



JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

OMBUDSMAN'S REDRESS GUIDELINES: INFORMATION FOR COMPLAINANTS

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Joint Standing Committee on the Corruption and Crime Commission

Ombudsman's Redress Guidelines: Information for Complainants

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***JOINT STANDING COMMITTEE ON
THE CORRUPTION AND CRIME
COMMISSION***

**OMBUDSMAN'S REDRESS GUIDELINES:
INFORMATION FOR COMPLAINANTS**

Report No. 13

Presented by:

Mr John Hyde, MLA and Hon. Ray Halligan, MLC

Laid on the Tables of the Legislative Assembly and the Legislative Council
on 18 October 2006

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TABLE OF CONTENTS

COMMITTEE MEMBERS.....	i
COMMITTEE STAFF.....	i
COMMITTEE ADDRESS	i
COMMITTEE’S FUNCTIONS AND POWERS	v
CHAIRMAN’S FOREWORD.....	vii
ABBREVIATIONS AND ACRONYMS.....	ix
 CHAPTER 1	
COMPLAINTS TO THE JOINT STANDING COMMITTEE ON THE	
CORRUPTION AND CRIME COMMISSION	11
1.1 BACKGROUND.....	11
1.2 NEW REDRESS GUIDELINES	12
 APPENDIX One	13
THE OMBUDSMAN’S REDRESS GUIDELINES	13

COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

One of the strengths of Western Australia's anti-corruption regime is that we are engendering a more transparent process for public sector agencies to explain their workings. Throughout human history, mistakes have occurred. It is a natural emotion for aggrieved members of the public to want their complaints addressed and sometimes for the issue of redress to be considered.

The Committee is impressed that our Ombudsman has proposed an objective, non-emotional way for public agencies to look at the issue of redress. We encourage all agencies to have a modern, transparent policy on redress and to be pro-active about it.

MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

CCC	Corruption and Crime Commission of Western Australia
Committee	Joint Standing Committee on the Corruption and Crime Commission
Ombudsman	Parliamentary Commissioner for Administrative Investigations
WA	Western Australia
WAPOL	WA Police

CHAPTER 1 COMPLAINTS TO THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

1.1 Background

The Committee receives a number of complaints each year from individuals against the CCC and/or the Parliamentary Inspector of the CCC. Most complainants allege that either the CCC or the Parliamentary Inspector failed to investigate their complaint about a public officer subject to the *Corruption and Crime Commission Act, 2003* adequately or in a sufficiently timely manner.

In its response to complainants, the Committee sets out the correct procedure for making complaints about the CCC. The Committee advises complainants that the *Corruption and Crime Commission Act, 2003* does not confer upon either the Parliamentary Inspector or the Committee the power to re-investigate formal decisions of the CCC; but rather, the process by which those decisions were made.

On 4 August 2006 the Committee received a letter from a particular individual complaining that the WA Police had not implemented various adverse “findings” and recommendations by the CCC and the State Ombudsman against the Police. The complainant originally made a complaint in January 2004 to the CCC about conduct by the Police in relation to a particular matter, the details of which are not relevant for the purposes of this report. According to the complainant, the CCC referred the matter to the Ombudsman to consider options for redress on the basis that the Police had made a “legal error” in their handling of the matter.

The complainant claims that the Ombudsman wrote to the Police recommending that they offer him an appropriate form of redress for the loss sustained as a result of their mistake, but that the Police refused to comply with the Ombudsman’s recommendations on the basis that the Ombudsman’s Redress Guidelines are not enforceable.

Upon receiving the complainant’s letter, the Committee wrote to the Ombudsman seeking her response and background to this particular matter. In her reply dated 4 September 2006, the Ombudsman confirmed that her office had agreed to inform the Police that she agreed with the CCC’s conclusion that the Police had made a legal error, and that the complainant should write directly to the Police in relation to the issue of compensation. However, the Ombudsman denied making an adverse finding against the Police or directing the Police in relation to redress.

When the complainant advised the Ombudsman in December 2005 that the Police had declined to offer him monetary compensation, the Ombudsman agreed to investigate the matter, but advised the complainant that the Redress Guidelines are not legally enforceable.

After investigating the matter further, the Ombudsman decided that the Police “had considered the Redress Guidelines prior to determining that redress was not warranted in this particular case.”

The Ombudsman subsequently closed the file on the matter as she did not consider it appropriate for her office to become involved in settlement negotiations.

In her letter to the Committee, the Ombudsman clarified the purpose of the Redress Guidelines:

These Guidelines are a frame of reference to assist agencies in assessing whether redress is appropriate in the particular circumstances of a claim. They are not legally enforceable...

As you would appreciate, it is not my role to act as an advocate for the complainant in persuading the WA Police to adopt a particular stance. My role has been confined to examining whether the WA Police, in this instance, followed a process in dealing with the matter that allowed a full and proper consideration of all relevant facts and circumstances. I am satisfied that the issue of redress was properly considered in this case.

1.2 New Redress Guidelines

The Ombudsman has sent the Committee a copy of the new Redress Guidelines. These are attached as Appendix 1 of this report.

The Committee resolved to table a brief report in Parliament attaching the Ombudsman's new Redress Guidelines as knowledge about the content and extent of the guidelines may assist Members of Parliament in their dealings with constituents, and the general public in their dealings with public sector agencies.

Although the Redress Guidelines do not expressly state that they are unenforceable, it is important to note that, as stated to the Committee by the Ombudsman, the guidelines are only a "frame of reference to assist agencies in assessing whether redress is appropriate in the particular circumstances of a claim." As such, they are not legally enforceable.

APPENDIX ONE

THE OMBUDSMAN'S REDRESS GUIDELINES



The Ombudsman's redress guidelines

About these guidelines

Public sector agencies deliver a vast range of services to members of the public who usually do not have the option of obtaining these services elsewhere. Under these conditions, it is important that the community has confidence that agencies will act fairly and reasonably in delivering their services.

In the Ombudsman's view it is essential that, when the service provided to an individual is unsatisfactory and the agency has in some way contributed to this, the agency should provide redress to remedy the situation.

These guidelines provide a framework to help managers make decisions about addressing a complainant's sense of grievance when they are dissatisfied with the service they have received from the agency. Ultimately, the guidelines should assist agencies to better manage their business, improve the transparency of their processes, and thus enhance public confidence in their operations.

Codes of conduct and organisational values

Public sector agencies, which include government departments, statutory authorities and local governments, have codes of conduct setting out values that include being honest and exhibiting high levels of integrity, openness and ethical behaviour.

The values in these codes should guide the way staff deal with aggrieved complainants. For example, "fairness" is demonstrated by maintaining an open mind in investigation and action; recognizing the lawful rights of others to natural justice and equitable outcomes; and allowing people access to due process. The principle of "openness" requires acknowledging mistakes, explaining actions and apologising. These principles underly the redress guidelines.

In the Ombudsman's view, the ethical principles in the codes of conduct of public sector agencies are consistent with a redress framework which provides that, when people are unfairly or unreasonably affected by decisions, the agencies should take all fair and reasonable steps to make good.

Redress circumstances

Circumstances that warrant the provision of redress by an agency to a complainant can arise in many ways, but in broad terms may arise when any one of or a combination of the following occur:

- poor communication results in misunderstandings or misapprehensions;
- an inappropriate, unfair or unreasonable decision is made;
- an inadequate or unfair process was used to arrive at a decision; or
- a decision was made that was disproportionate or unreasonable in the circumstances.

Redress principles

There are six principles involved in the consideration of redress:

1. All mistakes are admitted and put right.
2. A sincere and meaningful apology is offered.
3. Arrangements for considering redress are made public.
4. Redress is fair and reasonable.
5. As far as possible, redress restores the complainant to their original position.
6. Redress is procedurally sound.

Principle 1: Admitting Mistakes	<p>An organisation that values openness and accountability should be willing to admit and make good its errors. For this principle to be effective, staff must be confident that they have full support from their agency to take these actions.</p> <p>To achieve this, it is important that management provide suitable resources (including training) so that staff not only handle complaints properly but also have a good understanding of the benefits of handling a complaint well. Management should also outline the scope of employees' decision-making delegations - giving them the power to deal with complaints, and explaining the limits of redress that can be offered.¹</p>
Principle 2: Apologies	<p>The <i>Civil Liability Act 2002</i> defines 'apology' as:</p> <p>An expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person (see <i>Appendix A</i>).</p> <p>In other words, an apology does not constitute an admission of liability, and therefore should not be relevant to the determination of fault or liability in connection with civil liability of any kind, nor should it be admitted into evidence in a court hearing.</p> <p>The impact of a sincere apology, offered early in the process, should not be underestimated. Even where an apology may not appear to be warranted, it is worthwhile expressing regret or sympathy in a way that does not accept blame; for example "I'm sorry that this situation has left you feeling disappointed". It will often avoid the escalation of a dispute and the significant cost in time and resources that can be involved.</p> <p>Apologising in this way should not be seen as a sign of organisational weakness. To the contrary, it is a sign of organisational strength and maturity.</p>
Principle 3: Visible Mechanisms	<p>In order to convince the public that complaints are taken seriously, agencies should publicise their mechanisms for complaint handling. This gives the public confidence that the agency will listen to complaints and act on them, and that making a complaint is worthwhile.</p>

¹ For example, in the case of a claim made against an agency by a third party, RiskCover requires there be no admission of liability. In this instance, 'claim' is defined as an allegation, request, or demand for compensation. Even complaints by third parties about conduct could be regarded as a claim. For further information, see http://www.icwa.wa.gov.au/riskcover/rc_forms_liability.shtml

<p>Principle 4:</p> <p>Fair and Reasonable</p>	<p>Redress should be fair and reasonable to both the person affected and the agency. There are a number of criteria that need to be considered.</p> <ul style="list-style-type: none">• Decisions not based entirely on legal grounds – Technical legal questions cannot and should not be ignored. However, fairness involves considering all of the ways in which the circumstances in question have affected the complainant and the wider community. This involves both legal and non-legal issues. An approach guided solely by legal principles risks being rigid, lacking the flexibility necessary for customer-focused agencies. Appropriate weight should be given to broad questions of reasonableness, the effect of decisions and the ethical obligations of fairness and accountability.• Equal treatment - Like cases should, as a matter of principle, be treated equally. Differences in redress between similar cases should be clearly attributable to material differences in the circumstances.• Resources not used to disadvantage - Agencies are typically large, with access to resources and advice not usually afforded to most citizens. Using these to the disadvantage of complainants only exacerbates the detriment suffered.• Proportion - Redress should be proportional to the detriment suffered. This involves weighing the problem and possible solutions to find an appropriate balance.
<p>Principle 5:</p> <p>Restoration</p>	<p>Generally, when a person suffers a detriment wholly or partly as a result of the inappropriate actions of an agency, that person should be restored to their original position. When this is not possible, fair and reasonable alternatives should be offered.</p>
<p>Principle 6:</p> <p>Procedurally Sound</p>	<p>A proper response by an agency to a person who has suffered a detriment involves:</p> <ul style="list-style-type: none">• covering all of the consequences of the decision in question. Failing to do so is likely to simply generate further complaints;• providing all relevant information about what happened, why it happened, what steps are being taken to rectify the position and why those steps are being taken;• accepting that agreements made in ignorance of rights and the available information are not fair and reasonable;• taking into account the views of the people affected;• taking into account protection of the public purse;• taking into account these guidelines and previous decisions about similar complaints;• dealing with the complaint in a timely manner. Agencies are much more likely to meet the ethical principles of respect, openness and accountability if redress circumstances are dealt with quickly. Delaying redress is liable to intensify the detriment already suffered.

Limitations

There are limits to what steps might be reasonably expected to be taken in order to make good. The following issues should be explored in order to determine the limits in individual cases.

- **Elapsed time** - As a general principle the greater the elapsed time since the decision in question the less compelling the obligation on the agency to make good.
- **Remoteness** - People not directly affected should not expect redress, unless special circumstances exist.
- **Contribution** - Complainants may have themselves contributed to redress circumstances. It is reasonable for the agency to take into account the extent to which its officers and the people affected have contributed to the detriment suffered.
- **Mitigation** - People affected by activities have a responsibility to take reasonable steps to minimise the impact on them.
- **Unwarranted enrichment** - Redress should be aimed at making good the detriment suffered. It should not lead to a person making a profit or gaining an advantage.

External considerations

Providing redress is likely to be delayed or even inappropriate when other processes have not been completed. However, as a general principle, an agency should not delay providing redress while such processes are still in train once the need to provide it has been acknowledged. Some of the more important considerations include:

- **Agency internal review** - Where appropriate, having regard to the particular circumstances of each case, providing redress should not be delayed because the agency's internal review is incomplete.
- **Legal liability** - In some cases the person suffering detriment will have a legal entitlement to redress, and in this situation, where possible, the agency should provide appropriate redress that obviates the need for that person to pursue their legal remedies. While concerns about legal liability are an important consideration, such concerns should not be the sole or even primary consideration in assessing whether to offer redress. Agencies have a duty to correct or rectify problems arising from maladministration for which they are responsible. Agencies should make sensible decisions to reach out of court settlements, or better still, to forestall the need for legal proceedings at all. Redress can be offered without admission of liability. The agency may wish, if offering an Act of Grace payment, to enter into a deed with the complainant by which they release the agency and the State from any liability related to the complaint.
- **Government expenditure** - Making good a detriment suffered should be primarily based on the moral obligation of the agency to do so on a balanced assessment of the relevant circumstances. But sometimes agencies limit their responses in a *bona fide* attempt to limit the financial exposure of government. While it is always important to use government resources wisely, this must be accomplished in a way that does not disadvantage complainants. When considering the public interest, agencies need to take account of the improvement in public confidence in service delivery that may result from a fair and timely response to service failures. In these cases the cost of providing redress could be viewed as one of the costs of providing a reasonable standard of service.

Of course agency expenditure must have a legal foundation. The *Financial Administration and Audit Act 1985* includes authorisation to request approval for Act of Grace payments (section 58B), which provides for the following:

1. An accountable officer or accountable authority may request the Treasurer to approve a payment under this section to a person who -
 - (a) has suffered damage, loss or injustice as a result of -
 - (i) an act or omission of the department or statutory authority or related body or affiliated body concerned; or

- (ii) that person's employment by the department or statutory authority or related body or affiliated body.
- or
- (b) has become subject to a financial obligation of a kind that or in circumstances where the accountable officer or accountable authority considers payment by the department or statutory authority would be proper and fair.
- 2. The Treasurer may approve a payment under this section notwithstanding that the department or statutory authority or related body or affiliated body concerned is not or may not be under a legal obligation to make payment.
- 3. The Treasurer may approve payment to a person under this section of an amount considered fair in the circumstances by the Treasurer, but such amount shall not exceed the amount prescribed by regulations for the purposes of this section.
- 4. With the approval of the Governor, the Treasurer may approve payment under this section of an amount exceeding that which the Treasurer may approve under subsection (3).
- 5. This section is in addition to, and does not affect, any other authority to make payments.

The procedure for making such requests is set out in Treasurer's Instruction TI319.² Act of Grace payments can be approved by Cabinet in exceptional circumstances, for example, where the circumstances do not fall within the criteria for the making and approval of an Act of Grace payment under the *Financial Administration and Audit Act 1985*.

Western Australian Government policy encourages agencies to establish Customer Service Charters which advise customers of the standards they can reasonably expect when dealing with an agency and how to seek a remedy "if something goes wrong."³ All these considerations need to be balanced in the agency's assessment of the circumstances.

The redress process

An agency's complaint handling system must have the capacity to identify and efficiently and effectively deal with decisions about redress. In the Ombudsman's view, a model redress mechanism incorporates the following four steps:

- Step 1. Decide whether redress circumstances resulting in a person suffering a detriment exist.
- Step 2. Consider the nature of the detriment.
- Step 3. Decide what it would take to satisfy the complainant or restore the complainant to their original position.
- Step 4. Determine what would need to be done to prevent a recurrence.

Step 1: Decision Resulted in a Detriment	<p>There are many occasions when a complainant may suffer a detriment when an agency is acting lawfully and reasonably. Depending on the circumstances, however, an apology may be appropriate.</p> <p>Similarly, redress does not need to be provided when legislation is operating as intended or to remedy major legislative deficiencies.</p>
Step 2: Nature of Detriment continued	<p>Establishing the nature of the detriment that the complainant has suffered and their desired outcome should be a standard component of the complaint-handling process. In determining this, agencies should take into account:</p> <ul style="list-style-type: none"> the amount of quantifiable financial loss (such as loss or damage to property, injury or damage to health, loss of earnings, medical and legal

² Refer Appendix B

³ Office of the Premier, Circular to Ministers 2/ 2000 "Service Improvements Through Customer Focus"

<p>Step 2:</p> <p>Nature of Detriment continued</p>	<p>costs, time and trouble where the person dealt with the matter without professional assistance); and</p> <ul style="list-style-type: none"> any non-financial damage (such as gross inconvenience, embarrassment, humiliation, or stress). <p>Many complainants are eager to move on and merely seek acknowledgement of their grievance and a timely apology. Some are satisfied with the knowledge that remedial action has been taken and elect not to pursue civil claims.</p> <p>Establishing the nature of the detriment that the complainant has suffered and their desired outcome should be a standard component of the complaint-handling process. In determining this, agencies should take into account:</p> <ul style="list-style-type: none"> the amount of quantifiable financial loss (such as loss or damage to property, injury or damage to health, loss of earnings, medical and legal costs, time and trouble where the person dealt with the matter without professional assistance); and any non-financial damage (such as gross inconvenience, embarrassment, humiliation, or stress). <p>Many complainants are eager to move on and merely seek acknowledgement of their grievance and a timely apology. Some are satisfied with the knowledge that remedial action has been taken and elect not to pursue civil claims.</p>
<p>Step 3:</p> <p>Restoring Complainant to Original Position</p>	<p>Sometimes agencies offer only partial redress, resulting in the complainant remaining dissatisfied. This occasionally occurs when property has been damaged or lost as a result of an agency's action. The agency may offer a part payment on the basis that the damage or loss was accidental. However, if the complainant's actions did not contribute to the damage or loss, the principle of fairness indicates that the complainant should be fully reimbursed.</p>
<p>Step 4:</p> <p>Prevent Recurrence</p>	<p>One of the principal functions of a good complaint handling system is to allow the agency to learn from its complaints and improve its services. It is expensive, inefficient and poor administrative practice to simply deal with complaints as they arise and fail to fix the cause.</p> <p>Each complaint should be assessed to determine whether the circumstances are likely to arise again and if there is a better way to deal with the matter. Often this will involve identifying training needs or making amendments to procedural manuals.</p>

Common excuses to avoid making good

The Ombudsman's experience is that agencies are often motivated to avoid making good to avoid expenditure or embarrassment or because they believe making good risks being seen as an admission of liability. In our view, such decisions are ill-conceived and inconsistent with the principles of accountability and openness.

The following common responses are unacceptable reasons to avoid making good:

- Avoiding setting a precedent** (or "the floodgates" argument) - If the flawed decision is demonstrably unfair and unreasonable in a specific set of circumstances, then this is what must be addressed.
- Not legally required to offer redress** - This confuses the issues of lawfulness and fairness. Fairness involves considering both legal and non-legal issues. Appropriate weight should be

The Ombudsman's redress guidelines

given to broad questions of reasonableness, the effect of decisions and the ethical obligations of fairness and accountability.

- **Fix the system but not resolve individual complaint** – The original complainant may obtain little satisfaction from actions to prevent a recurrence of the incident that led to the complaint. When an agency identifies a deficiency that needs correction, fairness requires that the complaint which led to that identification be addressed in an appropriate manner.
- **Don't want to create a bigger problem** – This approach is inconsistent with the ethical principle of openness. If making good alerts people to the fact that a bigger problem exists, then this is itself a useful outcome.

Forms of redress

When things go wrong, many complainants want no more than to be listened to, understood, respected and, where appropriate, provided with an explanation and an apology.

There are various forms that redress can take.

<i>Explanation</i>	It may be possible to resolve the complaint by providing information about the decision-making process or relevant policies or legislation, or by giving reasons for decisions if this has not already been done. A complainant's sense of grievance is likely to be lessened when they are satisfied that their position has been understood and taken into account.
<i>Apology</i>	A prompt sincere apology provided verbally can be extremely effective. In some situations, an expression of sympathy or regret may be more appropriate. Apologise or express regret promptly, sincerely, face to face, and confirm it in writing.
<i>Reconsidering conduct</i>	Taking into account new information or information that may have been unintentionally ignored during the original assessment may lead to stopping action or taking alternative action or otherwise changing the consequences of a flawed decision.
<i>Changing policy or practice</i>	Some complainants are satisfied by the fact that changes will be made to prevent future similar incidents.
<i>Mitigation</i>	Mitigation reduces the impact of the detriment suffered and may involve replacing damaged property, correcting records, returning property or refunding fees.
<i>Restitution</i>	Compensation for loss or damage to property.
<i>Reimbursement</i>	Compensation for costs that were incurred as a result of the flawed decision, including medical costs, professional costs, or time and trouble involved.
<i>Satisfaction</i>	Compensation for loss of amenity or rights, or for inconvenience. When an agency is not under a legal liability to provide financial compensation (i.e. restitution, reimbursement and satisfaction), it may still decide that it has a moral obligation to offer this type of redress. This can be done by way of an Act of Grace payment under section 58B of the <i>Financial Administration and Audit Act 1985</i> . Appendix B sets out Treasurer's Instruction T1319, which provides the procedure for making such requests and the types of issues to be addressed in their assessment.

Develop agency-specific guidelines

The availability of redress is a crucial component of a fair and reasonable complaints system. When a complainant suffers a detriment and it can be established that an agency contributed to that detriment, an agency that wishes to be seen as accountable must take steps to rectify the perceived damage. If agencies lack a proactive approach to providing remedies, they risk complainants remaining aggrieved.

To ensure public confidence is safeguarded, the Ombudsman suggests that agencies develop a "menu" of remedies, including examples, to assist staff in considering what remedy to provide. This will ensure that staff provide consistent and appropriate responses. To ensure transparency, the agency's commitment to appropriate redress (including limitations, where these apply) should also be made accessible to members of the public.

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Appendix A

CIVIL LIABILITY ACT 2002

Apologies Part 1E

s. 5AF Interpretation

In this Part — "apology" means an expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person.

s. 5AG Application of this part

1. Subject to sections 3A and 4A, this Part applies to civil liability of any kind unless this section states otherwise.
2. This Part extends to a claim even if the damages are sought to be recovered in an action for breach of contract or any other action.
3. This Part does not apply unless the civil liability giving rise to the claim arises out of an incident happening on or after the commencement day.
4. If in a claim for damages:
 - (a) it cannot be ascertained whether or not the incident out of which the personal injury arises happened on or after the commencement day; and
 - (b) the symptoms of the injury first appeared on or after the commencement day, the incident is to be taken, for the purpose of subsection (3), to have happened on or after the commencement day.
5. In this section "commencement day" means the day on which the Civil Liability Amendment Act 2003 section 8 comes into operation.

s. 5AH Effect of an apology on liability

1. An apology made by or on behalf of a person in connection with any incident giving rise to a claim for damages:
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that incident; and
 - (b) is not relevant to the determination of fault or liability in connection with that incident.
2. Evidence of an apology made by or on behalf of a person in connection with any incident alleged to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in connection with that incident.

Appendix B

TREASURER'S INSTRUCTION

319 Act of Grace payments (24.11.2000)

Background

Act of Grace payments are those payments which are not payable in pursuance of the law or are not payable under a legal liability. Although not legally bound, the government makes these payments when it considers that:

- (i) it has a moral obligation to compensate for a loss or damage; or
- (ii) it has a responsibility to relieve a person or body from a financial hardship and that it would be proper and just to do so.

Section 58B (1) of the Act provides that Accountable Officers and Accountable Authorities may request the Treasurer to approve Act of Grace payments. Section 58B (3) provides that the Treasurer may approve payments up to \$50,000 as prescribed by Regulation 25 of the Financial Administration Regulations. Act of Grace payments in excess of the prescribed amount require the Governor's prior approval.

Under section 57(1) of the Act the Treasurer may delegate to any Minister any functions that are conferred on the Treasurer under this Act. The Treasurer has delegated to Ministers of the Crown the authority to approve Act of Grace payments up to \$50,000.

In circumstances where a Minister may, under a delegation from the Treasurer, approve such payments Accountable Officers and Accountable Authorities shall, to ensure compliance with section 58B(1) of the Act, cause all such requests to be addressed to the Treasurer and delivered to the responsible Minister.

Treasurer's Instruction

- (1) All submissions for Act of Grace payments pursuant to section 58B of the Act shall provide details of the proposed payment including full details of the incident or occurrence which gave rise to the request for the Act of Grace payment.
- (2) Where a delegation from the Treasurer under section 57(1) of the Act so provides, requests for Act of Grace payments up to \$50,000 shall be addressed to the Treasurer and submitted to the responsible Minister for approval.
- (3) Submissions for Act of Grace payments in excess of \$50,000 seeking the approval of the Governor in accordance with Financial Administration Regulation 25, and thereafter the Treasurer shall be forwarded through the responsible Minister to the Under Treasurer.
- (4) A register shall be maintained of all Act of Grace payments made pursuant to section 58B in respect of the department or statutory authority.

Treasurer's Instruction Guidelines

Requests for an Act of Grace payment arise from many and varied situations and each request will be assessed on the circumstances associated with that particular request. Requests for Act of Grace payments should be reviewed for reasonableness by the department or statutory authority prior to being submitted for approval. As a guide to the type of issues addressed when requests are considered, the following criteria which are used in the assessment of claims for Act of Grace payments in respect of damage to personal property, are listed:

- (a) any contributory negligence on the part of the claimant;
- (b) any defect or fault on the part of the Government;
- (c) the purchase price and current value of the article lost or damaged; and
- (d) the cost of repairing or replacing the article.

Where injustice is suffered, agencies are to ensure that all relevant avenues have been pursued in settling the matter, and that legal counsel has been obtained as to the appropriateness and quantum of compensation. It is recommended that, where appropriate, agencies consult with Treasury prior to preparing any request for Act of Grace payments.

The Crown Solicitor has advised that costs to be met in relation to the following matters are not in the nature of Act of Grace payments:

- payments to satisfy a judgement; or
- payments arising from out of court settlements, which stand in lieu of judgements and which may be evidenced by deeds of release, or where legal action has commenced, the filing of documents in court.

Where an agency is involved in litigation and the litigation is not covered under professional indemnity and public liability insurance cover, the agency must immediately seek the Crown Solicitor's assistance with settlement of the matter.

Claims for breach of contract, breach of copyright or defamation are examples of actions that would not be included under professional indemnity or public liability insurance cover.

In the event an agency has to meet an associated cost, the expense is to be met from within the agency's existing budget allocations.

Act of Grace payments are not to be met from supplementary funding. However, where supplementary funding is considered necessary, Ministers must obtain the Treasurer's approval to such funding before proceeding in accordance with TI 302 Supplementation of Appropriations.

Act of Grace payments outside the scope of section 58B of the Act are not covered by this Treasurer's Instruction. Requests for such payments should be addressed to the Treasurer for approval by the Governor.

Extracted from Western Australian Financial Administration Bookcase,

319 ACT OF GRACE PAYMENTS