



Our Reference: **136517E**

Your Reference: 14881403

13 March 2008

Fosters Lawyers
PO Box 350
GLADESVILLE NSW 1675

ENTERED

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17 MAR 2008

BY: _____

Victims Services
Parramatta Justice Precinct
Level 1, 160 Marsden Street, Parramatta
Locked Bag 5118, Parramatta NSW 2124
DX 8232 Parramatta | ABN 64 782 244 502
Enquiries: Tel 02 8688 5511 | Fax 02 8688 9632
Freecall 1800 069 054 | TTY 02 8688 5575
vct@agd.nsw.gov.au | www.lawlink.nsw.gov.au/vs

Dear Sir/Madam,

Re: DIRK NIEROP
Application for Further Counselling
Victims Support & Rehabilitation Act 1996

I refer to your client's request and advise that a further **10 hours** has been **approved** by a delegate of the Director on 13 March 2008.

Please see attached Notice of Determination.

An appointment may now be made to see the following approved counsellor:

Name: **Ms Eija Stewart**
Suburb: **MANLY**
Telephone: **8838 2390**

At the completion of these hours the Tribunal will obtain a counselling report from the Approved Counsellor. If further counselling is then required please forward a written request to the Tribunal.

Please note that these approved hours of counselling are only valid for 12 months from the approval date. Your client may reapply for counselling after this period if required.

If you have any further enquiries, please do not hesitate to contact the Tribunal on (02) 8688 5511 or 1800 069 054 (toll free) and quote claim number **136517E**.

Yours faithfully,

Marianne Curtis
Acting Director
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Notice of Determination s- 21 Victims Support and Rehabilitation Act 1996

Name: DIRK NIEROP.

File ref: 136517

REASONS FOR DECISION

The Applicant's seek to appeal the decision of an Assessor dated 13 November 2007, where a request for an initial 2 hours of counselling under the Act was declined. I note the Applicant's request for review dated 21 January 2008 provided to the Tribunal by his Solicitors acting in respect of a related compensation claim, and I take this to be a request pursuant to section 21 (8) of the Act. Pursuant to that section, a review lies to the Director. Pursuant to section 63 (2) of the Act, the Director has delegated that function to the Registrar.

I note the Applicant's Solicitor's advice and further information concerning the circumstances of the incident and in particular the judgment of the District Court.

This is a somewhat unusual matter in that the perpetrator nominated by the Applicant, was the complainant / victim in the matter when the Police brought criminal proceedings. In addition, this Applicant was the accused / defendant in those proceedings, for which the Court ultimately found offences against him proven.

Whilst it is clear that the Applicant's Solicitor's are of the view that their client is the victim of an act of violence (a view I share only in regards to what took place at the top of the stairs), the Crown took the view (rightly or wrongly) that their client was the aggressor / perpetrator in respect of all actions / injuries involving Shane Bullock at the nightclub in the early hours of 9 April 2006. For this reason the Assessor's decision of 13 November 2007 is not without merit.

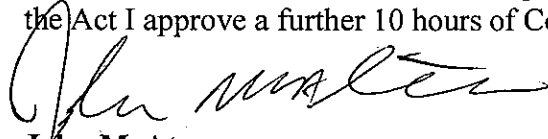
However, notwithstanding the myriad complexities and competing entitlements / claims to be a victim in the matter, it would appear that section 30 might well be relevant in considering this Applicant's remedies under the Scheme of Victims Compensation in New South Wales. Section 30 does not however apply to matters dealt with under Part 2 Division 3A of the Act. Having reviewed the evidence I am of the opinion that the actions of the Applicant (at least in so far as they relate to his alleged injuries) do not fall within the relevant provisions of section 24(3) of the Act. The criminal Court has found that other than the subsequent use of excessive force against Mr Bullock on the landing, this Applicant's actions were lawful and as part of his legitimate duties. When he was assaulted by Mr Bullock at the top of the stairs (which I infer is the basis of both his counselling and compensation claims), he was clearly not yet an offender, and in any event for the purposes of section 24 (3), the assault upon him predated the assault perpetrated by him.

I therefore find that he is eligible for counselling under Division 3A of Part 2 of the Act. I note that the compensation claim relies on a physical injury to the jaw, and a seriously disabling psychological or psychiatric chronic disorder claim. From the Court evidence (which is now in evidence before the Tribunal) I note that the Applicant continues to work, has increased in his hours of employment



following the incident (working overtime), and appears to lead an exemplary and active life. Whilst such a determination must await the receipt of the relevant report, any assessment by the tribunal includes (but is not limited to such a report). In addition the provisions of section 30 (3) and 30 (4) may have some bearing.

Pursuant to section 21 (8) of the Act, upon review I set aside the Assessor's decision dated 13 November 2007 and pursuant to section 21 (2) and 21 (3) (b) of the Act I approve a further 10 hours of Counselling.



John McAteer
A / Registrar VCT

13 March 2008

