

ACT Justice and Community Safety Directorate, ACT Government Solicitor and ACT Magistrates Court

ADMINISTRATION OF APPLICATIONS FOR FINANCIAL
ASSISTANCE UNDER THE *VICTIMS OF CRIME (FINANCIAL
ASSISTANCE) ACT 1983*

May 2012

Report by the Acting ACT Ombudsman,
Alison Larkins, under the *Ombudsman Act 1989*

REPORT NO. **01|2012**

Reports by the Ombudsman

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CONTENTS

EXECUTIVE SUMMARY	1
PART 1 — INTRODUCTION, THE <i>VICTIMS OF CRIME (FINANCIAL ASSISTANCE) ACT 1983</i>	2
The purpose of the Act	2
<i>Explanatory Memorandum, Victims of Crime (Financial Assistance) (Amendment) Bill 1998</i>	2
Other state and territory jurisdictions	3
PART 2 — ADMINISTRATIVE ARRANGEMENTS IN THE ACT	4
The role of the Magistrates Court	4
The role of the Justice and Community Safety Directorate	5
The role of the ACTGS	5
<i>Law Officer (Model Litigant) Guidelines 2010 (No 1)</i>	6
The role of the Victims of Crime Commissioner (formerly Coordinator)	7
Legal representation	8
PART 3 — COMPLAINTS	9
The case of Ms A	9
<i>Ms A's complaint to the ACT Ombudsman</i>	9
<i>Investigation of the complaint</i>	9
<i>The response to our investigation</i>	10
The case of Ms B on behalf of Mrs C	12
<i>Ms B's complaint to the ACT Ombudsman</i>	12
<i>Investigation of the complaint</i>	13
<i>The response to our investigation</i>	14
PART 4 — CONCLUSIONS AND RECOMMENDATION	16
Administrative carriage of applications for financial assistance	16
Consideration for applicants without legal representation	17
PART 5 — RESPONSES TO THE DRAFT REPORT	18
<i>RESPONSE FROM THE ACT CHIEF MAGISTRATE (19 MARCH 2012)</i>	18
<i>RESPONSE FROM THE VICTIMS OF CRIME COMMISSIONER (15 MARCH 2012)</i>	18
<i>RESPONSE FROM THE ACT SOLICITOR GENERAL (4 APRIL 2012)</i>	19
ABBREVIATIONS AND ACRONYMS	26

APPENDIX A — SCHEMES OPERATING IN OTHER STATE AND TERRITORY JURISDICTIONS 27

New South Wales 27
Northern Territory 27
Queensland 28
South Australia 28
Tasmania 28
Victoria 28
Western Australia 28

APPENDIX B — TEMPLATE LETTERS FOR CORRESPONDENCE FROM ACTGS TO FINANCIAL ASSISTANCE APPLICANTS..... 29

EXECUTIVE SUMMARY

In 2010–11, the Australian Capital Territory (ACT) Ombudsman’s office investigated two complaints about delays in finalising applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983* (Victims of Crime (Financial Assistance) Act). The investigations revealed that the administrative arrangements in place for progressing and finalising applications were inadequate. Under the arrangements, excessive and unreasonable delays are likely to occur, especially for applicants who have no legal representation.

The two complaints we investigated demonstrate the impact that delays can have on vulnerable people who are the victims of crime in the ACT. Following advice from the Victims of Crime Commissioner that there were many similarly delayed cases pending within the ACT, I decided it was in the public interest to publish this report and to make recommendations for improving the administration of applications for financial assistance under the Victims of Crime (Financial Assistance) Act.

Both complaints highlight that the absence of a structured administrative regime precludes applicants from receiving just entitlements within reasonable timeframes. While the intent of the Victims of Crime (Financial Assistance) Act is to allow people who have been injured by criminal conduct to apply for, and receive, reasonable financial compensation, the current arrangements put applicants into an adversarial contest with the Territory, represented by the ACT Government Solicitor (ACTGS). This contest is inherently unfair because, under the Victims of Crime (Financial Assistance) Act, fees payable to lawyers representing applicants are strictly capped, thus making it unlikely that an applicant will have legal representation. Applicants who may be traumatised as victims of a crime may be left to drive the application process themselves.

We believe the beneficial intent of the Victims of Crime (Financial Assistance) Act would be more appropriately implemented if applications were methodically case managed and the imbalance of expertise between the applicant and the Territory properly addressed.

I recommend that the Justice and Community Safety Directorate, in consultation with the Victims of Crime Commissioner, ACTGS and Magistrates Court, review the administrative arrangements for progressing applications for financial assistance under the Victims of Crime (Financial Assistance) Act. A review should consider the feasibility of developing and implementing a structured case management methodology and improving outcomes for victims. The methodology should include:

- an identified agency or officer who is impartial to the outcome of applications to track and ensure the progress of applications
- case management procedures that emphasise that applications should progress expeditiously
- guidelines for officers conducting assessments of financial assistance applications that acknowledge and give consideration to the likelihood that applicants will not have effective legal representation, are consistent with the beneficial nature and intent of the legislation, and are consistent with the Territory’s obligations to act as a ‘model litigant’.

PART 1 — INTRODUCTION, THE *VICTIMS OF CRIME (FINANCIAL ASSISTANCE) ACT 1983*

The purpose of the Act

1.1 The purpose of the *Victims of Crime (Financial Assistance) Act 1983* (Victims of Crime (Financial Assistance) Act) is to establish a government-funded scheme to compensate people injured in the Australian Capital Territory (ACT) by criminal conduct. The scheme is designed to assist victims of violent crime to recover from the physical and mental injuries suffered by providing an avenue to recoup expenses reasonably incurred. The scheme also provides special assistance¹ by way of reasonable compensation for pain and suffering if the criminal injury was sustained as a result of a violent crime being an offence under Part 3 of the *Crimes Act 1900* (sexual offences).

1.2 Financial assistance can only be awarded by the Magistrates Court. Special assistance can only be made if the criminal injury is an extremely serious injury or the result of a sexual assault. Further, the victim must have obtained assistance from the Victim Services Scheme, unless the person is physically incapable of benefiting from the scheme.

1.3 There are criteria to be met before a person can be considered eligible for financial assistance: the injury must have been sustained in the ACT after the enactment of the legislation; the crime must be a violent crime; and the crime must have been reported to the police. The scheme is open to a person directly injured by a crime (primary victim), people responsible for the maintenance of a victim, and in the case of death, the victim's relatives.

1.4 Nothing in the Victims of Crime (Financial Assistance) Act requires that anyone be charged or convicted of a crime before an applicant may be considered eligible for financial assistance.

Explanatory Memorandum, Victims of Crime (Financial Assistance) (Amendment) Bill 1998

1.5 In 1998, the Minister for Justice and Community Safety (the Minister) introduced the Victims of Crime (Financial Assistance) (Amendment) Bill 1998 to the ACT Legislative Assembly. The Bill proposed significant amendments to the *Criminal Injuries Compensation Act 1983* and the *Victims of Crime Act 1994* (Victims of Crime Act). Additional and consequential amendments were also proposed to the *Crimes Act 1900*, *Magistrates Court Act 1930*, *Evidence (Closed-Circuit Television) Act 1991* and *Supreme Court Act 1933*.

1.6 The Minister circulated an Explanatory Memorandum detailing the reasons for the proposed amendments to the legislation and the Government's expectations of how the legislation was intended to operate, once enacted. The following comments from the Memorandum demonstrate that the legislation was intended to be beneficial in nature and to make financial assistance more accessible to victims of crime, including those without legal representation:

This Bill implements a new approach to assisting victims of crime in the Territory to provide a more comprehensive response by the Territory, on behalf of the wider community, to persons injured by crime. The reforms were developed in close consultation with victims' groups through the Victim Support Working Party which was established in 1997 to consider options for reforming the

¹ Section 10 of the Victims of Crime (Financial Assistance) Act.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

existing criminal injuries compensation scheme. In its May 1998 Report, the Working Party pointed to the current scheme under which more than \$4.5 million was awarded in one year to just over 300 victims and commented:

“ ... it is surely a fundamental question of access and equity that such a huge proportion of the community’s resource to crime victims is devolved to such a small proportion of total potential clients ... the current allocation of Government and community resources to crime victims is seriously distorted and overly focused on individualised financial packages with little or no regard to whether the emotional trauma of criminal victimisation is actually alleviated.”

The primary purpose of these amendments is to ensure that the assistance provided by the Territory produces better outcomes for a greater number of victims than occurs in the current arrangements.

...

Part III of the Act as amended by this Bill explains how applications for financial assistance are to be made and decided. The processes have been simplified to enhance access by persons who choose not to use legal representation. To this end, Part III confers on the Magistrates Court exclusive original jurisdiction to decide financial assistance applications.

Other state and territory jurisdictions

1.7 Each of Australia’s states and the ACT and the Northern Territory (NT) has enacted its own legislation to enable victims of crime to apply for, and receive, financial assistance or compensation as a primary, secondary or related family member victim of the crime. Schemes operating in New South Wales, the NT, Queensland, Victoria and Tasmania are characterised by having independent assessors who determine if, and how much, financial assistance is payable. In South Australia (SA) and the ACT, applications are referred to government solicitors’ offices for assessment; final determinations are made by the court. The South Australian legislation includes statutory timeframes for allowing applicants to refer a matter directly to the court if the applicant and Crown Solicitor are unable to meet an agreed assessment within three months.²

² Details of the schemes operating in other Australian jurisdictions are briefly described in Appendix A.

PART 2 — ADMINISTRATIVE ARRANGEMENTS IN THE ACT

2.1 The Victims of Crime (Financial Assistance) Act specifies roles for the Magistrates Court and the ACTGS, which represents the Territory in application proceedings. The Attorney-General and the Victims of Crime Commissioner are also stakeholders in the administration of financial assistance applications, although they have no specific roles defined in the Act. The Attorney-General has broad responsibility to oversee judicial matters in the Territory. The Victims of Crime Commissioner has a range of functions that are articulated in the Victims of Crime Act. These functions do not include any specific responsibility for the operation or oversight of victims of crime financial assistance applications. However, the Commissioner and his staff assist victims to apply for financial assistance as part of the Commissioner's broad function to advocate on behalf of victims.³

The role of the Magistrates Court

2.2 Section 26 of the Victims of Crime (Financial Assistance) Act states:

The Magistrates Court has jurisdiction to decide an application for financial assistance under this Act.

2.3 Progress of the application through the Magistrates Court is governed by s 27(2)-(4):

(2) An application, together with the required statutory declaration and each accompanying document, must be filed in the Magistrates Court within 12 months after the day when the relevant injury or property damage was sustained.

(3) The Magistrates Court may, on application made at any time (whether before or after the end of the period mentioned in subsection (2)), extend the time for the filing of an application if the court considers it just to do so.

(4) Within 14 days after an application is filed, the registrar must—

(a) forward a copy of the application, statutory declaration and each accompanying document to the government solicitor; and

(b) by written notice to the person for whom financial assistance is sought (or to the person making the application, if that is a different person) and to the government solicitor, fix a date, time and place for deciding the application.

2.4 Generally, applications cannot be decided on the documents filed with the application alone. Consequently, it is not immediately possible to fix a date and time for deciding the application. In practice, the parties to the application (the applicant and the Territory represented by the ACTGS) need to confer to decide what further documentation and evidence will be required to support the application. The date and time for deciding the application is deferred pending the acquisition of that further documentation and evidence. The Magistrates Court plays no active part in monitoring the progress of the parties in acquiring this further documentation. The Magistrates Court will not act until one or other of the parties approaches the court to have the matter listed.

³ Recently, with the permission of the court, the Victims of Crime Commissioner acted on behalf of a victim of crime in a financial assistance application proceeding before the ACT Magistrate's Court. This was the first time that the Commissioner had acted in this way, and postdates the two case studies presented in this report.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

2.5 The Magistrates Court has the authority under the Victims of Crime (Financial Assistance) Act to decide the amount of financial assistance payable to an applicant, if any. There are various provisions in the Act for limiting or off-setting the amount payable in certain circumstances and the court is required to determine whether, and to what extent, these provisions apply in each case. For primary victims, these provisions include:

- s 31(2)(a): the behaviour, condition, attitude and disposition of the applicant(s), before and at the time the criminal injury or eligible property damage was sustained
- s 32: costs incurred from services and the availability of services under the Victim Services Scheme
- s 35: set-offs for entitlements awarded under other applicable legislation
- s 37: set-offs for primary victims who were intoxicated at the time the criminal injury was sustained. Section 37(2) precludes this being considered for primary victims of sexual assaults
- s 38: set-offs for victims who were engaged in the commission of a minor crime at the time the criminal injury was sustained by them.

The Magistrates Court can make the award of financial assistance subject to conditions if it so decides (s 44).

2.6 In making these determinations, the Magistrates Court relies on the documentation provided by the applicant and the ACTGS. In practice, the court will rely on agreement being reached between the applicant and the ACTGS as to a quantum payable according to the provisions. If there is no agreement, the court may make directions to the parties to resolve the matter, but only if the applicant or the ACTGS approaches the court to have the matter listed.

The role of the Justice and Community Safety Directorate

2.7 The Attorney-General is the Minister responsible for the administration of the Victims of Crime (Financial Assistance) Act.⁴ The Justice and Community Safety Directorate (formerly the Department of Justice and Community Safety) is responsible for developing and implementing administrative policies and procedures for enabling the Attorney-General's functions, where necessary. While it is within the authority of the Directorate to implement administrative guidelines for managing financial assistance applications made under the Act, we are not aware of the Directorate having developed any relevant policies, procedures or guidelines.

The role of the ACTGS

2.8 The ACTGS represents the interests of the ACT Government in financial assistance applications (s 28). Under the Victims of Crime (Financial Assistance) Act, the ACTGS:

- must be provided a copy of an application and notified of the date, time and place of the Magistrates Court's decision (s 27(4))
- may apply to the Magistrates Court to vary the final award of financial assistance (s 46)
- must make arrangements for the payment of financial assistance in accordance with the order of the court (s 49).

⁴ *Administrative Arrangements 2011 (No 2)* Notifiable instrument NI2011-351.

Law Officer (Model Litigant) Guidelines 2010 (No 1)

2.9 In February 2010, the Attorney-General issued the *Law Officer (Model Litigant) Guidelines 2010 (No 1)*.⁵ This instrument places an obligation on the Territory and its agencies to behave as a model litigant in the conduct of litigation. The nature of this obligation is defined in Part 3 of the instrument as:

- 3.1. The obligation requires that the Territory and its agencies act honestly and fairly in handling claims and litigation brought by or against the Territory or an agency by:
- (1) dealing with claims promptly and not causing unnecessary delays in the handling of claims and litigation;
 - (2) paying legitimate claims without litigation, including making partial settlements of claims or interim payments in appropriate circumstances, where it is clear that liability is at least as much as the amount to be paid;
 - (3) acting consistently in the handling of claims and litigation;
 - (4) where it is not possible to avoid the commencement of legal proceedings, keeping the costs of litigation to a minimum, including by:
 - (a) not requiring the other party to prove a matter if the Territory or its agency knows it to be true;
 - (b) not contesting liability if there is no doubt concerning liability;
 - (c) use methods [*sic*] that it considers appropriate to resolve the litigation including alternative dispute resolution;
 - (d) ensuring that persons participating in settlement negotiations on behalf of the Territory or an agency have authority to settle a claim or legal proceedings in the course of the negotiations.
 - (5) not taking unfair advantage of a claimant who lacks the resources to litigate a legitimate claim;
 - (6) not relying on a technical defence which will delay or circumvent the resolution of the issues involved in litigation, unless the Territory's or the agency's interests would be prejudiced by the failure to rely on that defence;
 - (7) not undertaking and pursuing appeals unless the Territory or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest; and
 - (8) apologising where the Territory or the agency is aware that it or its lawyers have acted wrongfully or improperly.

2.10 The ACTGS is expected to abide by these obligations when dealing with applications for financial assistance under the *Victims of Crime (Financial Assistance) Act*. The ACTGS has advised us that, in its view, it does so.⁶

2.11 The ACTGS has little incentive to act expeditiously or to ensure timely outcomes for applicants. Given that the ACTGS represents the interests of the ACT Government and not the applicant, there is no reason for it to actively progress any application for financial assistance without specific directions from the Magistrates Court to finalise a matter. There is also no reason for the ACTGS to seek to have the matter listed before the Magistrates Court if the applicant does not.

⁵ Notifiable Instrument NI2010-88.

⁶ Correspondence from the Director-General, Justice and Community Safety Directorate, dated 27 May 2011.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

2.12 The current administrative arrangements burden the ACTGS with two competing and incompatible expectations. On the one hand, the office is expected to represent the interests of the Territory and ensure that only sustainable and reasonable claims will be paid. On the other hand, it is expected to negotiate fairly with applicants who will, in all likelihood, lack legal representation⁷ and therefore be at a disadvantage in matters of legal opinion as to what constitutes a fair or sustainable claim.

The role of the Victims of Crime Commissioner (formerly Coordinator)

2.13 The position of the Victims of Crime Commissioner was established following amendments to the Victims of Crime Act and commenced on 28 February 2011. The functions of the Commissioner are defined in s 11 of the Victims of Crime Act as:

- (a) to manage the victims services scheme and any other program for the benefit of victims;
- (b) to advocate for the interests of victims;
- (c) to monitor and promote compliance with the governing principles;
- (d) to ensure concerns and formal complaints about noncompliance with the governing principles are dealt with promptly and effectively;
- (e) to ensure the provision of efficient and effective services for victims;
- (f) to consult on and promote reforms to meet the interests of victims;
- (g) to develop educational and other programs to promote awareness of the interests of victims;
- (h) to distribute information about the operation of this Act and the commissioner's functions;
- (i) to ensure that victims receive information and assistance they need in connection with their involvement in the administration of justice;
- (j) to encourage and facilitate cooperation between agencies involved in the administration of justice with respect to victims;
- (k) to advise the Minister on matters relating to the interests of victims;
- (l) any other function given to the commissioner under this Act or another territory law.

2.14 Previously, the role was performed by the Victims of Crime Coordinator. The Victims of Crime Commissioner is responsible for advocating for the interests of victims and ensuring the provision of efficient and effective services for victims. Significantly, the Commissioner does not legally represent victims in any proceedings, including applications for financial assistance.

2.15 We met with the Commissioner on 27 September 2011 to discuss his role and concerns in regard to the victims of crime financial assistance scheme. The Commissioner confirmed that his office receives many approaches from people seeking assistance and advocacy in the application and assessment processes for the scheme. The Commissioner advised that it had become a major focus for his staff to assist victims to access their entitlements under the scheme. The Commissioner also commented that, in his view, there were a large number of applications under the Victims of Crime (Financial Assistance) Act pending but not progressing satisfactorily towards a decision in the Magistrates Court.⁸

⁷ See paragraph 2.17.

⁸ At the time of drafting, the Victims of Crime Commissioner advised that of the 53 matters lodged in 2009 that he had reviewed, court files indicated that 30 were not yet finalised.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

2.16 The ACTGS has advised that its records indicate that of the 407 matters received since the beginning of 2008:

- 187 have been finalised
- 53 remain active
- in 82 matters, information requested by ACTGS is outstanding for a period of at least three months
- in 46 matters, the applicant has been advised that they were not entitled to assistance
- 10 matters have been withdrawn or dismissed
- in eight matters, no application was received
- in 11 matters, the outcome of criminal or civil proceedings is awaited.⁹

Legal representation

2.17 Section 28 of the Victims of Crime (Financial Assistance) Act gives the Territory the right to be a party to the proceedings of a financial assistance application. The Territory is represented by the ACTGS. Section 47 places a limit on the amount that a lawyer may charge in legal fees in relation to a proceeding under the Act. That is, if an applicant chooses to be represented in the proceedings, a lawyer cannot charge more than the amount prescribed in the regulations—currently \$650.¹⁰ The Victims of Crime Commissioner advised us that the cap in fees had the consequence of limiting the number of lawyers practicing in this area.

⁹ Advice provided in response to the draft report dated 23 March 2012.

¹⁰ Victims of Crime (Financial Assistance) Regulation 1998, Regulation 3A.

PART 3 — COMPLAINTS

3.1. The two complaints we investigated involved victims of sexual assaults. In both cases, the victims were ultimately found to have been eligible for financial assistance under the Victims of Crime (Financial Assistance) Act, although significant delays occurred in finalising the claims. In one case, the primary victim died before the claim was assessed. In both cases, persons of interest were identified, but no-one was convicted of the assault.

The case of Ms A

3.2. Ms A reported to police that she had been the victim of a sexual assault while intoxicated. The assailant was a person previously unknown to Ms A. In August 2007, Ms A lodged an application for financial assistance as a primary victim of the assault under the Victims of Crime (Financial Assistance) Act. Upon receipt of the application, the Magistrates Court forwarded a copy to the ACTGS office. On 21 January 2010, the application was finalised, following a Supreme Court trial in December 2009 that ended with the jury unable to reach a verdict.

Ms A's complaint to the ACT Ombudsman

3.3. In September 2009, Ms A complained to the Ombudsman that she had not been able to negotiate with the ACTGS to progress her application for financial assistance under the Victims of Crime (Financial Assistance) Act. Ms A was seeking special assistance as a primary victim under s 10 of the Act for out-of-pocket expenses and for pain and suffering. Initially, the ACTGS advised Ms A that her claim would be processed swiftly as it was not part of the criminal proceedings that had been initiated by the Director of Public Prosecutions. However, 10 months after lodging her application, the ACTGS advised Ms A that any decision by its office would not be made until the conclusion of the trial.

Investigation of the complaint

3.4. Ms A provided us with copies of her email correspondence with the ACTGS. Ms A was the instigator of almost all the correspondence and contact with the office.

3.5. In May 2008, Ms A contacted the ACTGS seeking information about the progress of her application. The office apologised for the delay in finalising her claim and provided the identity of the officer who was dealing with her application. Two weeks later, following further email exchanges, Ms A was advised that the officer was waiting to hear back from a supervisor before providing a response. In early June 2008, the officer advised Ms A that her application for financial assistance would be determined following the outcome of the trial. This advice was not consistent with previous advice given to Ms A by the ACTGS and conflicted with Ms A's expectation that her claim would be processed swiftly. In August 2008, the ACTGS reiterated its advice in an email to Ms A:

As mentioned to you previously, unfortunately this office is unable to make any offers for financial assistance when there is *[sic]* court proceedings underway. This is because the alleged offender may successfully run a defence or it may turn out in the trial that the allegations have been fabricated, which would mean the financial assistance has been wrongly awarded.

This office will review your case again and an assessment will be provided to you upon finalisation of the charges.

In November 2009, the ACTGS wrote to Ms A advising that as the trial had not been completed there was no basis for her claim.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

3.6. When the trial did conclude in December 2009—for an offence in 2007—the jury was unable to reach a verdict. However, the ACTGS stated that it considered four days' worth of transcripts and decided that Ms A had a claim under the Victims of Crime (Financial Assistance) Act. Arrangements were made to finalise the claim in January 2010.

The response to our investigation

3.7. In its response to our inquiries,¹¹ ACTGS stated that it was not appropriate for Ms A's claim to be finalised until after the criminal trial had concluded. It said that until the trial there was no evidence upon which a decision could properly be made in relation to the application and that there would be difficulties in obtaining evidence to make an assessment of Ms A's claim before the criminal matter had been decided.

3.8. The ACTGS raised several complex legal issues about the criminal proceedings and said that these issues would have an impact on the success of the criminal proceedings and finalisation of Ms A's application. We were also advised of other impediments to progressing the matter, including a statement made by Ms A in her Taped Record of Interview in which she:

indicated that she didn't know whether she consented to anything that was done to her.

In the view of the ACTGS, this raised the possibility of the defendant raising the issue of consent at trial in his defence. It was another reason the ACTGS decided not to consider the matter until after the trial.

3.9. The ACTGS was also concerned that progressing Ms A's financial assistance application might have interfered with the conduct of the pending criminal trial. We note, however, that there are provisions in the Victims of Crime (Financial Assistance) Act, and in criminal justice proceedings generally, that could have been relied on to allay these concerns. Section 45 of the Act empowers the Magistrates Court to prohibit publication of the financial assistance proceedings if it is necessary in the interests of the administration of justice.

Section 45 Restriction on publication

(1) The Magistrates Court may make an order prohibiting the publication of any report or account of proceedings on an application, or any part of the proceedings, if satisfied that it is necessary in the public interest.

(2) In proceedings on an application, the Magistrates Court may make an order prohibiting the publication of a person's name or any particulars likely to lead to his or her identification for any of the following people:

- (a) the primary victim;
- (b) the applicant;
- (c) a person whose criminal conduct is relevant to the proceedings.

(3) The Magistrates Court may only make an order under subsection (2) if—

- (a) the person has not been convicted of any offence relevant to the proceedings; or
- (b) the court is satisfied that the making of the order is necessary in the interests of the administration of justice.

(4) In considering whether to make an order under this section, the Magistrates Court must have regard to the desirability of the public being made aware of the principles applied by the court with regard to applications.

¹¹ Correspondence dated 24 January 2010 and received on 29 January 2010.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

The ACTGS' insistence that it was not appropriate to progress the application until the trial was concluded is also at odds with:

Section 29 Civil standard of proof

It is sufficient for the Magistrates Court to be satisfied on the balance of probabilities in relation to any matter to be decided in proceedings on an application, including whether an offence has been committed if no conviction has been recorded.

In regard to the possibility that Ms A may have consented to the assault, s 37 of the Victims of Crime (Financial Assistance) Act states:

Section 37 Set-offs—intoxication of primary victims

(1) On an application by a primary victim who is a primary victim solely because of having had a violent crime committed against him or her, if the victim was intoxicated at the time the criminal injury was sustained, the Magistrates Court must calculate the amount of financial assistance to be awarded to the victim by reference to the degree of injury the court considers that the victim would have sustained if he or she had not been intoxicated at that time.

(2) Subsection (1) does not apply to an application by a primary victim if the criminal injury resulted from criminal conduct in relation to a sexual crime committed against the primary victim.

Ms A's application fell within the ambit of s 37(2) on the face of the records. In our view, there appears to have not been any justifiable reason to delay Ms A's application beyond the committal hearing. At that time, the civil standard of proof (s 29) applied, the issue of 'consent' was irrelevant to considering the financial assistance application (s 37(2)), and any concern about interfering with or prejudicing the criminal trial could have been averted through the provisions of s 45.¹²

3.10. However, in our view if there was sufficient evidence for a Magistrate to commit the matter to the Supreme Court for trial, it might reasonably be assumed that there was sufficient evidence for the Magistrates Court to at least consider, on the civil standard, whether or not the criminal injury was sustained as a result of the relevant crime.¹³ We discussed this matter further with the Solicitor General in March 2012. The Solicitor General explained that the issue at hand was whether or not any crime had in fact been committed—a matter that the ACTGS could not determine until the transcript of the trial was made available to it. In our view, it was for the Magistrates Court to decide, on the balance of probabilities, whether or not Ms A was the victim of a crime eligible for financial assistance under the Victims of Crime (Financial Assistance) Act. Had this matter been put to the Magistrates Court prior to the conduct or conclusion of the criminal trial, it would have been open to the court to find that Ms A was the victim of a crime, that Ms A was not the victim of a crime, or that Ms A's eligibility could not be determined until the criminal trial had concluded. In hindsight, it appears that an opportunity was lost for an early consideration of Ms A's eligibility that could have benefitted her including, for example, by way of an interim award of financial assistance.¹⁴

¹² In correspondence dated 27 May 2011, the ACTGS advised, 'We do not consider that there were other appropriate ways to separate the [financial assistance] application from the criminal process.'

¹³ Section 10 Victims of Crime (Financial Assistance) Act.

¹⁴ See s 43 Victims of Crime (Financial Assistance) Act.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

3.11. The ACTGS advised that it does not have any policy or procedures in place to deal with financial assistance applications, but undertakes each case on its own merits.¹⁵ Nor does it have guidance for officers to appropriately manage timeframes or the expectations of clients who in the circumstances may be traumatised or otherwise incapable of making informed decisions. In our view, the absence of policies, procedures or guidance contributed to the poor outcomes that further distressed Ms A for a considerable time after the event itself. These poor outcomes included:

- an unreasonable delay to resolve the matter until the trial had concluded
- causing further harm to Ms A by suggesting that her allegations may have been fabricated, or that she may have consented to the assault¹⁶
- failure to advise Ms A that there may not be sufficient evidence to support her claim.

Ms A's application was finalised in January 2010, 29 months after she lodged it in August 2007. Ms A was awarded financial assistance in accordance with the scheme.

The case of Ms B on behalf of Mrs C

3.12. Ms B's mother, Mrs C, was an elderly woman who in December 2005 reported to police that she had been sexually assaulted by a staff member at the nursing home where she was a resident. In January 2006, the staff member was charged with the assault and, after a hearing in the Magistrates Court, committed to stand trial in the Supreme Court in October 2006. In November 2006, Ms B, who had enduring power of attorney for her mother, made an application for financial assistance on Mrs C's behalf as a primary victim under the Victims of Crime (Financial Assistance) Act. Mrs C died in June 2008 before the ACTGS had assessed her application for financial assistance.

Ms B's complaint to the ACT Ombudsman

3.13. In March 2011, Ms B complained to the Ombudsman's office about the length of time taken by the ACTGS to process her mother's application and the lack of information or explanation provided to her and her mother throughout the process. Ms B complained that Mrs C's pain and suffering had not been taken into consideration either in the sum awarded to her as a secondary victim of the crime, or in correspondence between the ACTGS and Mrs C or with her. Ms B complained that neither she nor her mother had been advised as to what, if any, consideration was given to the psychiatrist's report following his examination of Mrs C in December 2007. Ms B also complained that neither she nor her mother were advised they could have the matter listed before the Magistrates Court, until she received a letter from the Chief Solicitor in January 2011 stating:

An applicant is always free to have a matter listed before the Court for directions if he or she is unhappy with the progress of the matter.

¹⁵ Correspondence dated 27 May 2011.

¹⁶ In correspondence with our office dated 17 December 2009, Ms A described her dealings with the Government Solicitor's office as 'particularly frustrating and occasionally offensive'. The Chief Solicitor acknowledged this and apologised to Ms A in his letter of 24 November 2009.

Investigation of the complaint

3.14. Ms B provided our office with copies of correspondence from the Victims of Crime Coordinator, Australian Federal Police, Magistrates Court, ACTGS, and advocates and clinicians familiar with her mother's case.

3.15. In February 2007, the ACTGS wrote to the Victims of Crime Coordinator requesting that an authority be executed to enable their solicitor to access the police report into the alleged sexual assault. In May 2007, the Victims of Crime Coordinator emailed the ACTGS advising that Ms B had obtained a copy of the police file under Freedom of Information, and inviting the ACTGS to view the file. According to the ACTGS, correspondence on file indicates that this invitation was not taken up despite successive communications between the Victims of Crime Coordinator, Ms B and the ACTGS between May and August 2007.

3.16. In December 2007, Mrs C was examined by the psychiatrist nominated by the ACTGS to assess her condition. The ACTGS received the psychiatrist's report in February 2008.

3.17. In February 2008, the Magistrates Court directed the Australian Federal Police to provide all relevant documents to the ACTGS and Ms B. File records show that the covering letter accompanying these documents was dated 3 March 2008.¹⁷

3.18. On 17 September 2010, the ACTGS responded to the Victims of Crime Coordinator's inquiries about the time taken to assess Mrs C's application:

As the AFP records had not been received by 1 May [2008] an ACTGS officer contacted Ms B who indicated that the records had been forwarded but that she would forward a further copy. These had been received by 5 June 2008. It was only at that point that ACTGS had all relevant information to enable an assessment to be undertaken.

3.19. Mrs C died on 7 June 2008. Following her death, the ACTGS took no further action on Mrs C's application.¹⁸ Ms B was subsequently awarded approximately \$5,000 as a person responsible for her mother's maintenance in a separate application for financial assistance. This sum was paid to cover the expenses Ms B incurred when she moved her mother to a different nursing home, as Mrs C no longer felt safe and secure in the home where she had been assaulted.

3.20. On the face of the documents, the ACTGS had access to all the information it required to make an assessment of Mrs C's application from March 2008. Arguably, had it taken up Ms B's invitation to view the police file in May 2007 or taken into proper consideration that the alleged offender had been committed for trial in October 2006 (a matter of public record), then the only outstanding matter would have been the psychiatrist's report, which was received in February 2008. While the ACTGS said that it did not have the police records before June 2008, the covering letter of 3 March 2008 should have alerted the office to the fact that these were available in March 2008.

3.21. The ACTGS did not assess Mrs C's application between March 2008, when all the necessary information was available to it, and June 2008, when Mrs C died. Following her death, the ACTGS decided that no compensation was payable to Mrs C or her estate and did not consider the application further.¹⁹

¹⁷ According to the ACTGS, the notice for non-party production only required the Australian Federal Police records to be issued to Ms B and, while the ACTGS did receive a copy of the covering letter, the police records were not attached to that copy of the letter.

¹⁸ The ACTGS disputes that it took no further action on Mrs C's application. See paragraph 3.26.

¹⁹ As above.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

3.22. In our view, the ACTGS made little if any effort to progress Mrs C's application and, further, did not advise Mrs C or Ms B that they could seek directions from the Magistrates Court to have the matter progressed. The ACTGS advised us that it represents the Territory in financial assistance applications, and therefore it was not appropriate for it to assist the applicant.

The response to our investigation

3.23. In response to our comment that the ACTGS had no procedures or guidelines in place for administering applications for financial assistance, it advised:

...as indicated in [a letter] to [the Victims of Crime Coordinator] the ACTGS revised its standard correspondence to applicants and their representatives to explain as fully as possible its role and the steps which are taken in response to applications for financial assistance. [The letter] also indicated why it was not appropriate to adopt guidelines imposing arbitrary timeframes in relation to the assessment of applications. The ACTGS adheres to this view.

...

The circumstances giving rise to applications and the nature and availability of evidence required in relation to them vary significantly. The assessment process involves obtaining and scrutinising evidence from a range of different people and organisations including the applicants themselves, their representatives, medical practitioners and the AFP. It is agreed that all applications should be progressed, in relation to information gathering and assessment, within a reasonable time, determined according to each application's circumstances.²⁰

3.24. In our view, the complex administrative burden alluded to in this comment highlights the need for a structured approach that includes defined procedures, guidelines and effective case management. Without them, the likelihood for a matter to become lost in 'administrative drift'²¹ is high. We agree that timeframes should not be imposed arbitrarily. Nevertheless good administrative processes should enable ACTGS officers to identify when an application is continuing to progress reasonably and when an application appears to have gone off track or to be unnecessarily delayed. Without such processes there is no impetus for officers to recognise and respond to instances of unreasonable delay.

3.25. The ACTGS disputed our observation that following Mrs C's death it took no further action on her application. In correspondence of 29 August 2011 we were advised that:

Further discussions took place between ACTGS staff, staff of the victims of crime support service, Ms B and her solicitor to address the legally complex issue of the effect of death on entitlement to financial assistance. Ultimately, the position reached was that Ms B herself needed to make the application and this was resolved promptly, in May 2010 ...

3.26. We acknowledge that the ACTGS continued to engage with Ms B and other stakeholders after Mrs C's death. One outcome of this ongoing engagement was to encourage Ms B to make a separate application for financial assistance in her own name, as a person responsible for her mother's maintenance. This application was progressed successfully and Ms B was awarded approximately \$5,000 to cover the costs she had incurred when she relocated her mother to another nursing home. Nevertheless we are not aware of any actions taken to finalise Mrs C's application—for example, we are not aware that this application has ever been referred to the Magistrates Court for a final determination.

²⁰ Correspondence of 29 August 2011.

²¹ See page 14 of *Lessons for public administration*, Report by the Commonwealth Ombudsman, Prof. John McMillan, under the *Ombudsman Act 1976*, Report no. 11|2007.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

3.27. The ACTGS accepted our criticism of its inability to explain why no action had been taken in response to Ms B's invitation to view the police files in May 2007. As the absence of these records from the ACTGS files was material to the delay in assessing Mrs C's application between March 2008 and June 2008, we recommended that an ex gratia payment in favour of Mrs C's estate be considered. The ACTGS agreed to this recommendation and advised that it would make representations to the Treasurer in this regard.²²

²² Correspondence of 29 August 2011.

PART 4 — CONCLUSIONS AND RECOMMENDATION

Administrative carriage of applications for financial assistance

4.1 None of the administering agencies is responsible for ensuring that applications for financial assistance under the Victims of Crime (Financial Assistance) Act are progressed expeditiously towards an outcome. The Victims of Crime Commissioner and the former Coordinator have made representations to the ACTGS on occasions to progress applications on behalf of victims but, by and large, an applicant or their legal representative, if they have one, is required to pursue matters themselves. The Magistrates Court can make directions requiring an application to proceed, but the court does not actively monitor the applications pending. If neither an applicant nor the ACTGS approaches the court seeking to have a matter listed, the court will not issue directions. The Justice and Community Safety Directorate is the government agency that has administrative oversight of the Victims of Crime (Financial Assistance) Act but it does not actively monitor or otherwise administer applications made under the Act. The ACTGS represents the interests of the Territory in the handling of applications made under the Act. The Act mandates that applications must be referred to the ACTGS, but there is no compulsion under the Act for the ACTGS to progress a matter without directions from the Magistrates Court.

4.2 On a plain reading of the Victims of Crime (Financial Assistance) Act, one would expect that decisions that are material to the progress of financial assistance applications would be made by the Magistrates Court, assisted and informed by the ACTGS (see Part 2 of this report). In reality, the Magistrates Court has negligible engagement with the majority of financial assistance applications.²³ It is the ACTGS that makes de facto decisions about the eligibility of an applicant to receive financial assistance under the Act. If the ACTGS forms the opinion that an applicant is not eligible for assistance, or that there is insufficient evidence to determine whether or not an applicant is eligible, then this opinion will determine the progress of the application. Unless the applicant approaches the court to have the matter listed, the ACTGS' opinion remains uncontested and becomes the de facto decision on the application.

4.3 The existing administrative arrangements have evolved without the benefit of a considered analysis of the various competing interests of the stakeholders. In the absence of any other agency or mechanism identified to take carriage of financial assistance applications, applicants, in particular, have presumed the ACTGS responsible for progressing their applications. This responsibility conflicts with the ACTGS' principle role, which is to represent the Territory as a party in litigation with the applicant over the eligibility and quantum of financial assistance payable. The consequence of these ad hoc arrangements is that, by default, the party with the least incentive to progress an application for payment is left to do so. This arrangement can be especially detrimental for applicants who do not have legal representation. This is not to say that the ACTGS manages these matters with the intention of advantaging the Territory over the applicant but, rather, it is put in the position of having to manage two roles or responsibilities that are inherently in conflict with each other.

²³ See the response to the draft report from the ACT Chief Magistrate in Part 5 of this report.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

4.4 Australian jurisdictions other than SA and the ACT have all enacted financial assistance or compensation schemes that are characterised by independent decision makers who assess and manage applications and award financial outcomes. Whereas the South Australian legislation includes statutory timeframes to facilitate applicants to escalate their claims to the court if agreement with the Crown Solicitor is not reached, no equivalent provisions exist in the *Victims of Crime (Financial Assistance) Act*. In the ACT, an applicant may have a matter listed before the Magistrates Court for directions at any time if he or she is unhappy with the progress of the matter. For applicants who are vulnerable, distressed, incapacitated or otherwise unrepresented, exercising this right may be a daunting prospect.

Consideration for applicants without legal representation

4.5 While applicants for financial assistance may choose to be legally represented, s 47 of the *Victims of Crime (Financial Assistance) Act* imposes a cap that significantly limits the legal representation available. Conversely, the Territory is always represented by the ACTGS in these proceedings. This arrangement was intentionally enacted in the legislation,²⁴ but nonetheless creates an imbalance in the capacity of the parties to negotiate a fair outcome. In Ms A's case, the ACTGS had formed the opinion that it would not be possible to determine whether or not Ms A was a victim of a crime until the criminal trial had concluded. The legal merits of this position are doubtful and, in our opinion, a matter for the Magistrates Court to decide on the balance of probabilities, but as Ms A was not legally represented she was not in a position to question the ACTGS' conclusion in this regard. One consequence of this was that Ms A's claim for financial assistance was delayed, unreasonably in our view, and no offer of an interim award²⁵ could be extended to her.

Recommendation

That the Justice and Community Safety Directorate, in consultation with the Victims of Crime Commissioner, ACTGS and Magistrates Court, review the administrative arrangements for progressing applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*. A review should consider the feasibility of developing and implementing a structured case management methodology and improving outcomes for victims. The methodology should include:

- an identified agency or officer who is impartial to the outcome of applications to track and ensure the progress of applications
- case management procedures that emphasise that applications should progress expeditiously
- guidelines for officers conducting assessments of financial assistance applications that acknowledge, and give consideration to, the likelihood that applicants will not have effective legal representation, are consistent with the beneficial nature and intent of the legislation, and are consistent with the Territory's obligations to act as a 'model litigant'.

²⁴ See Explanatory Memorandum, *Victims of Crime (Financial Assistance) (Amendment) Bill 1998*.

²⁵ See s 43 *Victims of Crime (Financial Assistance) Act* and part 3.1(2) *Law Officer (Model Litigant) Guidelines 2010 (No 1)*.

PART 5 — RESPONSES TO THE DRAFT REPORT

5.1 On 17 February 2012, we sent the draft of this report to the Director-General of the Justice and Community Safety Directorate, ACT Chief Magistrate, ACT Solicitor General and Victims of Crime Commissioner for comment. Responses from the ACT Chief Magistrate, Victims of Crime Commissioner and Solicitor General are included here. We did not receive a response from the Justice and Community Safety Directorate.

RESPONSE FROM THE ACT CHIEF MAGISTRATE (19 MARCH 2012)

1. I concur that the delay in dealing with applications under the Act is in some instances unacceptable.
2. I note that the Court has adopted a “hands off” approach to these matters. In reality, they commence at Court and are finalised at Court, with little real input from the Court. There are few exceptions to this.
3. The number of matters brought back to Court for intervention by way of directions or hearing is negligible. This suggests that the Court has a minimal role to play for various reasons.
4. Nonetheless, even in dealing with initial conferencing of matters and consent finalisations, the Court’s time is utilized with little added value.
5. On the whole, in my observation as the Magistrate who has signed off all finalisations in recent times, the ACT Government Solicitor deals with the matters well, and in accordance with the law, albeit at times less expeditiously than might be ideal.
6. Given the relative roles of the ACT Government Solicitor and the Court, I recommend that a model in line with the South Australian model be introduced, such that the matter is initially lodged with the ACT Government Solicitor, being referred to Court only if not resolved within a specified time frame (e.g. six months) or if, and when, it becomes apparent that settlement will not be achieved, whichever comes first. In the latter case, filing could be at either party’s instigation. This will allow the Court to invest resources in matters in which its input is clearly required. There being a smaller number of matters, these could be more proactively case managed.

RESPONSE FROM THE VICTIMS OF CRIME COMMISSIONER (15 MARCH 2012)

I agree with the content of the Executive Summary. It reflects the concerns noted by the Victims of Crime Coordinator in annual reports dating from 2007-08 to 2009-10 and my concerns noted in last year’s annual report.

My specific comments are:

Pg. 1—3rd para under Executive Summary—victims can apply to Legal Aid ACT for assistance to lodge their financial assistance applications and Legal Aid ACT has previously assisted some victims with their applications.

Pg. 2—para 1.2—special assistance is also available to sexual assault victims.

Pg. 2—para 1.3—the term secondary victim is not used in ACT. A person responsible for the maintenance of the primary victim may apply for assistance under s 10 (3) of the *Victims of Crime (Financial Assistance) Act 1983*.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Pg. 3 para 2.1—....Perhaps a fuller description of my functions....These functions do not include any specific responsibility for the operation or oversight of the victims of crime financial assistance scheme. However, the Commissioner and his staff assists victims to access the scheme as part of the Commissioner's functions to advocate on behalf of victims, to ensure the provision of efficient and effective services for victims and to ensure that victims receive information and assistance they need in connection with their involvement in the administration of justice.

Pg. 3 last sentence—Recently, with the permission of the Court I acted on behalf of a victim of crime in a financial assistance application proceeding before the ACT Magistrate's Court. This is the first time I have acted on behalf of a victim in such a proceeding.

Pg. 5, para 2.6—I am uncertain if the GSO provides the Court with any documents other than what it has requested the victim to provide to support their application. I am also unsure if the Court actually makes directions to the parties to resolve the matter ...

Pg. 7 para 2.13—The position of Victims of Crime Commissioner commenced on 28/2/2011.

Pg. 7—para 2.15—I suggest the following wording may be more suitable.

We met with the Commissioner on 27 September 2011 to discuss his role and concerns in regard to the victims of crime financial assistance scheme. The Commissioner confirmed that his office receives many approaches from people seeking assistance and advocacy in the application and assessment processes for the scheme. The Commissioner advised that it has become a major focus for his staff to assist victims to access their entitlements under the scheme. The Commissioner also commented that, in his view there were a large number of applications under the Act pending but not progressing satisfactorily towards a decision in the Magistrates Court.

Pg. 8 para 2.16—It may be misleading to suggest that lawyers draft applications and charge \$650. Perhaps the point [that] needs to be made is that the cap on fees (which was intended to minimise legal costs for victims) has had the unintended consequence of limiting the number of lawyers practicing in this area.

Pg. 13 para 3.19—Delete the term 'secondary victim'....

Pg. 14 para 4.1—Victim Support ACT justice advocates have attempted to expedite a number of cases on behalf of victims of crime. I, and the former Victims of Crime Coordinator, have also made representations to the Government Solicitors' Office on behalf of a number of victims in order to progress their application. Nevertheless, I agree that no entity has been given direct responsibility for the tracking of applications. Representations on behalf of victims are made on a case by case basis by my office and not all applications come to my office's attention.

I agree with the recommendation that the current administrative arrangements are reviewed....It is my hope that the report provides some impetus for the consideration of improvements to the victims of crime financial assistance scheme.

RESPONSE FROM THE ACT SOLICITOR GENERAL (4 APRIL 2012)

Paragraph 1.4 *Nothing in the Act requires that anyone need be charged or convicted of a crime before an applicant may be considered eligible for financial assistance.*

Comment: ACTGS agrees with this comment. In many instances ACTGS has agreed with an applicant that they are entitled to financial assistance when no

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

charges have been laid or where no one is convicted. However, in such matters, as in all matters, the eligibility of an applicant must be considered in light of the requirements set out in the Act by reference to the evidence which is available.

Where no charges have been laid the evidence available may be limited to that of the applicant themselves: this does not prevent them being entitled but it is legitimate for ACTGS to closely scrutinise the application and seek further information if necessary. For example, the police reports or relevant medical evidence may be sufficient to support the applicant's claim. Where no one has been convicted it is legitimate for the ACTGS to consider whether the applicant would be able to satisfy the court on the balance of probabilities of an entitlement. If it failed to do so the ACTGS would be abdicating its responsibilities, owed to the Territory itself and to the court, to ensure that the requirements of the Act have been complied with and that making an award is appropriate. It also cannot be properly contended that it is in the public interest to permit an applicant to be granted compensation where the requirements of the Act have not been met.

Paragraph 2.11 *Both of the complaints demonstrate that the ACTGS had little incentive to act expeditiously or to ensure timely outcomes for the applicants.*

Comment: As you are aware the Territory's position in relation to one of the complaints (relating to the "A" matter where the incident which gave rise to the application was the subject of criminal proceedings) was that it was not appropriate to assess the application until after those proceedings had taken place. In that matter the only evidence which supported the applicant's entitlement to assistance was evidence obtained from the criminal trial.

(Sentence removed to protect privacy.) Armed with the transcript of the trial, we formed the view (on a beneficial interpretation of that evidence) that on balance a court may find that the applicant was the victim of a serious and violent crime but only once we had the trial evidence. That complaint provides no evidence in support of your conclusion.

The second complaint (relating to the "C" matter) was about a delay of around 4 months in finalising an application after relevant information was available. ACTGS has conceded that this delay was unacceptable but one example, albeit one which had the unfortunate consequence that no assistance could be awarded because of the unexpected death of the applicant, amongst the hundreds of claims handled by ACTGS does not justify your conclusion.

Paragraph 2.12 *In the current administrative arrangements, the ACTGS is burdened by two competing and incompatible expectations: on the one hand the office is expected to represent the interests of the Territory and ensure that only sustainable and reasonable claims will be paid. On the other hand, it is expected to negotiate fairly with applicants who will in all likelihood lack legal representation and therefore be at a disadvantage in matters of legal opinion as to what does constitute a fair or sustainable claim.*

Comment: The ACTGS represents the Territory which becomes a party to a proceeding by filing a notice of appearance (section 28 of the *Victims of Crime (Financial Assistance) Act 1983*, the "Act") and which is liable to pay any financial assistance awarded to the applicant (section 48). The ACTGS role is to ensure that any awards made are consistent with the requirements of the Act. The obligation to act honestly and fairly in handling claims arises under the Model Litigant Guidelines.

The ACTGS believes that there is no incompatibility between these two expectations. However, the ACTGS acknowledges that, for the reasons you outline, there may be a perception that applicants are at a disadvantage when issues become contentious. This perception is only partially allayed by the fact that if there is disagreement

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

between the views of the ACTGS and applicants as to the merits of an application then the Magistrates Court has power to determine the matter.

For its part the ACTGS maintains that it responds effectively and fairly to the challenge of dealing with unrepresented litigants. ACTGS staff are acutely aware that the process of seeking financial assistance is stressful and unfamiliar. One means of responding to that has been the development of standard correspondence which sets out clearly what is happening, its legal basis and what is expected or required of the applicant. I attach copies of that correspondence for your information.

Additionally, and in contrast to the normal approach in adversarial litigation, ACTGS staff invariably (and in nearly every case where the issue is about the extent of the applicant's entitlement rather than whether or not there is any entitlement) indicate to the applicant what further evidence is required in order for the application, or a particular aspect of it, to be successful. This occurs either in a conference, convened by the Magistrates Court, and attended by a court officer (usually a Deputy Registrar), or by correspondence.

In most instances, the evidence is provided, resulting in the making of an award by the court which is acceptable to both parties. In other matters, the evidence is not provided. In some circumstances, the ACTGS is not aware of why no evidence is produced.

The perception of disadvantage arises most starkly in cases where a significant issue about entitlement arises. Such cases are always discussed with and reviewed by more senior staff, including the Deputy Chief Solicitor and the Solicitor-General. Where the issue is finely balanced, and notwithstanding the burden on the applicant of establishing their claim on the balance of probabilities, the ACTGS has often been prepared to concede entitlement even if it could make a strong argument that the burden of proof has not been satisfied.

If the ACTGS concludes that the evidence is not sufficient to enable an award to be made it advises the applicant and notifies them of their right to have the matter set down for hearing by the Magistrates Court. In our experience magistrates are familiar with dealing with litigants in person and ensure that their claims are dealt with fairly and sympathetically and that they do not suffer because of their lack of formal representation.

Paragraph 2.15 ... *The Commissioner also commented that, in his view there were a large number of applications under the Act pending but not progressing satisfactorily towards a decision in the Magistrates Court. (Footnote 7: At the time of drafting the Victims of Crime Commissioner has advised that of the 53 matters lodged in 2009 that he has reviewed, court files indicated that 30 were not yet finalised.)*

Comment: The position in relation to the matters lodged in 2009 may not be apparent from court files. 22 matters lodged in that year have been finalised. There are 3 matters where the ACTGS and the applicant are engaged in correspondence within the last 3 months. It can reasonably be expected that they will resolve in the near future. In a further 18 matters ACTGS has requested information but there has been no response from applicants within the last 3 months. In these circumstances there is no basis for criticism of ACTGS in relation to the failure of the matter to progress. In 2 matters ACTGS has not been served with an application even though it has been filed. ACTGS has informed the applicant in 4 matters that they are not eligible for financial assistance and the applications have not been pursued. In 4 matters ACTGS is awaiting the outcome of criminal or common law proceedings.

ACTGS records indicate that of the 407 matters received since the beginning of 2008: 187 have been finalized; 53 remain active; in 82 matters information requested by ACTGS is outstanding for a period of at least 3 months; in 46 matters the

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

applicant has been advised that they were not entitled to assistance; 10 matters have been withdrawn or dismissed; in 8 matters no application was received and in 11 matters the outcome of criminal or civil proceedings is awaited.

ACTGS met with the Commissioner in September 2011 to discuss several matters where the Commissioner had concerns about the Territory position. While it is not appropriate to discuss those matters in detail the ACTGS responded in relation to each matter, explaining the basis of the Territory's position. No further correspondence has been received from the Commissioner in relation to those matters.

Paragraph 3.9 *The ACTGS was also concerned that progressing Ms A's financial assistance application may have interfered with the conduct of the pending criminal trial. We note however that there are a number of provisions in the Act, and in criminal justice proceedings generally, that could have been relied upon to allay these concerns. Section 45 of the Act empowers the Magistrates Court to prohibit publication of the financial assistance proceedings if it is necessary in the interests of justice...The ACTGS insistence that it was not appropriate to progress the application until the trial was concluded is also at odds with section 29 (which provides that the Court must be satisfied on the balance of probabilities in relation to any matter to be decided) ...In regard to the possibility that Ms A may have consented to the assault ...Ms A's application fell within the ambit of section 37 (2) on the facts of the records. In our view, there appears to have not been any justifiable reason to delay Ms A's application beyond the committal hearing because at that time the civil standard of proof applied, the issue of consent was irrelevant to considering the financial assistance application and any concern about interfering or prejudicing the criminal trial could have been averted through the provisions of section 45.*

Paragraph 3.10 *However, in our view if there was sufficient evidence for a committal, and sufficient evidence to commence a Supreme Court trial, it might reasonably be assumed that there was sufficient evidence for the Magistrates Court to at least consider, on the civil standard, whether or not the criminal injury was sustained as a result of the relevant crime.*

Comment: The making of a non-publication order is subject to the discretion of the court and assumes that there was evidence sufficient for the Territory to conclude that an award should be made. A non-publication order would not avail the accused if he complained of having to give evidence in a civil trial prior to a criminal one and it is doubtful whether a Court would order an accused to do so.

The ACTGS did not rely on section 37 as a basis for denying that Ms A was entitled to financial assistance. Clearly, such an argument would have been defeated by section 37 (2). The Territory's position was that there was insufficient evidence to establish on the balance of probabilities that she had been the victim of a violent crime. This was a fundamental question in Ms A's application: in order to determine whether or not she had been the victim of a violent crime it was necessary to know the alleged perpetrator's version of events and to consider the totality of the evidence led in the criminal trial. For example, if a victim consents to what would otherwise be an assault no crime has been committed and an application for financial assistance will not be successful. I refer you to my discussion above in response to paragraph 2.1.

The ACTGS is not in a position to determine its view of applications on the basis of a decision by the Magistrates Court to commit an accused for trial. A committal hearing is not exhaustive and an accused person will frequently decline to give evidence at that stage. No adverse inference can be drawn from that. Cross examination of witnesses is generally not allowed (section 90AB of the *Magistrates Court Act 1930*). Further, in many instances, a person committed will be exonerated at a subsequent

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

trial. The reasons for this will vary but clearly there are cases where a jury or a judge sitting alone is not satisfied of the version of events provided by the complainant.

Paragraph 4.3 *Australian jurisdictions other than the ACT and SA have all enacted financial assistance or compensation schemes that are characterised by including independent decision makers who assess and manage applications and award financial outcomes.*

Comment: It is a matter of policy for government to determine whether or not the Territory scheme for financial assistance to victims of crime is appropriate. While ACTGS notes the observations you make it contends that the relatively few matters which are contentious, such as those relating to unsubstantiated allegations of sexual assault, where the victim initiated the incident in which they were injured or where the victim suffered from significant injury prior to the events giving rise to the application, would also prove problematic under the schemes operating in other jurisdictions.

Paragraph 4.4 *The legal merits of the Territory's position (that assessment of the claim should not occur until after the criminal trial) are doubtful... One consequence of this was that Ms A's claim for financial assistance was delayed, unreasonably in our view...*

Comment: Many matters are resolved without a criminal trial having occurred. In matters where a person is charged with a criminal offence in relation to the injury to the applicant, however, it is difficult for the ACTGS to undertake an assessment of any application until the criminal proceedings are finalised, the timing of which the ACTGS has no control over. Efforts to obtain evidence to enable an assessment to take place prior to that point could be viewed as interfering with the conduct of the criminal proceedings and may well be seen by crucial witnesses, including the defendant themselves, as prejudicial to their interests.

The ACTGS approach is supported by authority, including High Court authority such as the following comments by Deane J. in Hammond v Commonwealth (1982) 152 CLR 188 at 206:

...it is fundamental to the administration of criminal justice that a person who is the subject of pending criminal proceedings in a court of law should not be subjected to having his part in the matters involved in those criminal proceedings made the subject of a parallel inquisitorial inquiry by an administrative tribunal with powers to compel the giving of evidence and the production of documents ...Such an extra-curricular inquisitorial investigation ...constitutes, in my view, an improper interference with the due administration of justice in the proceedings against him in the criminal court and contempt of court.

Pre-judging the outcome of a criminal trial by reaching a conclusion adverse to the defendant prior to that trial may be contrary to the presumption of innocence, the right to a fair trial, the privilege against self-incrimination and damaging to the reputation of the defendant, rights which are enshrined in the *Human Rights Act 2004*. It is unlawful for the Territory, as a public authority, to act in a way that is incompatible with these rights.

It is also relevant to note that the ACTGS approach means that the applicant is not required to give evidence, and be subjected to cross examination, before the criminal trial.

I am content that the ACTGS position is legally justified and correct. That is not to say that there are many applications where the identity or version of events of an accused person will not be relevant to determining the applicant's eligibility. It depends on the circumstances of each matter.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Paragraph 4.4 ... and no offer of an interim award was extended to her.

Comment: In order to make an interim award the Court must be satisfied that financial assistance should be awarded to the applicant but there is not sufficient information to decide the amount of a final award (section 43 of the Act). The ACTGS position in relation to an interim award would have been the same as it was in relation to a final award, namely, that it was not appropriate as the evidence, prior to trial, was insufficient to enable it to conclude that Ms A was entitled to financial assistance.

Generally

It would not be appropriate for the ACTGS to accept all applications, and the word of the applicant, on face value. Such an approach would be inconsistent with its duties to the Territory and the Court in ensuring that the requirements of the Act are met and that evidence is available to support the making of awards.

The applications which present difficulty include those where there are uncorroborated allegations of violent crime, where there is insufficient or unreliable evidence in support of the claimed assistance, where the conduct of the applicant themselves may have caused or contributed to their injuries and where issues of statutory interpretation arise. The vast majority of applications are handled in a straightforward and timely manner with exchanges of correspondence between the ACTGS and the applicant, the provision of information and obtaining further evidence and agreement as to the terms of an award.

As you assert, the Act is "beneficial in nature". Hence ambiguous provisions are to be interpreted in a manner favourable to those who are to benefit from the legislation although any such interpretation must be restrained within the confines of the actual language employed and what is fairly open on the words used (Bull v Attorney-General (NSW) (1913) 17 CLR 370 per Isaacs J. @ 384; Khoury (M & S) v Government Insurance Office of NSW (1984) 54 ALR @ 650). With respect this does not mean that any less rigour should be applied in determining whether a person satisfies the requirements of the Act when an application is made.

The ACTGS does analyse the evidence in a manner that is most favourable to applicants where there is a doubt. It did so in the matter of A where it would have been open to it to require the applicant to prove her case. I refer you again to my discussion above. Insofar as is possible ACTGS negotiates with applicants so that a negotiated figure is presented to the court as the appropriate amount for an award. This means that many cases are resolved with the making of an award which is less than originally claimed but acceptable to both parties. It is also one reason why so few cases (approximately 5 in the past 3 years) ultimately have to be determined by the court.

Recommendations

My comments on your recommendations are as follows:

- *An identified agency or officer who is impartial to the outcome of applications, but responsible for tracking and ensuring the progress of applications*

The ACTGS has no difficulty with this recommendation while noting that the progress of applications will often be dependent upon the provision of information and evidence by the applicant.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

- *Case management procedures that emphasise that applications should progress expeditiously.*

As part of its processes for continuous improvement the ACTGS has case management procedures in place that have improved over time and ensures that applicants of [sic] provided with timely and effective information about the processes involved and, so far as possible, progress matters expeditiously. To the extent that this recommendation is based upon the circumstances of one matter, the C application, ACTGS says that this occurred some years ago and represents the exception rather than the rule. The true picture, as revealed above, is that the ACTGS manages applications appropriately and in a timely manner.

- *Guidelines for officers conducting assessments that (i) acknowledge and give consideration to the likelihood that applicants will not have effective legal representation (ii) are consistent with the beneficial nature and intent of the legislation and with the Territory's obligations to act as a model litigant.*

The fact that applicants will often not have effective legal representation is recognised and accommodated in current case management procedures. The ACTGS has undertaken assessments for many years involving unrepresented applicants and the issue rarely arises. There is no evidence to indicate that the ACTGS has ever acted inconsistently with the letter or spirit of the Act or its obligations as a model litigant. It is, of course, axiomatic that an applicant must establish an entitlement under the Act before recovering financial assistance and neither the classification of the legislation as beneficial, nor the Territory's model litigant obligations can detract from that obligation.

ABBREVIATIONS AND ACRONYMS

ACT	Australian Capital Territory
ACTGS	Australian Capital Territory Government Solicitor
NSW	New South Wales
NT	Northern Territory
Qld	Queensland
SA	South Australia
Tas	Tasmania
Vic	Victoria
WA	Western Australia

APPENDIX A — SCHEMES OPERATING IN OTHER STATE AND TERRITORY JURISDICTIONS

New South Wales

Section 3 of the *Victims Support and Rehabilitation Act 1996* (NSW) states the objects of the Act as:

- (a) to provide support and rehabilitation for victims of crimes of violence by giving effect to an approved counselling scheme and a statutory compensation scheme,
- (b) to enable compensation paid under the statutory compensation scheme to be recovered from persons found guilty of the crimes giving rise to the award of compensation,
- (c) to impose a levy on persons found guilty of crimes for the purpose of funding the statutory compensation scheme,
- (d) to give effect to an alternative scheme under which a court may order the person it finds guilty of a crime to pay compensation to any victim of the crime.

The NSW scheme is characterised by having a compensation fund from which compensation to victims of crime is paid. Section 68 defines the funding arrangements for the fund:

There are to be paid into the Compensation Fund:

- (a) all proceeds or profits confiscated under the *Confiscation of Proceeds of Crime Act 1989*, and
- (b) all money required by the *Criminal Assets Recovery Act 1990* to be credited to the Fund, and
- (c) all money recovered under Division 8 of Part 2 or Part 5 of this Act, and
- (d) all money advanced to the Fund by the Treasurer, or appropriated by Parliament, for the purposes of this Act, and
- (e) all other money required by or under this or any other Act to be paid into the Fund, and
- (f) all fines paid for offences under section 58L.

In the NSW legislation, applications for statutory compensation are determined by a compensation assessor. Under the Act, the compensation assessor does not conduct hearings into the matter but can direct that medical examinations be undertaken. An applicant for compensation can request that the Director review the decision of a compensation assessor, or may appeal to the Victims Compensation Tribunal.

Northern Territory

The Crime Victims Services Unit can pay financial assistance to victims of crime who have suffered financial loss or injury as a result of a violent act that occurred in the NT. The *Victims of Crime Assistance Act* (NT) gives powers to the Minister to appoint a Director and assessors. Under the scheme, victims of crime can apply to the Director for an immediate payment of up to \$5,000. The Director's decision must be made within 28 days and is not reviewable. Alternatively, or in addition, victims may apply for financial assistance under the scheme. Applications are referred to an assessor who must decide the application by awarding financial assistance or refusing to award financial assistance. An applicant may appeal the decision to refuse, or the sum awarded, to the Local Court.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Queensland

Section 21 of the *Victims of Crime Assistance Act 2009* (Qld) establishes

a scheme for the payment of financial assistance—

- (a) to a victim of an act of violence; or
- (b) to a person who incurs, or is reasonably likely to incur, funeral expenses for the death of a primary victim of an act of violence.

The scheme is administered by an appointed Scheme Manager and Government Assessors who also assess applications for financial assistance from victims of violent crimes.

South Australia

The *Victims of Crime Act 2001* (SA) establishes a system which is very similar to that in operation in the ACT. Section 18(3) of the Act requires that applications are first made to the Crown Solicitor. Section 18(5) allows claimants to apply to the court for compensation if the matter has not been settled by agreement with the Crown Solicitor within three months.

18(3) An application is to be made in the first instance to the Crown Solicitor.

18(5) If a claim for statutory compensation has not been settled by agreement between the Crown Solicitor and the claimant within 3 months after the application is made or a longer period agreed between the Crown Solicitor and the claimant (the period for negotiation), the claimant may apply to the court for an order for statutory compensation.

18(6) An application to the court under subsection (5) must be made on or before the later of the following:

- (a) the end of the initial application period; or
- (b) the end of the period of 6 months that follows immediately after the end of the period for negotiation.

18(7) The court may, for any proper reason, extend a period of limitation fixed by this section.

Tasmania

Financial assistance for victims of crime in Tasmania is governed by the *Victims of Crime Assistance Act 1976* (Tas). This scheme is characterised by the provision of Commissioners empowered to conduct hearings and make awards under the scheme. Section 2A relates to the appointment of Commissioners:

(1) The Minister may appoint one or more people who are Australian legal practitioners to be Criminal Injuries Compensation Commissioners.

(2) An appointment under subsection (1) is subject to any terms and conditions the Minister determines.

(3) For the purpose of this Act, the Master, Registrar and Deputy Registrar are Commissioners.

Victoria

The *Victims of Crime Assistance Act 1996* (Vic) established the Victims of Crime Assistance Tribunal, which has powers to undertake hearings and make determinations for payments of financial assistance to primary and secondary victims of crimes.

Western Australia

In WA, the payment of compensation to persons who have been injured or suffered loss as a result of a criminal offence is governed by the *Criminal Injuries Compensation Act 2003* (WA). As in NSW, applications are assessed by an Assessor of Criminal Injuries Compensation. An independent authority, the Office of Criminal Injuries Compensation, is responsible for assessing and awarding compensation to victims of crime.

APPENDIX B — TEMPLATE LETTERS FOR CORRESPONDENCE FROM ACTGS TO FINANCIAL ASSISTANCE APPLICANTS

Australian Capital Territory
Government Solicitor



5 April 2012

Our Reference
XXX

Contact

Ms/Mr [Applicant Name]
[Street Address]
[Suburb, State, Postcode]

Dear Ms/Mr [Applicant Surname]

Your Application for financial assistance pursuant to the Victims of Crime (Financial Assistance) Act 1983 – CIC [number] of [year]

I refer to your application for financial assistance.

I write to provide you with information about this office's role in applications made under the *Victims of Crime (Financial Assistance) Act (the Act)* and the process of making assessments under that legislation.

The ACT Government Solicitor (ACTGS) is instructed to appear on behalf of the Australian Capital Territory (the Territory) in all applications under the Act. The Territory has a right of appearance pursuant to section 28 of the Act and becomes the respondent to your application for financial assistance.

The Application

The ACTGS first becomes aware of your application for financial assistance when the application and supporting documentation is provided to this office by the Registrar of the ACT Magistrates Court. Accompanying that material is a listing notice advising of a conference time.

Prior to the conference date your application and supporting material are considered by this office and an assessment made as to whether any further material is required to determine whether or not an award for financial assistance should be agreed to and if so, in what amount.

The Conference

Conferences are generally held about four weeks after your application is provided to the court. They are held at a date and time allocated by ACT Magistrates Court and you are required to attend at the appointed time.

Supporting material can be obtained from the Australian Federal Police (which assists in making a determination as to whether an applicant is a primary victim as required by section 9 of the Act) or receipts and medical reports (which assists in an assessment of the amount of money to award).

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

In most cases further material is required beyond that provided with an application. In your case we ask that you provide us with:

1. [document]
2. [document]
3. [document]

Requests for further information may be conveyed to you at the conference and as such conferences are largely an information gathering exercise. It is important to note that at the conferencing stage it may or may not be clear on the paperwork whether or not you are entitled to financial assistance under the scheme.

Conferences are attended by an employee of this office. The process of assessment is explained and whilst a swift resolution, without the need for further court attendance, is the most desirable outcome in the event agreement is unable to be reached the matter may need to be listed for a further conference and, if necessary proceed to hearing before the Magistrates Court.

Consideration of your Application

Once all information is provided ACTGS considers the application in accordance with the requirements contained within the legislation. Particular consideration is given to whether you are a primary victim as required by section 9 of the Act.

All applications are considered in light of the general criteria contained within section 31 of the Act which require that a consideration of a primary victim's behaviour, condition, attitude and disposition before and at the time of the criminal injury is sustained is made.

At that time a consideration of any applicable set offs (see Division 3.3) is also made. A setoff is an adjustment made because of other payments of compensation or an allowance for the fact that a primary victim was intoxicated (except in the case of victims of sexual crimes) and, at least in part the author of his or her own misfortune.

An award of 'special assistance' may be made in the case of sexual assault matters or if you are seriously and permanently impaired as a result of another type of violent crime. An assessment of your entitlement to special assistance is made on the basis of evidence provided by you to ACTGS. The amount to which an applicant is entitled differs depending on the type of criminal injury sustained.

The majority of applications are not problematic and proceed swiftly to an award being made. A number of circumstances may, however, give rise to the need to await further information or the Territory being unable to negotiate an outcome and advising the applicant of the need to list the matter for hearing in the event. The most common reasons for delay in the making of an award are incomplete criminal investigations or a pending criminal trial of the offender that may impact on the outcome of the application. If you receive a letter advising that the Territory is unable to progress your application or does not consider that you are entitled to financial assistance it is important to note that the Territory is only expressing its opinion at this point and is not making a decision or finally determining the outcome of the application. That is the role of the court.

In the event you do not agree with the Territory's position you are able to have the matter listed for determination by the ACT Magistrates Court.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Legal Advice

As the ACT Government Solicitor acts on behalf of the Territory we are unable to provide you with legal advice on any aspect of your application. In the event you require legal advice I suggest you contact either the Victims Support Scheme on 1800 822 272 or the ACT Law Society on 6247 5400 each of whom will be able to direct you to an appropriate solicitor. The ACT Law Society also provides a free, by appointment only, legal advice bureau which is run weekdays between 12:30-2:00 which may be able to help you.

In the event you have any questions in relation to the contents of this letter please call the contact officer on xxxx.

Yours faithfully

ACT Government Solicitor

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

**Australian Capital Territory
Government Solicitor**



4 April 2012

Our Reference
xxx

Contact

Ms/Mr [Applicant Name]
[Street Address]
[Suburb, State, Postcode]

Dear Ms/Mr [Applicant Surname]

Your Application for financial assistance pursuant to the Victims of Crime (Financial Assistance) Act 1983 – CIC [number] of [year]

I refer to the conference held before the ACT Magistrates Court on [date].

I confirm that in order to progress your application I require you to provide copies of the following:

- [insert further evidence required]
- [insert further evidence required]

Documents should be sent attention to [contact officer name] at:

ACT Government Solicitor
Level 5, 12 Moore Street
CANBERRA CITY, ACT, 2601.

They can also be scanned and sent by email to [contact officer email] or faxed to 6207 0650.

It is important to note that I cannot consider your application until you provide all documents referred to above.

The ACT Government Solicitor will obtain a copy of the Australian Federal Police Report on your behalf. This will be done through a process called a notice for non-party production. A notice for non-party production is a court document issued by the ACT Magistrates Court which allows us to obtain information relevant to your application. I will write to you further in relation to this process once the notice has been issued.

If you have any questions please do not hesitate to contact me on [telephone number].

Yours faithfully
ACT Government Solicitor

Australian Capital Territory
Government Solicitor



22 March 2012

Our Reference
xxx

xxx

Contact

Dear xxx

Your Application for financial assistance pursuant to the *Victims of Crime (Financial Assistance) Act 1983* – CIC xxx of 2012

I enclose by way of service Notice of intention to respond.

A notice of intention to respond is a court document which we are required to give to you. You do not have to do anything in response to this document however you may find it useful to keep as it has our address and contact details on it should you need to provide further supporting documentation or enquire as to the status of your application.

Please note any emails or written correspondence should be directed to the contact officer who is xxxx. Their telephone number is xxxx and email address is xxxx.

If you have any questions please do not hesitate to contact me on xxxx.

Yours sincerely

ACT Government Solicitor

xxxx

Encl

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Australian Capital Territory
Government Solicitor



5 April 2012

Our Reference
xxx

Contact

Mr/Ms [Applicant Name]
[Street Address]
[Suburb, State, Post Code]

Dear Ms/Mr [Applicant Surname]

**Your Application under the Victims of Crime (Financial Assistance) Act 1983 -
CIC [number] of [year]**

I refer to your application for financial assistance.

I **enclose** by way of service copy of the Notice for Non-Party Production directed to the Australian Federal Police (AFP) in this matter.

This notice allows the Territory to obtain information relevant to your application from the AFP. In particular it will require the AFP to produce a copy of the police report which is one of a number of key documents in determining your entitlement to financial assistance.

The AFP will initially send documents to you. When you have had an opportunity to look at them please provide them to me at the above address. You may of course take a copy for your records.

You should note that until you provide the documents to me I will be unable to progress our consideration of your application further.

If you have any questions please do not hesitate to contact me on xxxx.

Yours faithfully
ACT Government Solicitor

Australian Capital Territory
Government Solicitor



4 April 2012

Our Reference
XXX

Contact

Ms/Mr [Applicant Name]
[Street Address]
[Suburb, State, Postcode]

Dear Ms/Mr [Applicant Surname]

Your Application for Financial Assistance pursuant to the Victims of Crime (Financial Assistance) Act 1983 - CIC [number] of [year]

I refer to your application for financial assistance.

Based on the matters raised in your application it is necessary for the Territory to have you examined by a medical specialist, which is permitted by section 30 of the *Victims of Crimes (Financial Assistance) Act 1983*.

Please find **enclosed** the list of practitioners approved by the Minister under the section. Please select one name from that list and inform me of your choice. I will then arrange an appointment and advise you accordingly.

Yours faithfully
ACT Government Solicitor

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Australian Capital Territory
Government Solicitor



4 April 2012

Our Reference

xxx

Contact

Mr/Ms [Applicant Name]
[Street Address]
[Suburb, State, Post Code]

Dear Ms/Mr [Applicant Surname]

**Your Application under the Victims of Crime (Financial Assistance) Act 1983 -
CIC [number] of [year]**

I refer to your application for financial assistance.

The Territory does not consider that you are entitled to an award under the *Victims of Crime (Financial Assistance) Act 1983*.

The Territory's position is based on [set out reasons why in brief].

Should you wish to pursue your application further, you should contact the ACT Magistrates Court and request that the matter be set down for a hearing.

Yours sincerely

ACT Government Solicitor

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Australian Capital Territory
Government Solicitor



4 April 2012

Our Reference
XXX

Contact

Mr/Ms [Applicant Name]
[Street Address]
[Suburb, State, Post Code]

Dear Ms/Mr [Applicant Surname]

**Your Application under the Victims of Crime (Financial Assistance) Act 1983 -
CIC [number] of [year]**

I refer to your application for financial assistance.

I have now had the opportunity to inspect the documents from the Australian Federal Police in relation to this matter. I note that the police report indicates that enquires are continuing. Unfortunately until such time as those enquires are complete and the outcome of that process is known the Territory is unable to assess your application.

If you wish to pursue your application prior to enquires being finalised you are at liberty to contact the ACT Magistrates Court and request the matter be listed for a hearing.

Yours sincerely

ACT Government Solicitor

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Australian Capital Territory
Government Solicitor



4 April 2012

Our Reference

XXX

Contact

Mr/Ms [Applicant Name]
[Street Address]
[Suburb, State, Post Code]

Dear Ms/Mr [Applicant Surname]

Your Application under the *Victims of Crime (Financial Assistance) Act 1983 - CIC [number] of [year]*

I refer to your application for financial assistance.

As I understand it the alleged offender whose actions are said to give rise to your claim has pleaded not guilty in the [court name] and will stand trial in the [court name] on [date – if known]. The evidence given at that trial is important in responding to your claim because there is a real question about your entitlement to financial assistance. The *Victims of Crime (Financial Assistance) Act 1983* provides that the ACT Magistrates Court may award financial assistance including out of pocket expenses, pecuniary loss and reasonable compensation for pain and suffering, to a primary victim who has sustained a criminal injury. Based on the information we presently have your entitlement to such assistance is not yet established.

Accordingly, your application will be considered and the Territory's position in relation to it will be advised, after the criminal trial has concluded. While the delay in assessing your application is regretted it is not within the control of this Office.

If you wish to pursue your application prior to criminal trial being finalised you are at liberty to contact the ACT Magistrates Court and request the matter be listed for a hearing.

Yours sincerely

ACT Government Solicitor

Australian Capital Territory
Government Solicitor



4 April 2012

Our Reference
xxx

Contact

Mr/Ms [Applicant Name]
[Street Address]
[Suburb, State, Post Code]

Dear Ms/Mr [Applicant Surname]

**Your Application under the Victims of Crime (Financial Assistance) Act 1983 -
CIC [number] of [year]**

I refer to your application for financial assistance under the Victims of Crime (Financial Assistance) Act 1983 (the Act).

The Territory considers an appropriate sum to be awarded by the court in respect of your application as follows:

Section 10(1)(a)	\$
Section 10(1)(b)	\$
Section 10(1)(c)	\$
Section 10(1)(d)	\$
TOTAL	\$

The amount allowed in section 10(1)(a) includes those expenses incurred as a consequence of the criminal injury, being as follows:-

[breakdown of payments]

I have not allowed a sum of [amount] for [expense] because [insert reason why].

The amount allowed in section 10(1)(b) includes losses suffered as a consequence of your incapacity to work.

I have not allowed a sum of [amount] for [expense] because [insert reason why].

The amount allowed in section 10(1)(c) includes expenses incurred as a consequence of making your application for financial assistance. Those expenses include:

[breakdown of payments]

I have not allowed a sum of [amount] for [expense] because it relates to fees payable to a lawyer which are not recoverable under the Act.

Section 10(1)(d) includes an amount of \$30,000 for special assistance as the medical evidence demonstrates that your injuries are extremely serious and permanent.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

If you are prepared to accept this assessment you should indicate in writing and I will arrange for the appropriate orders to be made by the court.

Yours sincerely

ACT Government Solicitor

Australian Capital Territory
Government Solicitor



[Date]

Our Reference
xxx

Contact

Mr/Ms [Applicant Name]
[Street Address]
[Suburb, State, Post Code]

Dear Ms/Mr [Applicant Surname]

**Your Application under the Victims of Crime (Financial Assistance) Act 1983 -
CIC [number] of [year]**

I refer to your application for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983* (the Act).

The Territory considers an appropriate sum to be awarded by the court in respect of your application as follows:

Section 10(1)(a)	\$
Section 10(1)(b)	\$
Section 10(1)(c)	\$
Section 10(1)(f)	\$
TOTAL	\$

The amount allowed in section 10(1)(a) includes those expenses incurred as a consequence of the criminal injury, being as follows:-

[breakdown of payments]

I have not allowed a sum of [amount] for [expense] because [insert reason why].

The amount allowed in section 10(1)(b) includes losses suffered as a consequence of your incapacity to work.

I have not allowed a sum of [amount] for [expense] because [insert reason why].

The amount allowed in section 10(1)(c) includes expenses incurred as a consequence of making your application for financial assistance. Those expenses include:

[breakdown of payments]

I have not allowed a sum of [amount] for [expense] because it relates to fees payable to a lawyer which are not recoverable under the Act.

ACT Ombudsman—Justice and Community Safety: Administration of applications for financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*

Section 10(1)(f) is special assistance as you suffered a sexual offence.

If you are prepared to accept this assessment you should indicate in writing and I will arrange for the appropriate orders to be made by the court.

Yours sincerely

ACT Government Solicitor