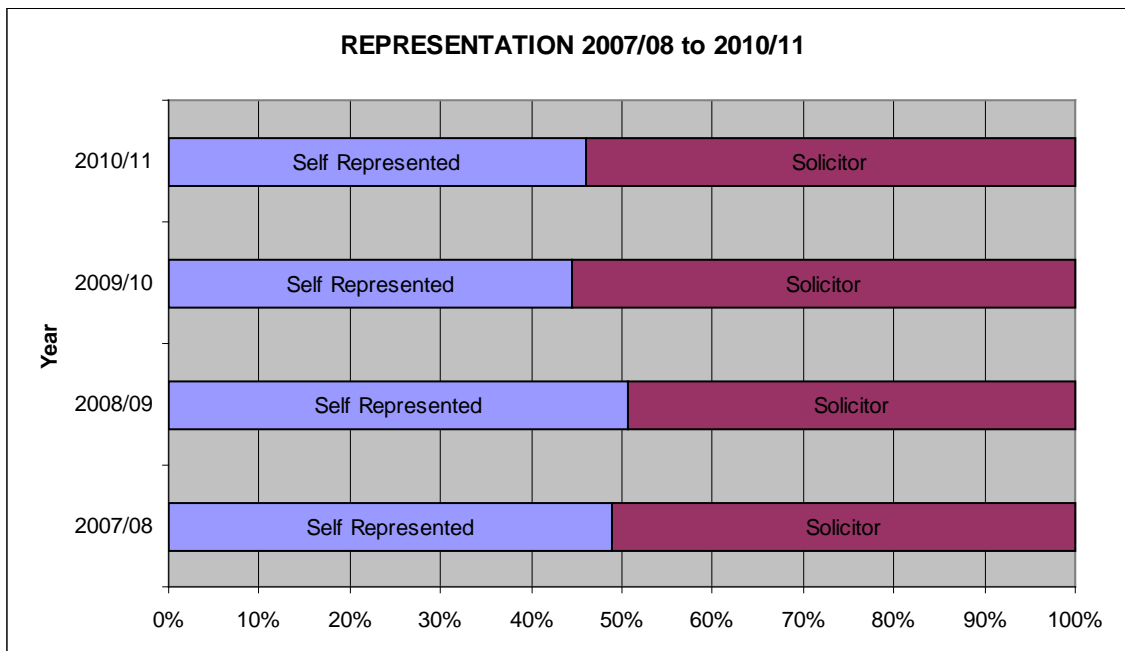


PRIMARY & SECONDARY VICTIMS



REPRESENTATION

The last 12 months has seen a slight decrease in the proportion of applicants having legal representation.



REFUSALS

Awards were refused on 102 applications for reasons detailed below:

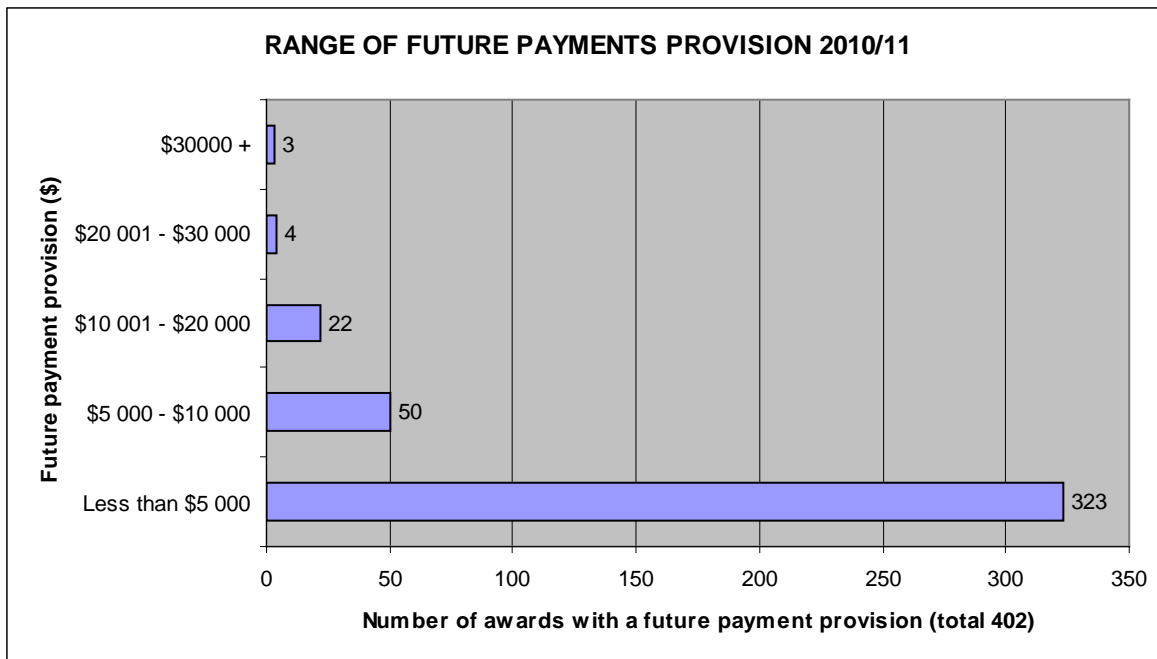
Section of Act	No of Refusals	Reason for Refusal
9	11	Time expired, extension of time refused
12	5	Assessor not satisfied applicant injured in the commission of a proved offence
13	12	Alleged offender acquitted
16	2	Alleged offence, charge not determined
17	40	Assessor not satisfied applicant injured in the commission of an alleged offence
29	1	Assessor's general discretion
35	4	Limitation of compensation for mental and nervous shock
36	2	No award if compensation likely to benefit offender
37	0	Injury caused by a motor vehicle *
38	16	Applicant did not assist investigation, apprehension or prosecution of offender
39	8	Victim engaged in criminal conduct **
41	1	Behaviour etc. of victim to be considered

* Whilst awaiting a decision of the Supreme Court on the proper interpretation of section 37 of the Act, applications where the injury was caused by, or by the driving or other use of a motor vehicle were deferred and not refused, see discussion on page 13.

** As a result of the decision in *Woods v Bird* [2010] WADC 86 delivered on 11 June 2010, action has been taken in the Supreme Court with respect to the proper interpretation of section 39 of the Act. Whilst awaiting the decision, cases in which the issue is raised have been deferred.

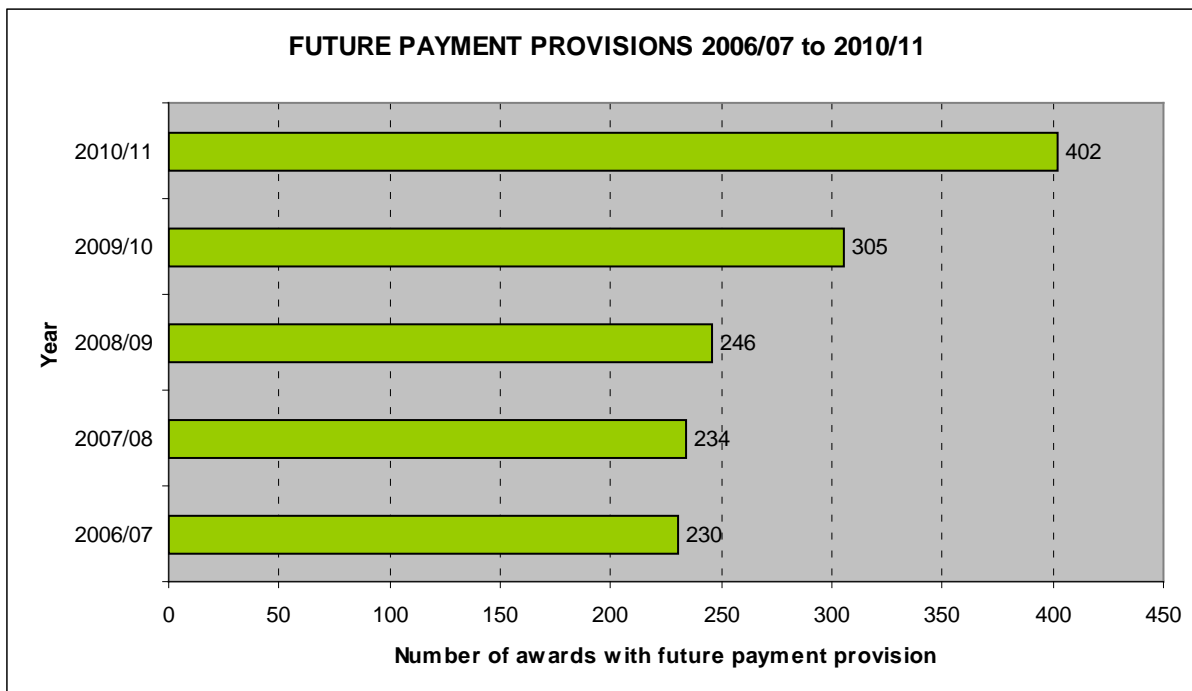
FUTURE PAYMENTS PROVISION

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.



Provision was made in 2010/11 for future payments of \$1,299,265, increasing the total provision made under the Act since 1 July 2004 to \$6,071,499. Of this provision, \$176,425 was paid out in 2010/11 bringing the total paid since 1 July 2004 to \$723,113.

Payment of expenses incurred after the date of the compensation award can only be made for expenses incurred up to 10 years after the date of the award or the date the applicant reached 18 years of age, whichever is the later.



APPEALS

During the year 51 appeals were lodged with the District Court following the determination of a compensation application. 33 appeals were finalised and of these 10 were successful, 6 were unsuccessful, 7 were abandoned and 10 were discontinued. In the previous financial year, 33 appeals were lodged and 11 were successful.

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 allows the award to be refused or the amount of an award to be reduced in proportion to the contribution found to have occurred. Reductions for contributory behaviour, ranging from 15% to 60%, were made in 21 awards during 2010/11. Of these, 9 awards were reduced by 20% or less and 12 awards were reduced by over 20%.

PERFORMANCE MEASURES

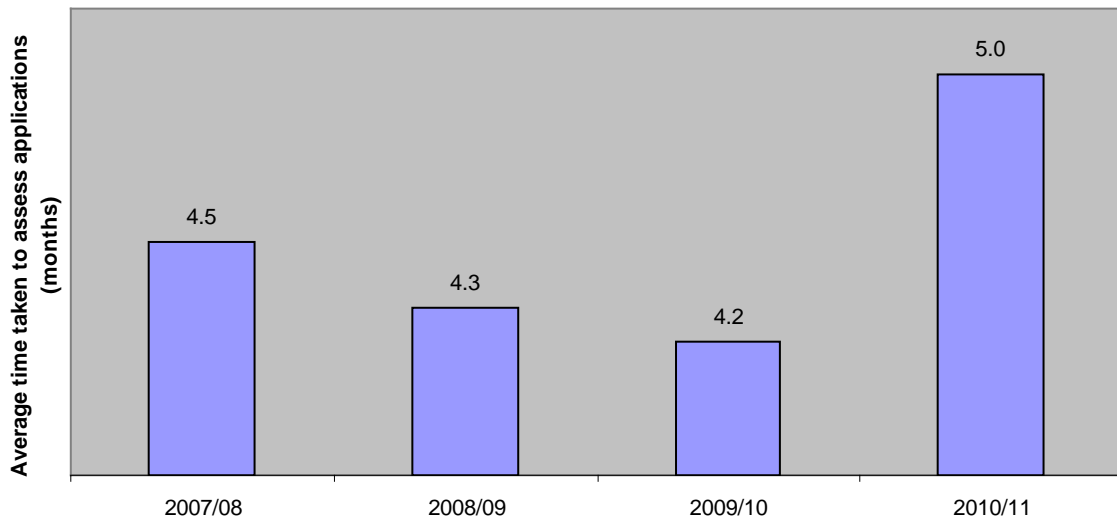
	Sep 10 Qtr	Dec 10 Qtr	Mar 11 Qtr	Jun 11 Qtr	Annual
Lodgements accepted					
New applications					
Finalisations					
39 weeks & less					
39 to 52 weeks					
More than 52 weeks					
Listings matters heard					
Cases on hand					
Less than 39 weeks					
39 to 52 weeks					
More than 52 weeks					
Applications New & Resub					
Applications Rejected					
Applications Resubmitted					

391	409	426	443	1669
428	546	483	450	1907
438	477	425	454	1794
352	376	322	355	1405
31	45	41	42	159
55	56	62	57	230
8	4	3	3	18
888	828	807	813	813
708	641	628	652	652
55	74	76	43	43
125	113	103	118	118
507	632	556	510	2205
116	223	130	67	536
79	86	73	60	298

ASSESSMENT TIME

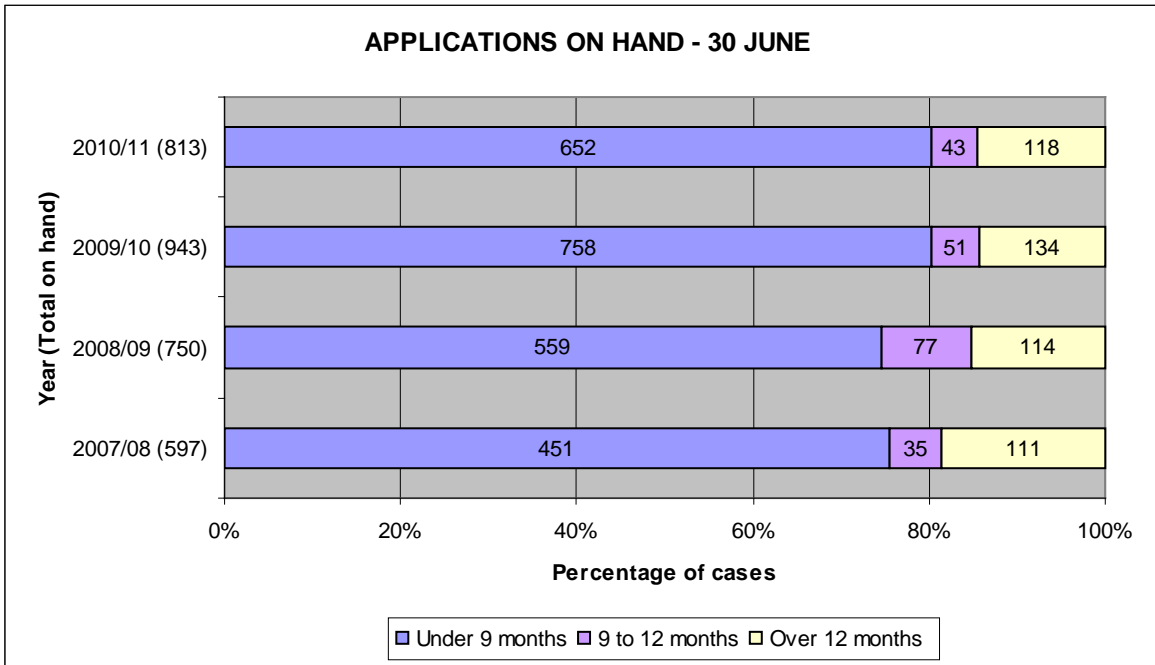
The average time taken to assess an application during 2010/11 was 5.0 months, a significant increase in the assessment time, from the average of 4.2 months in the previous year. It is apparent that the increase in the time taken to finalise applications is due, at least in part, to the sharp increase in the number of applications received.

ASSESSMENT TIME 2007/08 TO 2010/11



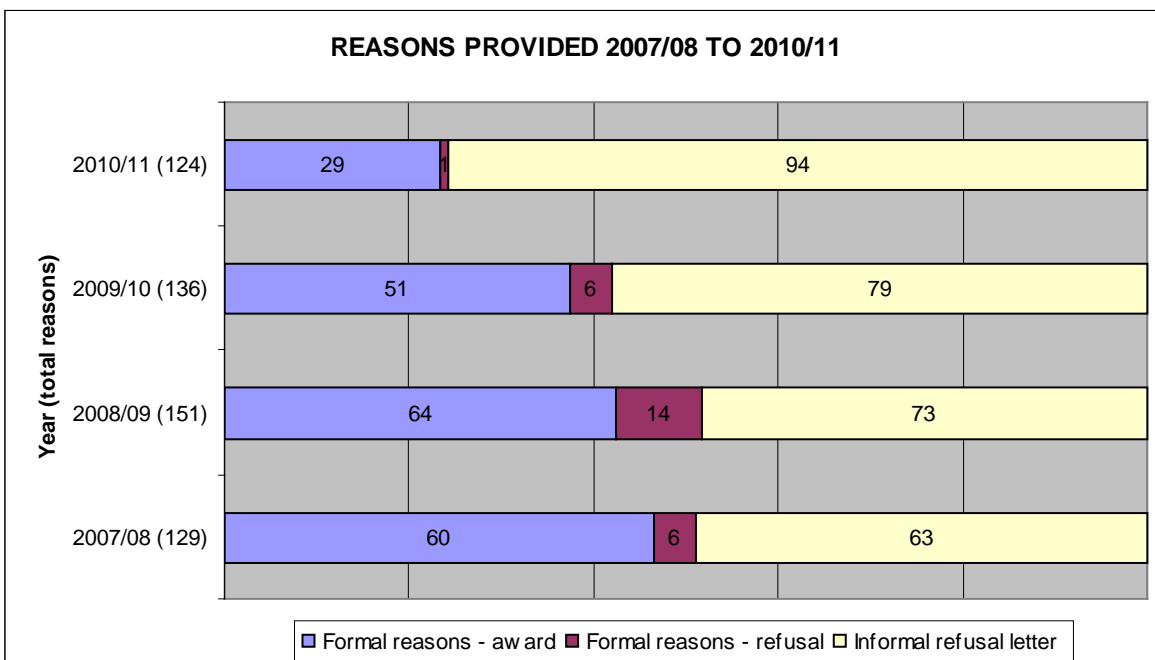
OUTSTANDING APPLICATIONS

At 30 June 2011, 813 applications were on hand, a decrease of 130, or 13.8%, over the preceding 12 months. The breakdown of the age of the cases on hand in the table below shows that the number of files which have been in the Office for more than 12 months has decreased by 11.9%. The proportion of the caseload represented by applications which have been in the Office under 9 months has remained constant at just over 80%. The proportion of cases aged between 9 and 12 months has decreased and the proportion aged over 12 months has also decreased. The number of files aged less than 9 months decreased by 106 to 652 while the number of files aged over 9 months also decreased to 161. These figures should be viewed in the context of an overall increase of 224 in the number of new applications during 2010/11 compared to the previous year.



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 in writing by letter of the reasons for that outcome, rather than in formal written reasons. Formal reasons for decision have been provided in 30 cases and, in total, reasons have been provided in 124 cases, a decrease of 12 from the previous year. The chart below sets out the breakdown of these reasons.



NEW DEVELOPMENTS

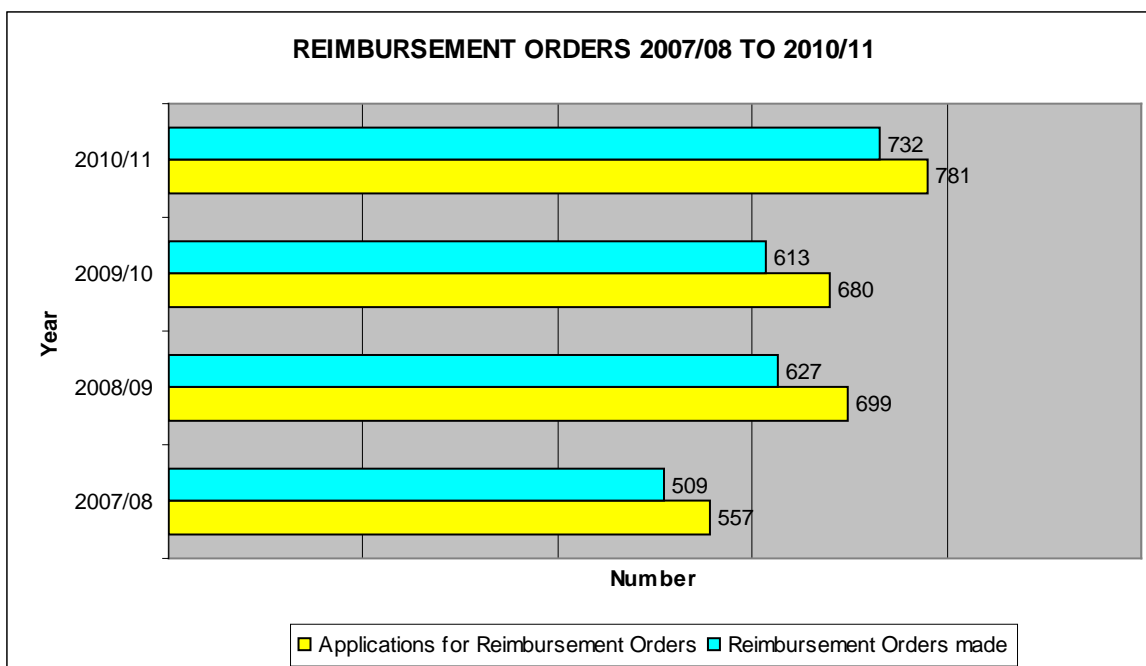
On 10 June 2011 the decision in *Re Her Honour Judge Schoombee; Ex Parte Attorney General For Western Australia* [2011] WASCA 129 was delivered. The decision had the effect of expanding the range of applicants entitled to compensation under the Act to include those injured by the commission of offences of dangerous driving causing death and dangerous driving causing grievous bodily harm.

On 4 March 2011 the decision in *ABC* [2011] WACIC 10 was delivered. This decision was the first to recognise that injury suffered as a consequence of the commission of offences against the child protection legislation in operation in WA from time to time, known generally as the offence of child neglect, is compensable under the Act.

It is expected that these decisions will result in an increase in the number of applications received and, in particular with respect to the child neglect cases, an increase in the complexity of applications.

RECOVERY OF DEBT

A Compensation Reimbursement Order to recover the amount of an award from a convicted offender may be sought on the instructions of the Chief Executive Officer of the Department of the Attorney General.



In 2010/11, \$1,346,118 of debt owed to the State was recovered compared to the previous year's total of \$1,263,016.

ACKNOWLEDGEMENTS

Thank you to my fellow Assessors, and the management and staff of both the Office of Criminal Injuries Compensation and the Department of the Attorney General, for the contribution each has made to what has been a difficult year. The Office has had to deal with a significant increase in the nature and volume of the workload, during a period when key staff had retired or been seconded to positions elsewhere. The comparatively inexperienced staff members have worked efficiently to achieve the skills and knowledge needed to process the increased volume and complexity of cases. They are all to be commended for their efforts and achievement.

H L Porter

CHIEF ASSESSOR OF CRIMINAL INJURIES COMPENSATION

16 September 2011