

Australian Capital Territory

# **Victims of Crime (Financial Assistance) (Recovery from Offenders) Guideline 2016 (No 1)**

**Notifiable instrument NI2016–318**

made under the

**Victims of Crime (Financial Assistance) Act 2016, section 87 (Commissioner's guidelines)**

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## **1 Name of instrument**

This instrument is the *Victims of Crime (Financial Assistance) (Recovery from Offenders) Guideline 2016 (No 1)*.

## **2 Commencement**

This instrument commences on 1 July 2016.

## **3 Guideline**

I hereby make the Guideline for Recovery from Offenders for recovery action taken under Part 6 of the *Victims of Crime (Financial Assistance) Act 2016*.

The Recovery from Offenders Guideline is set out in Schedule 1.

John Hinchey  
Victims of Crime Commissioner  
23/6/16

# SCHEDULE 1

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Victims of Crime (Financial Assistance) (Recovery from Offenders) Guideline 2016 (No 1) sets out the process for taking recovery action under part 6 of the Act.

Section 71 of the Act requires the Commissioner to, as far as practicable; recover a recoverable amount from an offender who is liable to pay that amount.

The Commissioner or delegate's primary consideration when considering whether to commence or continue recovery is the safety of the assisted person.

## **1. Prior to contacting the offender**

- (1) The Commissioner or delegate will seek the following information from the Registrar:
  - (a) The identity of the person convicted or found guilty of the offence
  - (b) The date of conviction or finding of guilt.
  - (c) Type of offence.
  - (d) Identity of a victim of the offence.
- (2) The Commissioner or delegate must satisfy themselves that the offence is a recompensed offence as defined in section 69 of the Act.
- (3) The Commissioner or delegate must not take or continue recovery action without considering the objective risks to the safety of any person and the subjective concerns of an assisted person.
- (4) If at any time during recovery action the Commissioner or delegate becomes aware of new or additional information that suggests that the objective risk to the safety of a person or subjective concerns of an assisted person has changed the Commissioner or delegate must reconsider recovery action as per (3).
- (5) If satisfied as per (2) the Commissioner or delegate will provide the assisted person with written notice, as required by section 73 of the Act. The notice will advise the assisted person of the following:
  - (a) The Commissioner intends to take recovery action
  - (b) The Commissioner will contact the offender to give the offender a recovery notice.
  - (c) That the assisted person must tell the Commissioner in writing within 28 days whether the person has any concerns about the Commissioner contacting the offender or the recovery action generally.
- (6) The Commissioner or delegate must not proceed to step 7 until the 28 day consultation period has ended.
- (7) The Commissioner or delegate must take into account any and all matters raised by a person in accordance with (5).

## **2. Locating the offender**

- (1) The Commissioner or delegate must make reasonable attempts to locate the offender.
- (2) The Commissioner or delegate shall seek information from the Registrar or Chief Police Officer about the offender's last known address.

- (3) If the offender was sentenced to imprisonment or an order requiring supervision by ACT Corrective Services, the Commissioner or delegate will contact ACT Corrective Services requesting the offender's home address.
- (4) If no contact details are provided, or the Commissioner or delegate becomes aware that the contact details are incorrect, further attempts to locate the offender must be made.
- (5) The Commissioner or delegate must make reasonable attempts to obtain the offenders home address from a government agency in accordance with section 79 of the Act. The agencies that may be contacted include but are not limited to the following:
  - (a) ACT Road Transport Authority
  - (b) Centrelink
  - (c) Medicare
  - (d) The Australian Electoral Roll
  - (e) ACT Housing
  - (f) NSW Road Transport Authority
  - (g) Any other agency the Commissioner or delegate reasonably believes may have the offender's home address.
- (6) If all attempts to obtain the offender's home address are unsuccessful, further attempts to obtain the offender's home address will be made every 6 months until the time limit for giving an offender a recovery notice is reached.

### **3. Confidential information**

- (1) Section 76 of the Act prohibits, as far as practicable, any confidential information about a person who has received financial assistance or a funeral expense payment to be provided to the offender.
- (2) When providing an offender with a Recovery intention notice, a Recovery Notice, or during any other contact with an offender the Commissioner or delegate will not provide the following information:
  - (a) The name of assisted person
  - (b) The contact details, including information on the location of an assisted person.
  - (c) Any information or reports on the medical or psychological condition of the assisted person.
  - (d) Any notes or information about the therapeutic or other services accessed by the assisted person.
  - (e) Particulars of the payments made under a particular payment type.
  - (f) Any other identifying information about the assisted person.
- (3) The following information may be provided to an offender:
  - (a) The date financial assistance was paid.  
Procedural fairness requires this information be provided to an offender to allow the offender to assess whether the recovery action was taken within the time allowed by the legislation.
  - (b) The total amount of financial assistance must be provided to the offender in order to seek to recover that amount.

### **4. Contacting the offender.**

- (1) If the Commissioner or delegate is satisfied on reasonable grounds that in all the circumstances recovery action is still practicable and appropriate the Commissioner or delegate must give the offender a recovery intention notice in accordance with section 74 of the Act.
- (2) If the offender lodges an objection to the notice within 28 days of receiving the recovery intention notice the Commissioner or delegate must consider that objection.
- (3) If further information about the objection is required the Commissioner or delegate will contact the offender and seek that information, or contact the Registrar to verify the information provided.

## **5. Recovery Intention Notice**

- (1) The Commissioner or delegate must satisfy themselves there are reasonable grounds to believe that recovery action is still practicable and appropriate in all circumstances. The Commissioner or delegate must consider the following when satisfying themselves:
  - (a) The assisted person must have been consulted with as required by section 73 of the Act.
  - (b) The criteria under section 72 of the Act.
  - (c) Whether a home address for the offender has been obtained.
  - (d) Any other matter that commissioner believes relevant.
- (2) If the Commissioner or delegate is satisfied as per (1) a recovery intention notice must be provided to the offender in accordance with section 74 of the Act.
- (3) If the offender lodges an objection to the recovery intention notice the Commissioner or delegate must do the following:
  - (a) Consider whether the objection is made in accordance with section 74(4) of the Act
  - (b) Make any enquires necessary to verify information provided.
  - (c) Consider whether it is still practicable and appropriate to proceed
- (4) If the Commissioner or delegate determines that the offender's objection is not valid or substantiated they must proceed to issue a Recovery Notice.
- (5) If the Commissioner or delegate determines that the offender's objection is valid, the Commissioner or delegate must do one of the following:
  - (a) Notify the offender that the recovery intention notice is withdrawn and that recovery action will not be progressed; or
  - (b) Take into account the payment that the offender has made or is required to make in relation to a court order and issue an amended recovery intention notice.

## **6. Recovery Notice**

- (1) Prior to issuing a recovery notice the Commissioner or delegate must review the following:
  - (a) The date the offender was convicted or found guilty of the offence
  - (b) The date on which the most recent financial assistance or a funeral expense payment was made to an assisted person.
- (2) The Commissioner or delegate must satisfy themselves that the last occurring date is not more than 2 years earlier than the time the notice will be given to an offender.

- (3) If the last occurring date is more than 2 years prior to when the notice will be provided to the offender, the Commissioner or delegate must cease all recovery action.
- (4) If the Commissioner or delegate is proceeding with recovery action a Recovery notice in accordance with section 77 of the Act must be sent to the offender.
- (5) All Recovery Notices will be sent by registered post.

## **7. Review of Recovery Notice by ACAT**

- (1) If an offender applies for a review of the Recovery Notice prior to the recovery date the offender's liability is stayed pending the outcome of the review.
- (2) If the offender's application for review is dismissed recovery action continues.
- (3) If the ACAT makes another order, the Commissioner or delegate will proceed with recovery action in accordance with that order.