



OFFICE OF CRIMINAL INJURIES COMPENSATION

DEPARTMENT OF THE ATTORNEY GENERAL

WESTERN AUSTRALIA

Chief Assessor's Report
2013 / 2014



CRIMINAL INJURIES COMPENSATION

The Honourable Michael Mischin, MLC
Attorney General of Western Australia
Level 10 Dumas House
2 Havelock St
WEST PERTH WA 6005

Dear Attorney General

STATUTORY REPORT - CRIMINAL INJURIES COMPENSATION 2013/14

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 2014.

Yours faithfully

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

H L Porter
CHIEF ASSESSOR OF CRIMINAL INJURIES COMPENSATION

7 August 2014

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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 from convicted offenders (the Recoveries Office).

KEY DATA

During 2013/2014,

2391 new applications for compensation were received, an increase of 9.7%.

2342 applications were accepted for processing, an increase of 8.7%.

1927 applications were finalised, an increase of 1.6%.

1679 awards were made totalling \$34,040,473.

The average award was \$20,274.

180 applications were refused.

7 hearings were held into applications for compensation.

The caseload increased by 407 to 1556 applications on hand, an increase of 35.4%.

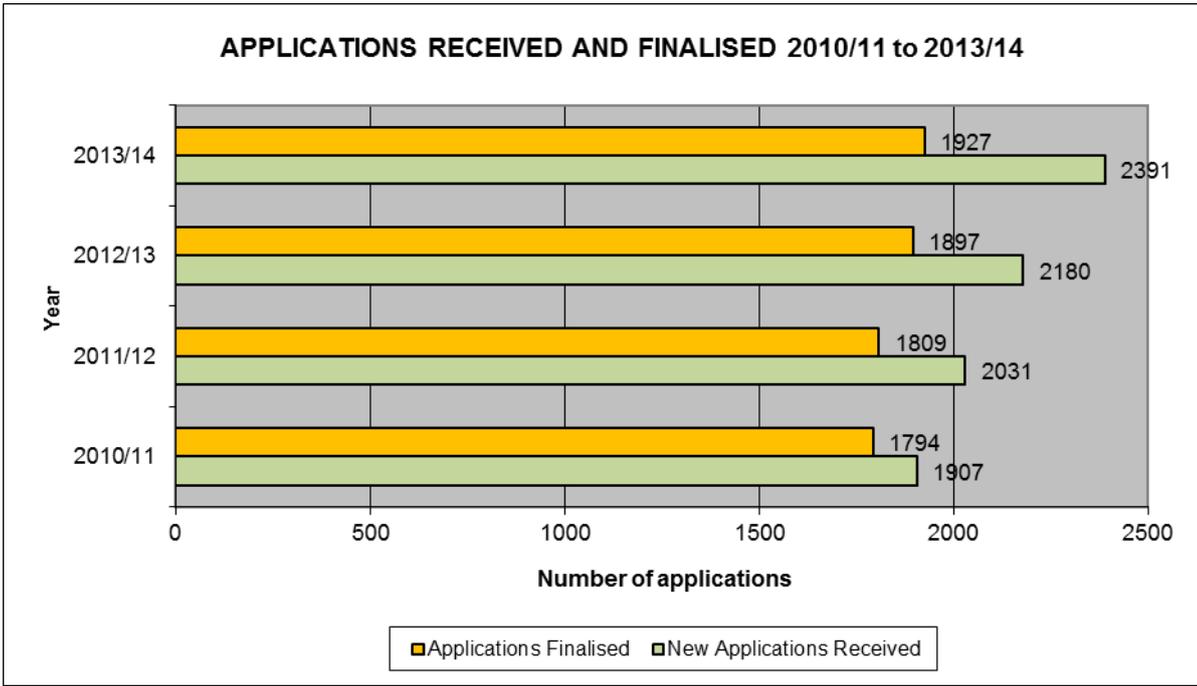
\$1,742,621 of debt owed to the State was recovered, an increase of 5.2%.

STATISTICAL PROFILE

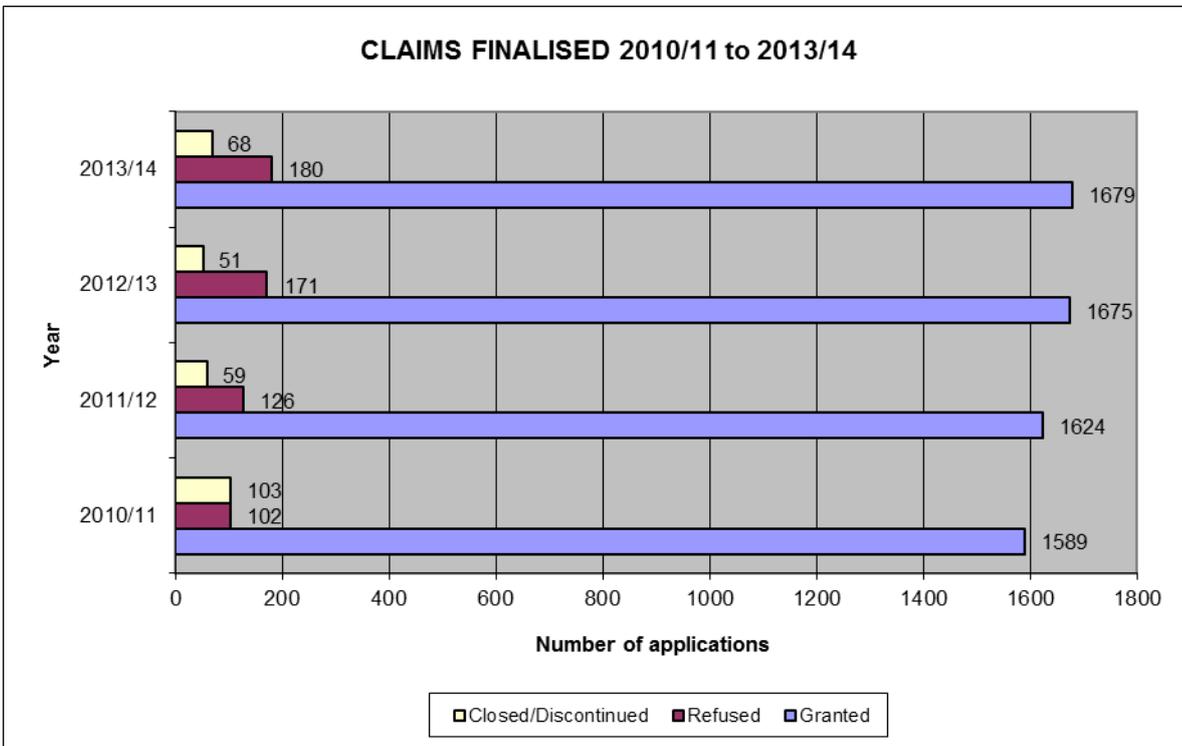
	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>
New applications received	1907	2031	2180	2391
Accepted applications	1669	1872	2154	2342
Rejected applications	536	646	443	694
Resubmitted applications	298	487	417	477
Awards granted	1589	1624	1675	1679
Applications refused	102	126	171	180
Applications closed or discontinued	103	59	51	68
Applications outstanding at 30 June	813	885	1149	1556

NEW APPLICATIONS RECEIVED

During 2013/14 new applications totalling 2391 were received. On 694 occasions applications were returned to the applicant for further work. Of the applications returned to the applicant, 477 were resubmitted on at least one occasion.

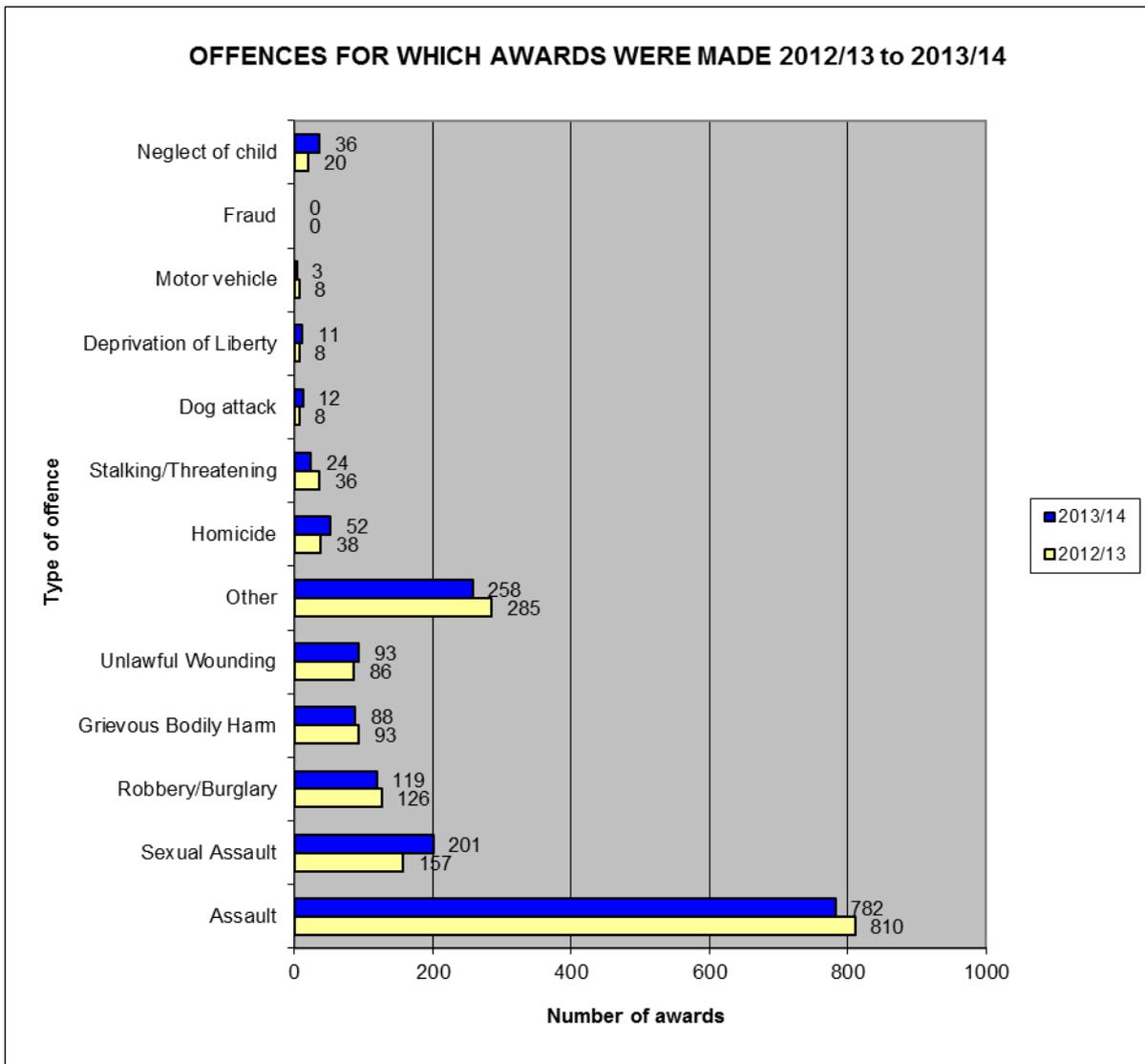


CLAIMS FINALISED



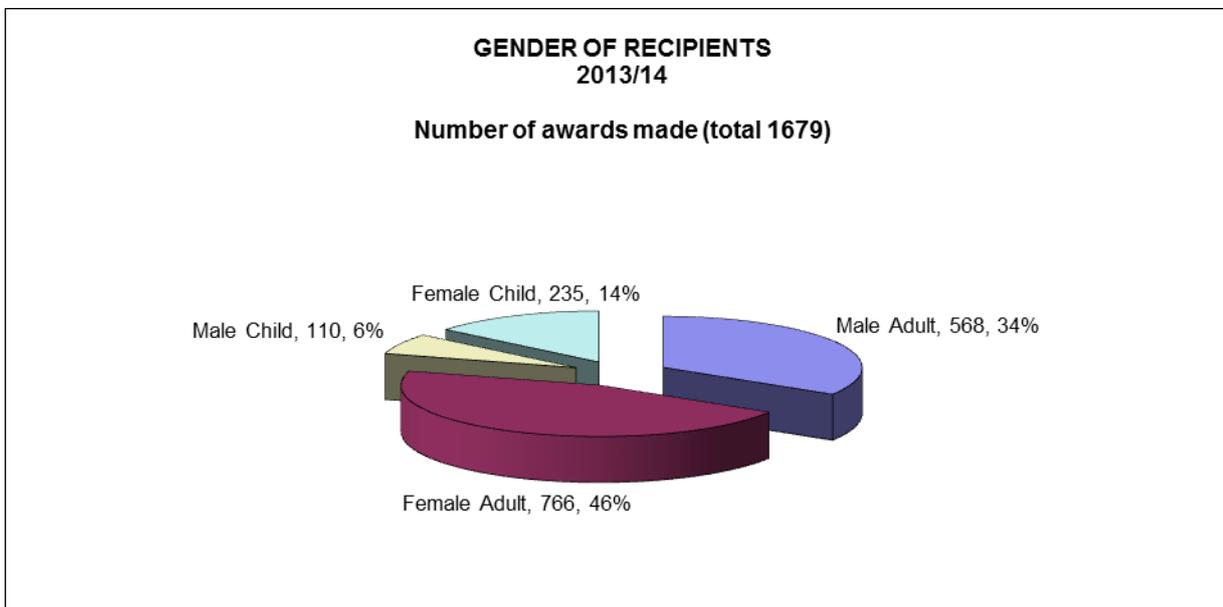
NATURE OF OFFENCES INVOLVED

The chart below illustrates the types of offences for which awards were made between 2012/13 and 2013/14.



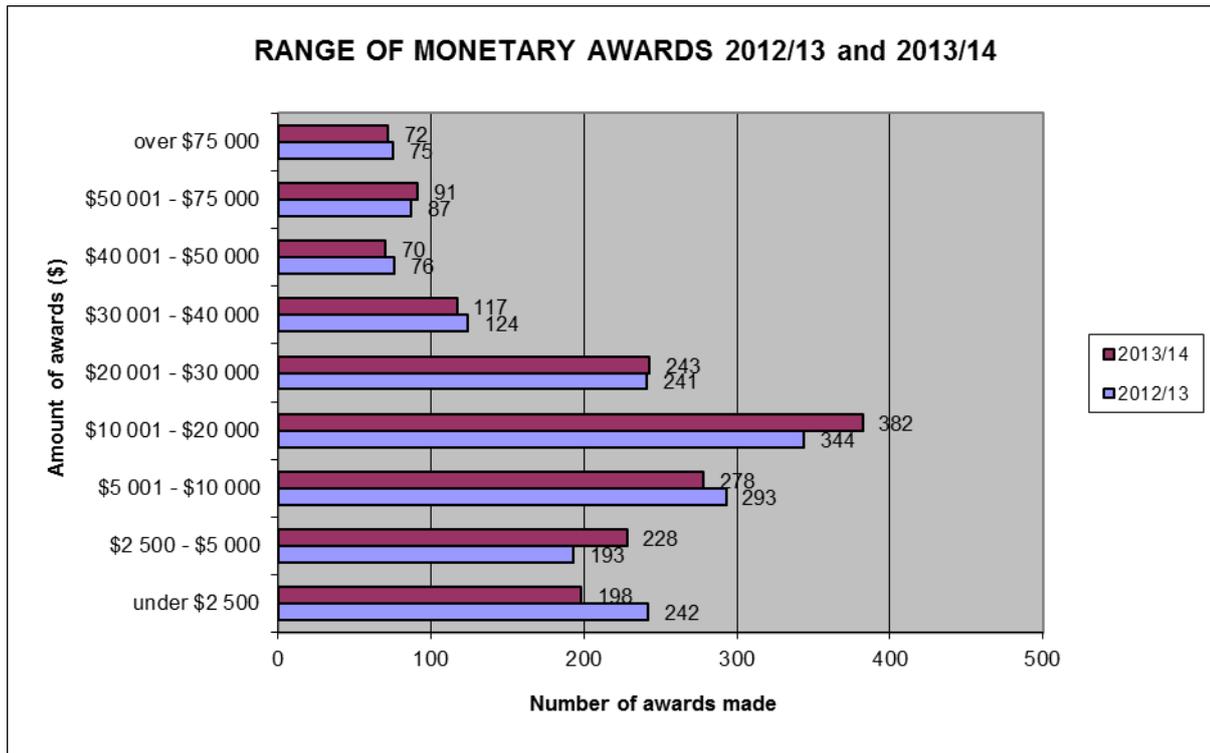
NUMBER OF MALES & FEMALES TO WHOM AWARDS WERE MADE

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.



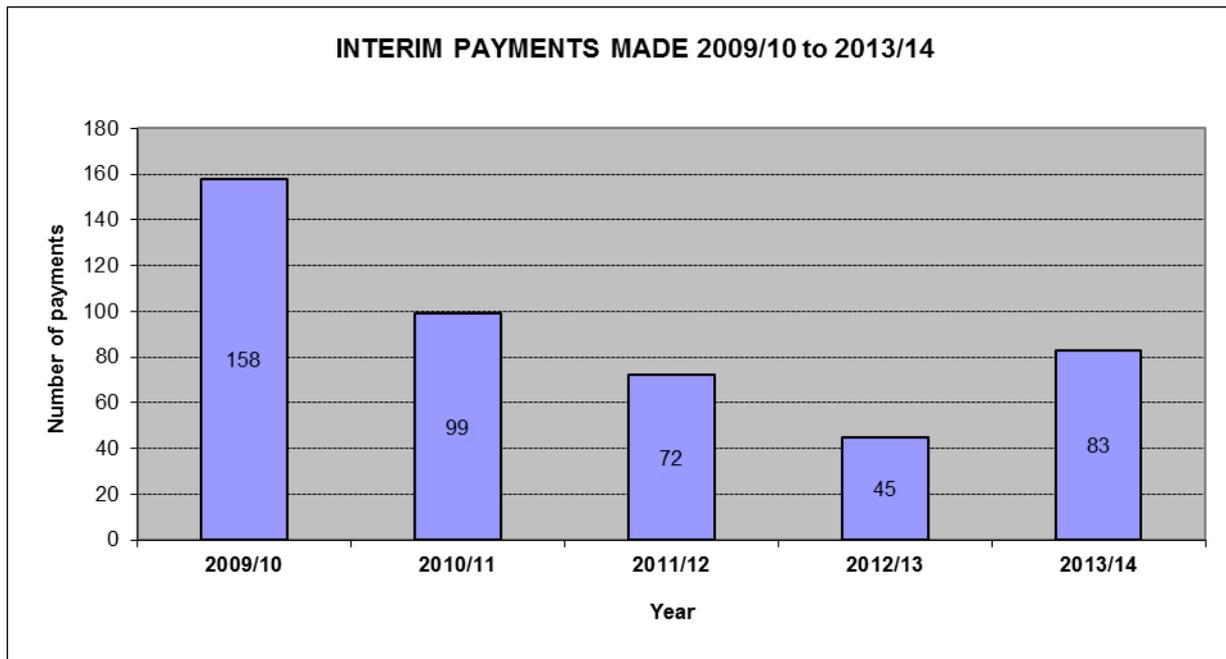
RANGE OF AWARDS MADE

The chart below illustrates the monetary range of awards made during 2012/13 and 2013/14.

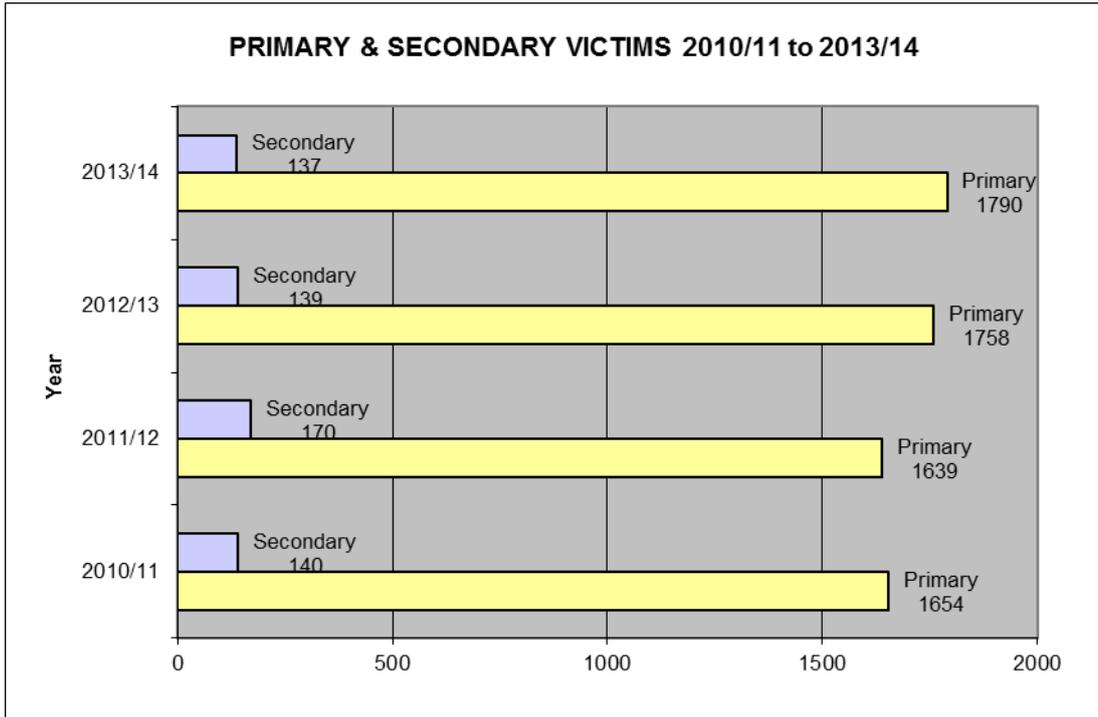


INTERIM PAYMENTS

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

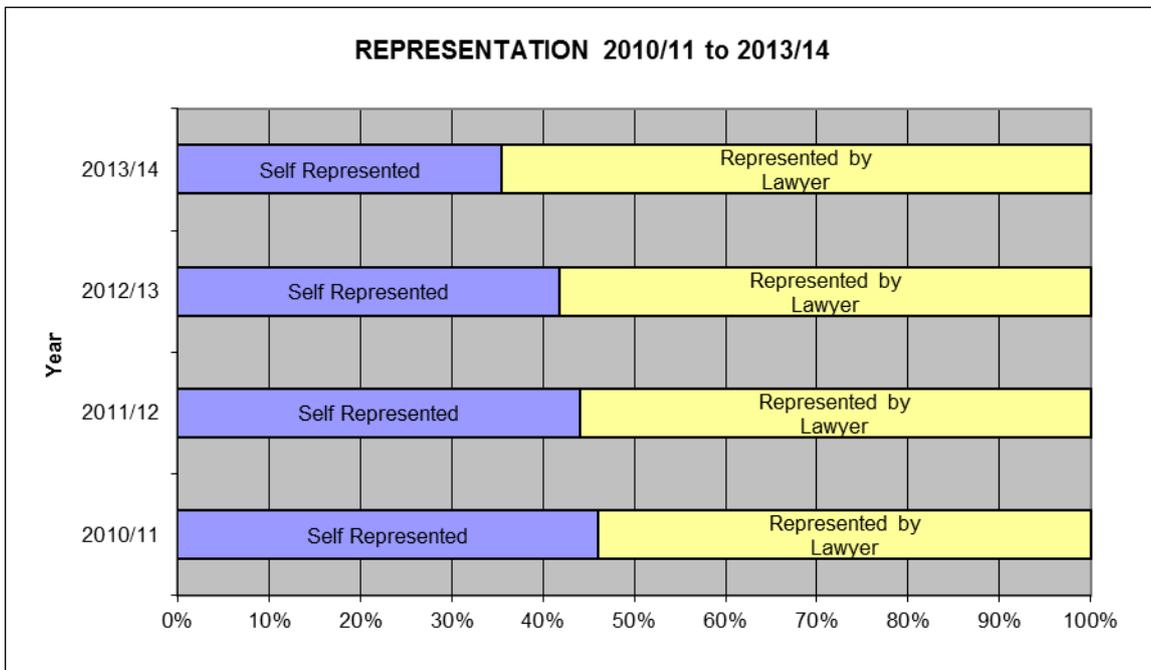


PRIMARY & SECONDARY VICTIMS



REPRESENTATION

The last 12 months has seen an increase in the proportion of applicants having legal representation with over 64% of applicants represented.



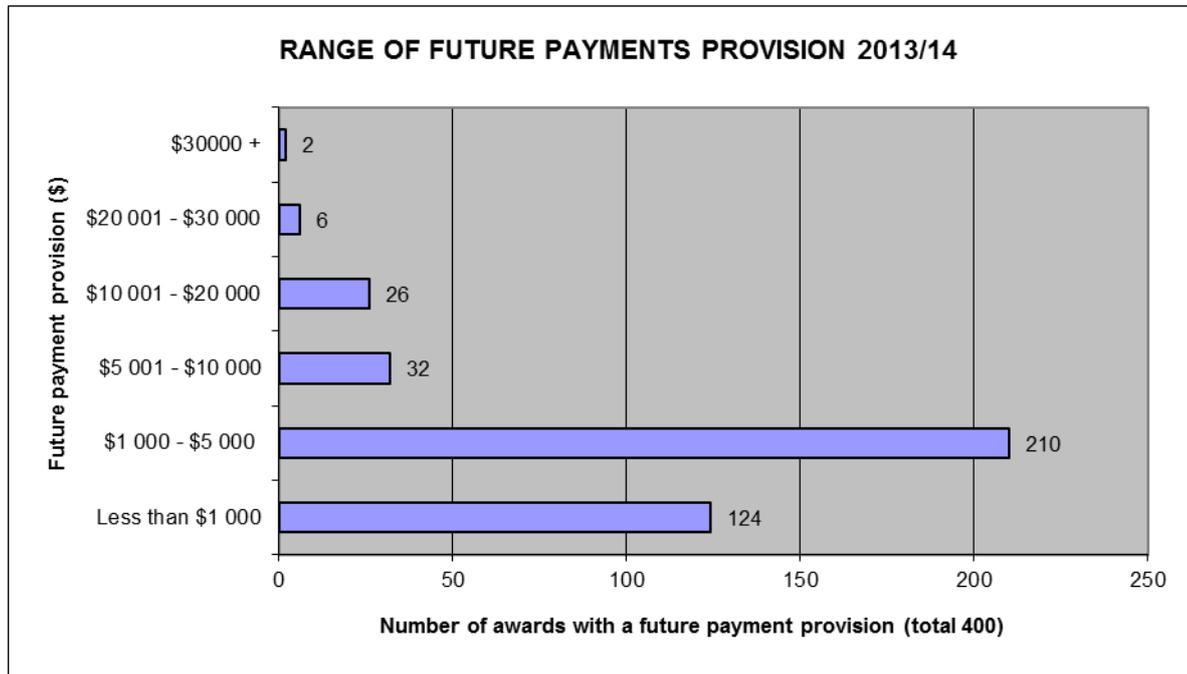
REFUSALS

During the year 2013/14, awards were refused on 180 applications for reasons detailed below. Of these refusals, 90 (50%) relate to domestic matters.

Section of Act	No of Refusals	Domestic matters refused	Reason for Refusal
9	42	26	Time expired, extension of time refused
12	10	4	Assessor not satisfied applicant injured in the commission of a proved offence
13	14	4	Alleged offender acquitted
14	1		Alleged offender acquitted due to unsoundness of mind
17	42	29	Assessor not satisfied applicant injured in the commission of an alleged offence
35	1		Limitation of compensation for mental and nervous shock
37	4		Injury caused by a motor vehicle
38	29	23	Applicant did not assist investigation, apprehension or prosecution of offender
39	19		Victim engaged in criminal conduct
40	7	4	Compensation previously awarded or refused
41	4		Behaviour etc of victim to be considered
42	7		Insurance payment deducted from award

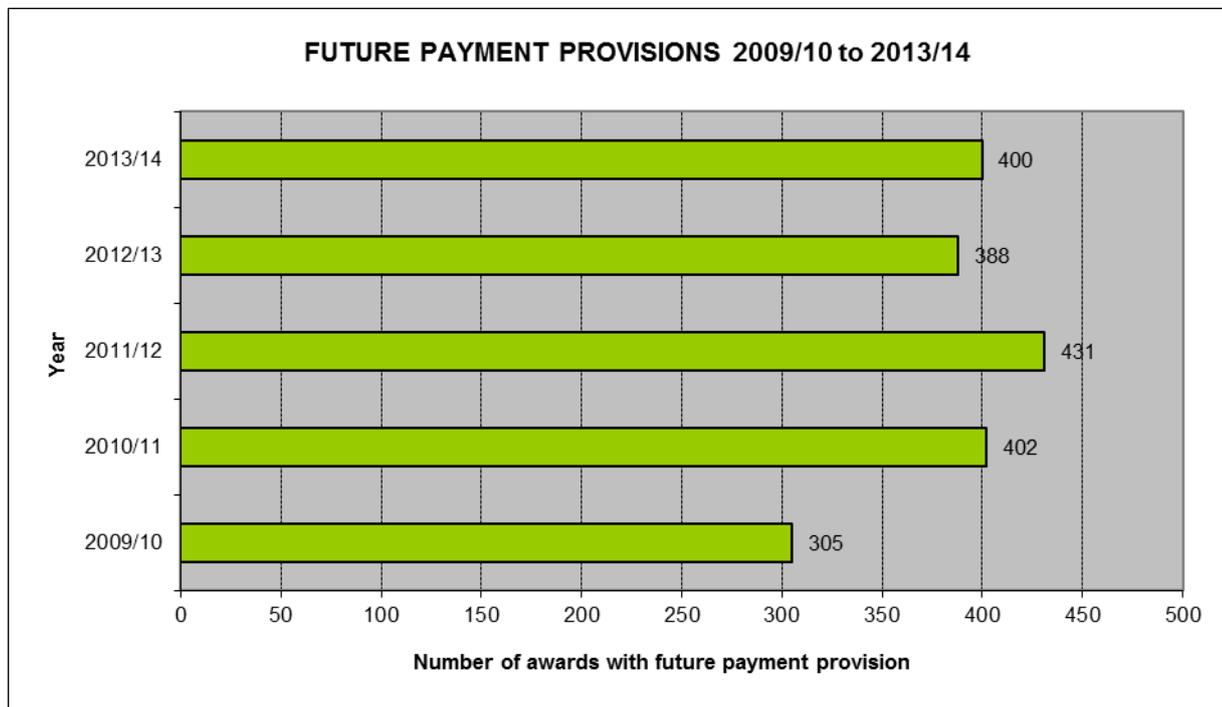
FUTURE PAYMENTS PROVISION

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 2013/14 in 400 awards for future payments totalling \$1,349,126 increasing the total provision made under the Act since 1 July 2004 to \$10,058,180. Of this, \$224,590 was paid out in 2013/14 bringing the total paid since 1 July 2004 to \$1,483,174.

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 29 appeals were lodged with the District Court following the determination of a compensation application. 51 appeals were finalised and of these 8 were successful, 31 were unsuccessful, 3 were abandoned and 9 were discontinued. In the previous financial year, 59 appeals were lodged, 38 were finalised and 9 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 5% to 50%, were made in 27 awards during 2013/14. Of these, 14 awards were reduced by 20% or less, 13 awards were reduced by over 20%. In addition, 4 awards were refused (see Table, page 9).

PERFORMANCE MEASURES

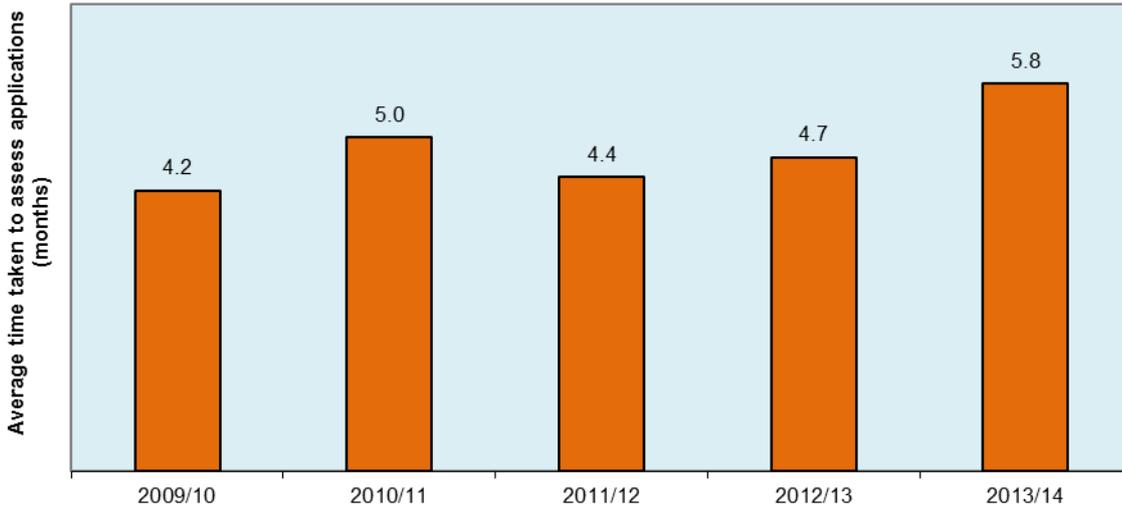
	Jun - Sep 13	Oct - Dec 13	Jan - Mar 14	Apr - Jun 14	Annual
Lodgements accepted	547	564	482	749	2342
New applications	539	653	511	688	2391
Finalisations	535	461	490	441	1927
39 weeks & less	420	352	359	328	1459
39 to 52 weeks	44	65	49	73	231
More than 52 weeks	71	44	82	40	237
Listings matters heard	1	3	3	0	7
Cases on hand	1153	1256	1244	1556	1556
Less than 39 weeks	968	1024	1047	1293	1293
39 to 52 weeks	89	103	61	113	113
More than 52 weeks	96	129	136	150	150
Applications New & Resub	667	781	627	793	2868
Applications Rejected	174	193	211	116	694
Applications Resubmitted	128	128	116	105	477

ASSESSMENT TIME

The average time taken to assess applications during 2013/14 was 5.8 months, an increase in the assessment time from the average of 4.7 months in 2012/13.

Calculation of the assessment delay is based on the group of applications finalised in less than 12 months from receipt, based upon data which reveals that in cases in which the application takes more than 12 months to finalise, the delay is caused by external factors such as the need to complete treatment, delay in finalisation of the prosecution, and the need for the applicant to first exhaust all other avenues for compensation. The average assessment delay over all applications finalised in the period was 7.2 months. Given the volume of applications being received, it is expected that the average time taken to finalise an application will continue to increase.

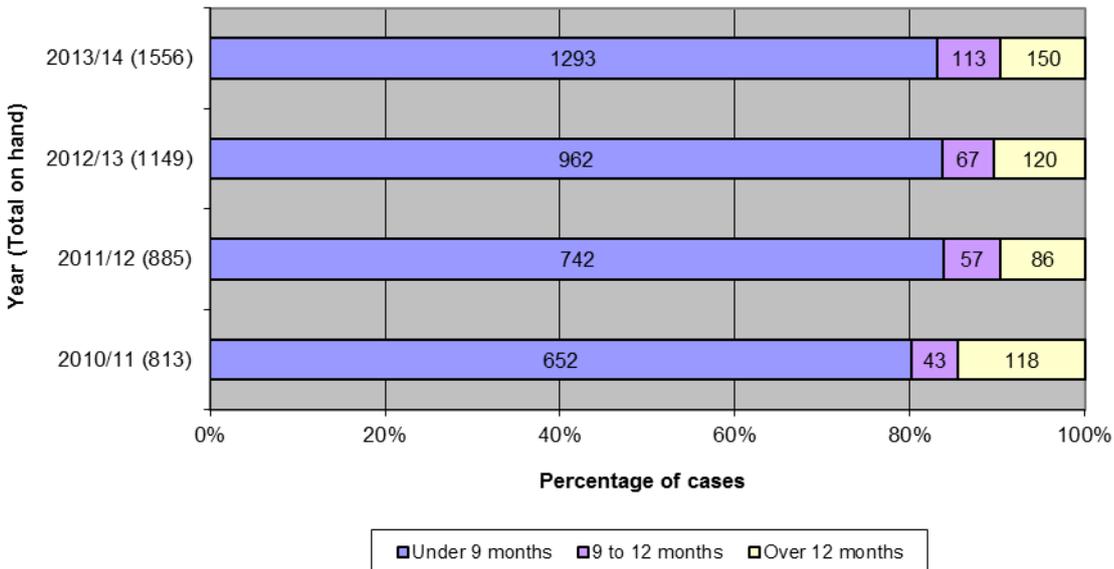
ASSESSMENT TIME 2009/10 TO 2013/14



OUTSTANDING APPLICATIONS

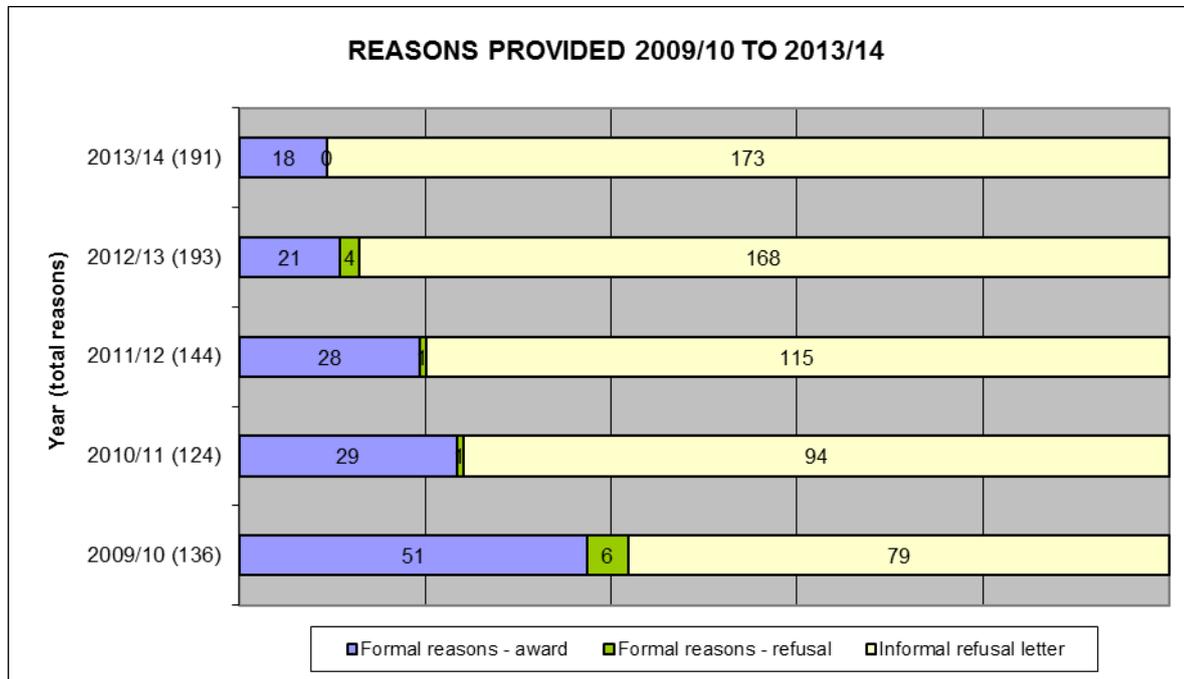
At 30 June 2014, 1556 applications were on hand, an increase of 407, or 35.4%, over the preceding 12 months. The breakdown of the age of the cases on hand in the table below shows that the number of files which have been in the Office for more than 12 months has increased by 25%. The proportion of the caseload represented by applications which have been in the Office under 9 months has remained steady at around 83%. The proportion of cases aged between 9 and 12 months has increased, while the proportion aged over 12 months has decreased slightly. The number of files aged less than 9 months increased by 331 to 1293 while the number of files aged over 9 months increased to 263. These figures should be viewed in the context of an overall increase of 155 in the number of new applications during 2013/14 compared to the previous year.

APPLICATIONS ON HAND - 30 JUNE



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. During 2013/14, formal reasons for decision were provided in 18 cases and in total reasons were provided in 191 cases, a decrease of 2 on the previous year. The chart below sets out the breakdown of these reasons.

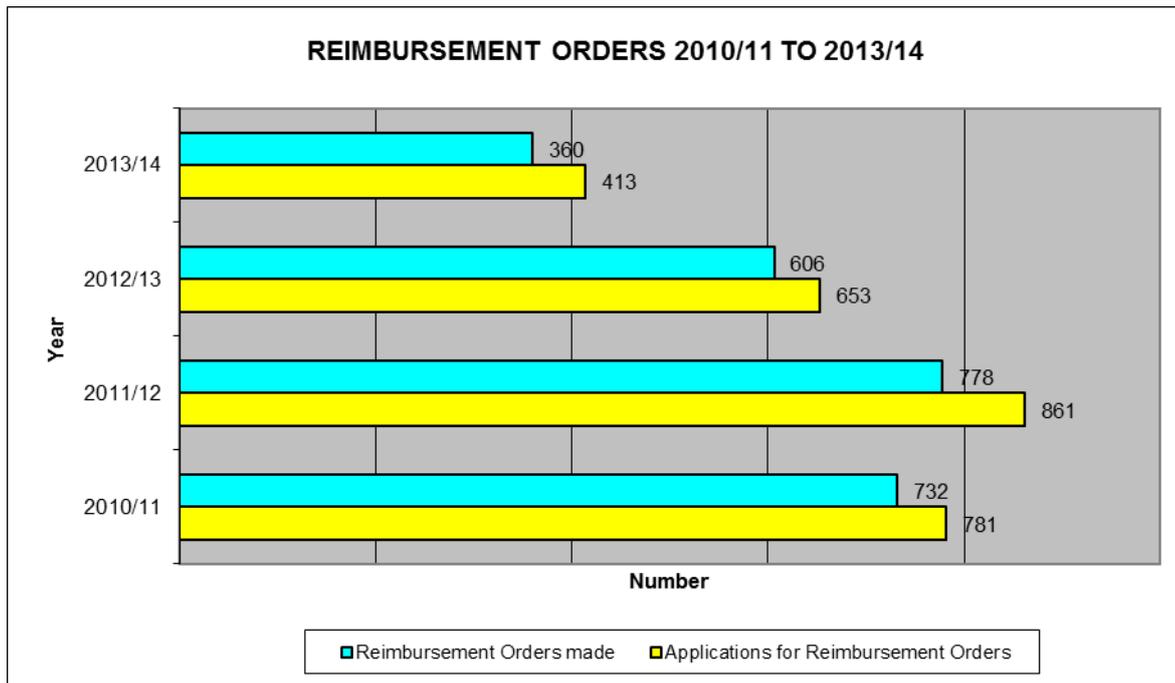


NEW DEVELOPMENTS

On 14 March 2013 Schoombee DCJ handed down her decision in *Devos v James* [2013] [No2] WADC 36. This decision gave a different interpretation of section 42 of the *Criminal Injuries Compensation Act 2003* to that assessors had previously relied upon in cases where the applicant had had other compensation such as workers' compensation or motor vehicle insurance for the same incident. The change meant that many applicants who would previously have been eligible for compensation under the Act were now ineligible. Following further litigation on the issue, on 7 February 2014 Stone DCJ handed down his decision in *Robertson - V- Baker* [2014] WADC 14, agreeing with the interpretation of Schoombee DCJ. As a result, compensation is no longer available under the Act where the applicant has received more than the jurisdictional maximum in compensation from other sources, even if the compensation already received was for a separate aspect of loss such as loss of earnings. The figures on page 9 of this report show that 7 awards have been refused because the applicant had received compensation from another source which exceeded the jurisdictional maximum. None had been refused for this reason in the previous 4 years. *Robertson -V- Baker* is currently before the Supreme Court on a prerogative writ brought by the Respondent for determination of this jurisdictional issue. The assessors estimate that there are approximately 80 cases currently pending the determination of this issue.

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 2013/14, \$1,744,156 of debt owed to the State was recovered compared to the previous year's total of \$1,657,019, which represents a 5.3% increase. From 4 June 2013 the number of CRO Hearings conducted has been reduced from 6 per month to 3 per month. This decision to reduce the time spent on the reimbursement process was taken in response to the pressure on assessors and staff to deal with the increasing rate of new applications. The case load of each assessor has increased from an average of 265 in July 2012 to 519 as at 30 June 2014.

ACKNOWLEDGEMENTS

As is always the case, the statistics measuring the performance of the Office in 2013-14 reveal the ongoing efforts of all involved in its operation. All members of staff have continued to produce excellent output in the face of the continued very high workload. I congratulate and thank each of the officers concerned on behalf of the community.

H L Porter
CHIEF ASSESSOR OF CRIMINAL INJURIES COMPENSATION

7 August 2014