Victims of Crime Assistance Bill 2009

Explanatory Notes

Objectives of the Bill

The objectives of the Bill are to:

- declare fundamental principles of justice to underlie the treatment of victims by certain entities dealing with them; and
- provide a mechanism for implementing the principles and processes for making complaints about conduct inconsistent with the principles; and
- provide a scheme to give financial assistance to certain victims of acts of violence.

Reasons for the Bill

The current provision of criminal injury compensation to victims of crime in Queensland has not been reviewed substantively since the introduction of the *Criminal Offences Victims Act 1995* (COVA) 13 years ago. The current scheme is a compensation-based scheme focused on compensating a victim with a lump sum payment. It is generally awarded after a lengthy court process, which can exacerbate the effect of the crime on the victim. COVA also contains the fundamental principles of justice for victims of crime which stem from the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (UN Victims Declaration).

On 26 November 2007, the Government announced the Victims of Crime Review (the Review) to examine how to make the scheme simpler and easier to access. The Review was undertaken by the Department of Justice and Attorney-General (DJAG) with oversight by the Inter-departmental Working Group and consultation with the External Community Reference Group, formed specifically for the Review.

The Review's *Report to the Queensland Government on the Victims of Crime Review 2008* (Review Report) made 27 recommendations. The Review Report recommended that the existing scheme under COVA be

repealed, including Chapter 65A of the Criminal Code as preserved by COVA, and replaced with a new scheme. The recommendations focus on the timely provision of financial assistance to victims for services they require as a result of their injuries, rather than a compensation-based scheme. The Review Report also recommended maintaining the fundamental principles of justice and introducing a mechanism for resolving victim complaints in relation to departures from the fundamental principles by government agencies.

The Review Report recommendations were made publicly available in February 2009.

Achievement of the Objectives

Fundamental Principles

The Bill achieves the objectives by maintaining the fundamental principles of justice for victims of crime adhering to the UN Victims Declaration. However, they have been amended in an effort to ensure relevance, practicality and having regard to best practice in other Australian jurisdictions.

The Bill creates a complaints mechanism for victims who consider government entities have breached the principles.

Financial Assistance

The Bill achieves the objectives by repealing COVA and Chapter 65A of the Criminal Code, as preserved by COVA, and providing for a new financial assistance scheme.

Under the new scheme, victims will no longer be required to apply for compensation through the court system. Instead they will apply for financial assistance to a new Victim Assistance Unit (VAU) within the Department of Justice and Attorney-General.

The new scheme will focus on victim recovery by paying for, or reimbursing the costs of, goods and services that the victim requires to help them recover from the physical and psychological effects of an act of violence. It aims to provide a tailored, needs-based response and allows for earlier intervention in the victim's recovery rather than waiting for a conviction of the offender.

There are tangible and intangible benefits to the victim, government, and society, of early intervention under the new scheme.

The VAU will provide a central point to access support services, practical support during court proceedings, and a victim's complaints resolution process, as well as government coordination of services, information, training and policy development for victims of crime in Queensland. Financial assistance under the Bill is additional to other services provided by or for government to victims of acts of violence. For example, public health services or government-funded community services.

There will be three types of victims under the new scheme: primary, secondary and related victims.

Primary victims are entitled to a maximum amount of financial assistance to the value of $75,000. This is the same maximum amount as the current scheme. However, under the Bill this assistance will pay for goods and services, such as medical and counselling expenses, and other assistance and special assistance up to $10,000, within the $75,000 maximum amount.

The Bill enables a broader range of primary victims to seek assistance than the current scheme. For example, the new scheme will include victims of offences dealt with summarily.

Secondary victims are a new category of victim and includes:

- parents who suffer an injury as result of an act of violence being committed against their child. These parents will be entitled to seek financial assistance for goods and services, such as medical and counselling expenses and other assistance, as set out in Bill. Assistance can be granted up to the value of $50,000 to be shared between the parents.
- witnesses of serious acts of violence such as murder and manslaughter will be entitled to seek financial assistance for goods and services and other assistance set out in Bill to the value of $50,000; and
- witnesses of other acts of violence who will be entitled to seek financial assistance for goods and services to the value of $10,000.

COVA currently provides for dependants of a person who has died, as a result of murder or manslaughter, to share a maximum amount of $39,000, and other family members to share a maximum amount of $9,000.

The new scheme allows persons known as 'related victims', being close family or dependants of a person who has died, to seek financial assistance. Related victims will share an amount up to $100,000, with a maximum amount of assistance of $50,000 per related victim. This assistance will pay

for goods and services, such as medical and counselling expenses, and other assistance specified in the Bill within the maximum limits.

A victim will be able to apply for interim assistance of up to $6,000 prior to the final grant of assistance being given. This amount will be taken into account as part of the final grant of assistance to a victim and is included in the maximum amount of assistance they may be granted.

The new scheme also allows the payment of funeral expenses up to $6,000 incurred as a result of the death of a primary victim.

Grants of financial assistance to victims of acts of violence under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.

Alternative Ways of Achieving Objectives

There are two main types of victim schemes in operation in Australia and in comparative international jurisdictions: financial assistance models and compensation models. Queensland currently has a compensation-based model. The type of scheme recommended by the Review for reform in Queensland is a financial assistance scheme. Financial assistance schemes focus on victim recovery by paying for, or reimbursing the costs of, goods and services that the victim requires to recover from the physical and psychological effects of the crime. Financial assistance schemes provide a more tailored, needs-based response and allow for earlier intervention in the victim's recovery than compensation schemes. This allows victims to get on with their lives more quickly.

The Review considered the following three models for implementing a financial assistance scheme:

- Government Assessment Model, which involves an administrative application process, with applications assessed and decided by a multidisciplinary team of Government Assessors whose role and functions are clearly set out in the Bill and guidelines;
- Magistrates Court Model, which involves a court based application process with applications decided by Magistrates;
- Tribunal Assessment Model, which involves an application process to a Tribunal with applications decided by Tribunal members.

The Review recommended the Government Assessment Model as it will adequately respond to the majority of criticism levelled at the current

scheme. It will be a more efficient use of government resources, and will be quicker and less legalistic than providing for Magistrates or a Tribunal to decide applications for assistance.

There is no alternative way of achieving the objective to introduce a financial assistance scheme for victims of acts of violence, other than introducing new legislation to repeal COVA and Chapter 65A of the Code.

Estimated Cost for Government Implementation

The scheme will receive increased funding rising to $28.8 million by 2011-12 which is an additional $7 million a year, over and above current arrangements.

Consistency with Fundamental Legislative Principles

The following aspects of the Bill raise potential fundamental legislative principles (FLP) issues.

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(2)(a)

- *Disclosure of information about a person with their consent*

The disclosures under clauses 69, 74 and 77(1) potentially infringe the FLP that legislation have sufficient regard to the rights and liberties of individuals, because an applicant is required to give the consent to disclose information if they want access to financial assistance under the Bill. The consent is required to enable the government assessor to gather all relevant information to decide the application. The applicant is only required to fill in an application form, attaching a medical certificate, any supporting documentation and the relevant consents.

Clause 69(1) allows access to a primary victim's criminal history with consent. The primary victim's criminal history is necessary for the government assessor to decide whether the primary victim was involved in a criminal activity for the purposes of clause 80. The victim's criminal history is only permitted to be looked at in this context. Consent is required given the sensitive nature of the information and in accordance with Queensland Police Service requirements.

The government assessor may stop considering an application for victim assistance until the government assessor receives a written report about the

primary victim's criminal history, if the government assessor reasonably requires the information to decide the application.

The breach is considered reasonable as it provides an appropriate balance between a person's right to privacy and the need to ensure that a person does not benefit from their criminal activity.

Clause 74 provides that if the government assessor has the necessary consent for obtaining medical information about the applicant, the government assessor may ask a designated person for information about the applicant. Consent of the applicant is required under clause 74 given the sensitive nature of medical information. However, medical information is required to make a decision on the application, particularly about the injury and the medical treatment required to assist the victim recover from the act of violence.

Clause 77(1) provides that the government assessor must have the necessary consent for obtaining information about relevant payments made to the applicant in relation to the act of violence. The government assessor can then ask the relevant entity for information about other payments to the applicant for the act of violence. Relevant entities include: the insurance commissioner about payments under the *Motor Accident Insurance Act 1994*; the police commissioner about compensation under the *Police Service Administration Act 1990*; and the Workers' Compensation chief executive officer about workers compensation. This information is necessary to decide whether the applicant's award is to be reduced under clause 86 for receiving a relevant payment for the act of violence. Consent of the applicant is required by these agencies.

In summary all three breaches are justified and are advantageous to victims who are seeking to access financial assistance under the scheme. The information which is the subject of the consent is necessary to decide the application and the provision of consent upfront facilitates a faster application process. The philosophy of the scheme is that victims can access assistance quickly, and the requirements in clauses 69, 74 and 77(1) enable this to happen. Rather than requiring the victim to delay making the application while they gather relevant information to support the application, the victim can apply immediately by filling in the approved form and can access interim assistance in appropriate circumstances, whilst the government assessor gathers the relevant information to make a decision.

In addition, under clause 140 there is a safeguard on further disclosure of the information by the government assessor. Clause 140 provides that any prescribed person, who has acquired information or gained access to a document about someone else in the course of administering the Act or because of an opportunity provided by involvement in administering the Act, must not disclose the information to anyone else. The maximum penalty is 100 penalty units or 2 years imprisonment. The disclosure is only permitted if: the person consents; it is in connection with the performance of a function under the Act; or as required or authorised under an Act or law.

The victim is given an opportunity under clause 88 to make submissions to the government assessor about any intended refusal or reduction of assistance as a result of information accessed under these clauses. This makes the potential breach less objectionable.

In addition, an applicant for assistance under the scheme has a right to see a review (both internally and externally) of a decision of the government assessor to refuse to grant the assistance; or if the assistance is granted, about the amount of assistance.

- *Disclosure of information about a person without their consent*

A number of provisions in the Bill provide for the disclosure of information about a person without the person's consent. This is arguably a potential breach of the FLP that legislation should have sufficient regard to the rights and liberties of individuals, as it potentially invades a person's privacy.

Clause 65 enables the government assessor to request certain information from the police commissioner about an act of violence for the purpose of deciding an application for assistance. It also enables the government assessor to ask about: the progress of any investigations being conducted in relation to the act of violence; the charges (if any) laid for the act of violence; the reason charges are not laid or continued with; details of the place and date of hearing of the proceeding for the charge; the outcome of any proceeding for the act of violence; and a copy of any statement made by the primary victim.

In addition, clause 66 enables the government assessor to request from the investigating police officer or the police commissioner (the relevant police official) witness statements and other information the relevant police official reasonably considers may be relevant to deciding the application.

The information under both these clauses is necessary to decide the application because it will help verify or otherwise the victim's account of events. It will also provide information about whether the victim's involvement in a criminal activity was the only, or the main, reason the act of violence was committed against them (clause 80), or their conduct contributed to their injury (clause 85(2)(a)).

It is not considered appropriate or desirable to seek the consent of the alleged offender or witnesses to disclose this information because, especially in the case of the alleged offender, there may be an unwillingness to provide consent and this would delay the government assessor's decision about the application. Also, some of the information, such as, the reason that charges were not laid or continued, is only within the police service's knowledge.

Under subsection 66(3), the relevant police official must comply with a request if, and to the extent, the relevant police official is reasonably satisfied the government assessor reasonably requires the documents and information to decide the application.

Disclosure under clause 66 about a witness is limited by clause 66(4) which provides that the police officer is only to disclose the identifying particulars of a witness if it is relevant to deciding the application.

Further, under clauses 65(4) and 66(6) the police officer must not give the information if: it would prejudice or hinder an investigation; it may lead to the identification of an informant; or may affect the safety of a police officer, complainant or other person.

Clause 67 provides that the government assessor may ask the Director of Public Prosecutions (DPP) for information about an act of violence for the purpose of deciding an application for assistance. The information includes: the charges laid for the act of violence; details of the place and date of hearing for the proceeding for the charge; a decision to substantially change the charge; and the outcome of a proceeding for a charge. This information is necessary to decide the application because it will help verify or otherwise the victim's account of events. It will also provide information about whether the victim's involvement in a criminal activity was the only, or the main, reason the act of violence was committed against them (clause 80), or their conduct contributed to their injury (clause 85(2)(a)).

Again is not considered appropriate or desirable to seek the consent of the alleged offender or witnesses to disclose this information because,

especially in the case of the alleged offender, there may be an unwillingness to provide consent and this would delay the government assessor's decision about the application. Also, some of the information, such as, the reason that charges were not laid or continued, is only within the DPP's knowledge.

Clause 68 provides for the government assessor to ask the chief executive of the department administering the *Corrective Services Act 2006* for certain information about an applicant for assistance who is in correctional services facility. The government assessor may ask the date the applicant will be released or discharged. This information is necessary to decide whether the application is to be deferred under clause 84. An applicant will be made aware at the time of applying for assistance that this information may be sought.

Clause 75 applies if an applicant for victim assistance is a child who is in the custody or guardianship of the chief executive (child protection) under the *Child Protection Act 1999*. The government assessor may ask the chief executive (child protection) for information about the applicant's injuries and any special needs of the applicant. This information is necessary to decide what assistance should be provided to the child.

It is not practical to get the child's consent. However, the provision of the information is beneficial to the child, particularly to ensure assistance is granted to meet their needs.

The provision is analogous to the government assessor asking a parent for further information about his/ her child (see clause 64).

Clause 76 applies if the government assessor knows or reasonably suspects an applicant for victim assistance has an impaired capacity. The government assessor can ask the QCAT principal registrar to advise whether a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000* and, if so, the person's name and address. The government assessor can also confirm whether a stated person is the guardian or administrator of the applicant. This information is necessary to determine who can make an application on behalf of a victim with impaired capacity, and to whom an award can be granted to administer on behalf of the victim.

Clause 77(2) provides that the government assessor may ask the chief executive of the department administering the *Corrective Services Act 2006* whether an applicant for victim assistance has started a proceeding under chapter 6, part 12B of that Act (the Victims Trust Fund). The government

assessor may ask the status of the proceeding and any amount paid or payable to the applicant in relation to the proceeding. This information is necessary to decide whether the applicant's award is to be reduced under clause 86 for receiving a relevant payment for the act of violence. An applicant will be made aware at the time of applying for assistance that this information may be sought.

Clause 77(3) applies where a dispute has been referred for mediation under the *Dispute Resolution Centres Act 1990* for a relevant offence for which assistance is sought. The government assessor may ask the director under that Act whether an agreement has been reached for the dispute, and if so, whether the agreement provided for the payment of an amount from the person who allegedly committed the offence to the victim of the act of violence. The government assessor can also ask for the amount paid or payable to the victim under the agreement. This information is necessary to decide whether the applicant's award is to be reduced under clause 86 for receiving a relevant payment for the act of violence. An applicant will be made aware at the time of applying for assistance that this information may be sought.

Clauses 114 and 194 allow the scheme manager to access information from the court registry about the conviction, sentence and address of the person whose act of violence lead to the victim's injury. The breach is justified because access is limited to circumstances in which the information is needed to recover an amount owed by a convicted offender and the use of information is limited for that purpose. It is appropriate that a taxpayer funded scheme allows recovery from the offender who caused the injury in the first place and access to court records is permitted to facilitate recovery.

Clause 133 allows the scheme manager to give information about a person's application for, or grant of, assistance to an entity managing a similar scheme in another jurisdiction, if it is necessary for deciding the person's application for assistance under that scheme. The further disclosure of the information by anyone who obtains it is limited by subsections (3) and (4).

Clause 136 allows the scheme manager to give a person prescribed information about someone else who has been granted assistance if: the person receiving the information and the other person are victims of the same act of violence; and they eligible for assistance, or a component of assistance, that has an assistance limit.

The breach is considered justified as the first person could not reasonably seek a review of the decision unless they had access to this information. Further, subsection (3) provides that the scheme manager must consider whether the needs of the first person can be met without giving the name of the other person.

In summary these provisions potentially breach the FLP that legislation has sufficient regard to the rights and liberties of individuals on the basis that it invades the privacy of individuals. The breaches are justified as this information is necessary to decide the application and consent is not practical or desirable to be obtained from the person.

In addition, for clauses 67, 68, 75, 77(2) and (3), the disclosure is limited by the person giving the information to the government assessor (for example the Director of Public Prosecutions under clause 67) having to first be satisfied that the information is necessary to decide the application. For clause 136 the disclosure is limited to circumstances where the scheme manager is reasonably satisfied that the person who is to receive the information needs it for deciding whether or not to apply for a review of a government assessor's decision on the person's application, or for making submissions for a review of the decision. Under clause 133, the disclosure is limited by the scheme manager first being satisfied that the information is necessary for the corresponding scheme manager to decide the application. This is not a requirement for clause 76 as this information is necessary to decide the application.

In addition, under clause 140 there is a safeguard on further disclosure of the information by the government assessor. The maximum penalty is 100 penalty units or 2 years imprisonment. The disclosure is only permitted if: the person consents; it is in connection with the performance of a function under the Act; or as required or authorised under an Act or law.

Clause 136(4) provides for a safeguard on further disclosure of the information by the government assessor under this clause. The maximum penalty for unauthorised disclosure is 100 penalty units or 2 years imprisonment. Further disclosure is only permitted if: the other person consents; it is for the purpose mentioned in subsection (2); or it is required or authorised under an Act or law.

The victim is given an opportunity under clause 88 to make submissions to the government assessor about any intended refusal or reduction in assistance as a result of information accessed under these clauses. This makes the potential breach less objectionable.

In addition, an applicant for assistance under the scheme has a right to seek a review (both internally and externally) of a decision of the government assessor to refuse to grant the assistance; or if the assistance is granted, about the amount of assistance.

- *If notified victims fail to make an application, or amend an application, the assistance is limited to the remaining pool*

Clause 72 applies if a victim shares in a pool of assistance, that is, a parent secondary victim, a witness secondary victim of a serious act of violence for loss of earnings or a related victim. Under clause 71(2), before deciding an application, the government assessor is to take reasonable steps to identify other victims in the pool who have not applied. The government assessor must then send the other victim(s) a written notice about the application and give them an opportunity to apply within 3 months of the notice. If the other victim(s) do not then apply for victim assistance within the 3 months and the original application has been decided, the other victim(s) can only apply if they a have a reasonable excuse with the scheme manager's approval. The other victim(s)' application(s) application(s) is/are limited to the remaining pool amount (if any).

Clause 104 provides for the amendment of assistance after it is granted if a victim's circumstances change. However, if the victim's entitlement to assistance is subject to a pool (for example, a maximum amount for victims of the same kind), an increase in assistance is limited to the remaining pool amount (if any).

This limit potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals because the legislation does not provide for fair and equal treatment between victims. A person who would otherwise have been entitled to a greater proportion of an assistance limit is prevented from obtaining that greater proportion, or obtaining any assistance at all if the assistance limit of the pool has been exhausted. The breach is justified as there needs to be finality in respect of access to the pool. Victims are given a reasonable opportunity to apply for assistance, and the statutory scheme (in the absence of which no persons/ victims would be able to access any assistance) only provides a limited pool for certain categories of victims.

- *No grant to particular persons if primary victim's activities caused act of violence*

Under clause 80, a primary victim is not eligible for assistance if the main, or only, reason an act of violence is committed against the person is their

involvement in a criminal activity. For example, a person is the member of a street gang that engages in criminal activity on an ongoing basis, and as retaliation for an attack by the person's gang on another gang, the other gang assaults the person.

This clause potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals because it implies that otherwise eligible victims will be treated unequally. The potential breach is exacerbated for related victims and family members because the activities of the primary victim could affect the related victims' and family members' entitlement to assistance, irrespective of the injury suffered by them.

It is not considered appropriate for government funds to be used to provide assistance to victims whose own actions bring about the act of violence from which they have suffered injury. A person's criminal history can be accessed to decide whether the person is involved in a criminal activity. Criminal histories will not be accessed for every victim. It will be accessed in cases where the materials before the government assessor (for example, the police brief) indicate involvement in a criminal activity.

The victim is given an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause. This makes the potential breach less objectionable.

- *No grant if act of violence not reported or if reasonable assistance not given*

Clause 81 potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals because it requires the act of violence to be reported before assistance may be granted.

Clause 82 also potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals because it requires a person to give reasonable assistance to the investigation and prosecution of an offender before assistance may be granted.

These potential breaches are made less objectionable because an act of violence does not need to be reported, or assistance given, if the person has a reasonable excuse. Clause 82(3) provides for the matters that a government assessor is to take into account when considering whether a person has a reasonable excuse for not providing assistance, including: the persons' age; an impaired capacity; a victim of a sexual offence; whether the alleged offender was in a position of power, influence or trust; any

threats or intimidation; the victims injuries; any other special circumstance that prevented the person from providing assistance; and any other matter the government assessor considers relevant.

In addition, special victims (of sexual offences or acts of violence against children etc) are not required to report to a police officer, but instead they can make a report to their counsellor, psychologist or doctor, due to the unique circumstances of these victims.

The victim has an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause. This makes the potential breach less objectionable.

Although the scheme is about providing assistance to victims it is not unreasonable that there be a mutual obligation on the victims receiving taxpayer funded assistance to report the act of violence, and to assist in the investigation and prosecution of the offender, unless they have a reasonable excuse. This enables offences to be investigated and offenders to be prosecuted. In addition, the report and any subsequent investigation and prosecution by the police will assist the government assessor in deciding the application and to verify the act of violence occurred.

- *Considering application for amendment*

Clause 103(1)(c) allows the government assessor to look at fresh evidence, when considering an application for an amendment to a grant of assistance. This may lead to a reduction in the award of assistance under clause 104(1)(a).

This may potentially breach the FLP that legislation has sufficient regard to the rights and liberties of individuals because the victim may have relied upon the assistance being granted and it may be reduced through no fault of their own.

However, under clause 104(2) the government assessor may only decrease the amount of assistance granted if: the applicant asks for the decrease; the expenses have not been incurred and therefore the assistance has not already been granted; or the decrease relates to expenses or loss of earnings where the applicant's circumstances have changed. This makes the potential breach less objectionable because it links the decrease to the applicant's circumstances changing, rather than the government assessor having a fresh look at whether the original decision on the person's application for assistance was correct.

Legislation should not confer immunity form proceeding or prosecution without adequate justification - *Legislative Standards Act 1992*, section 4(3)(h)

- *Protection from civil liability*

Clause 143 confers immunity from civil liability on persons involved in administering the Bill. Conferral of immunity potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals, including not conferring immunity from proceeding without adequate justification. The immunity is justified because it is limited to acts or omissions that are made honestly and without negligence. Also, any potential liability instead attaches to the State. This follows the usual approach in Queensland.

Legislation should have sufficient regard to the institution of parliament - *Legislative Standards Act 1992*, section 4(4)

- *Deciding amount of assistance generally*

Clause 85(2)(c) allows a regulation to add to the matters the government assessor may consider when deciding the amount of assistance to be granted. These matters may result in a reduction of the assistance that would otherwise be payable to the person. This potentially breaches the FLP that legislation have sufficient regard to the institution of Parliament because it delegates legislative power to the Governor-in-Council, and effectively allows the Governor-in-Council to amend this section.

This regulation-making power is necessary to ensure flexibility to add new matters that the government assessor may need to consider as they are identified. It will also allow the regulation to include matters for specific types of applications or specific circumstances. The regulation will be subject to disallowance by Parliament.

- *Temporary regulation-making power*

Clause 147 allows a regulation to be made to amend the Bill and therefore potentially breaches the FLP that legislation should have sufficient regard to the institution of Parliament. The breach is justified because the effect of the clause is that regulations can only be made where they benefit individuals because they either increase the types of victims who can seek assistance (by adding to the list of offences that are a 'prescribed offence' under clause 25(8)) or increase the amount of assistance a victim may receive (by moving an act of violence into a higher category under schedule 2, item 3).

The temporary regulation is to be used where it is necessary for the department to respond quickly to a policy change. Because the regulation has a life of only 1 year, requires the department to seek an amendment of the Act within that year.

- *Transitional regulation-making power*

Clause 148 allows a transitional regulation to amend the Bill and therefore potentially breaches the FLP that legislation should have sufficient regard to the institution of Parliament. However, the regulation is directed at preserving a person's existing rights under the *Criminal Offence Victims Act 1995* (COVA) and the Criminal Code, chapter 65A, and is therefore beneficial. In addition, the transitional regulation-making power, and any transitional regulation made under it, is given a limited life of 2 years after the commencement of the clause.

Legislation should have sufficient regard to the rights and liberties of individuals including not adversely affect rights and liberties, or imposing obligations, retrospectively - *Legislative Standards Act 1992*, section 4(3)(g)

- *Person may apply for assistance*

Chapter 6 (Repeal and transitionals provisions) changes a person's entitlement under COVA and Chapter 63A of the Criminal Code into an entitlement for assistance under this Bill. In addition, clause 179 overrides the current availability of an extension of time under section 41 of COVA, and it is replaced with the scheme manager's ability to approve an application for assistance under new scheme based on similar provisions to the extension of time criteria in chapter 3. This potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals, including by adversely affecting rights.

The Review recommended there should be no transitional period for victims to make applications under COVA and the Code once the new scheme commences. Once the new scheme commences a person who was eligible to make an application under COVA or the Code will be eligible to make an application under the new scheme only.

The provisions do not remove a person's entitlement but rather replace it with a different entitlement, consistent with government policy. A person whose rights have crystallised because they have lodged an application under the previous regime are not affected (chapter 6). In this instance, the

decision will continue to be made under the previous regime and appeals heard by the Court of Appeal.

This breach is justified because the exclusion of such a transitional provision would mean that there would be three schemes operating in Queensland at one time – effectively perpetuating and multiplying the confusion, complexity and delays that exist under the current regime.

Awards under COVA and assistance under the Bill have a different focus. An individual victim may consider they are disadvantaged if they receive a lesser amount under the Bill compared to what they would have received under COVA due to the change of approach in providing assistance (and not compensation) based on individual needs. However, they will receive more timely assistance to help them recover from the act of violence rather than a lump sum years after the event. On the other hand some victims will receive a greater award under the Bill (if they require a significant amount of ongoing assistance).

In addition, the Bill also includes primary victims that are not eligible under COVA. For example, victims of indictable offences dealt with summarily, summary offences, and offences dealt with by way of a juvenile justice conference or alternative dispute resolution.

The advantages of the new scheme include that the method of assessment will be fairer and more tailored, as it is based on the needs of the victim rather than awards based on set amounts for the type of injury (as under the current scheme).

Under the Bill, most victims will have a greater chance of recovery (and a quicker recovery) from the effects of the crime through: early payment (including interim payments) for goods and services needed to recover from the crime; reimbursement for loss of earnings up to $20,000 for primary and parent secondary victims; and a lump sum payment of special assistance up to $10,000 for primary victims and assistance up to $10,000 for related victims (a symbolic gesture from the State).

The move to a financial assistance scheme brings Queensland into line with best practice in government assistance to victims in Australia and addresses criticisms of the current scheme. Victims groups and relevant Government departments were involved in developing this change in focus to early treatment and support the proposed scheme.

The Government is undertaking a significant media campaign (for example, by way of newspaper advertisements) to alert victims to the new

scheme and how the transitional provisions will affect them regarding the commencement of the new scheme. This will enable them to make an application under COVA or the Code should they wish to do so.

- *Mixed applications by family members*

Under clause 175 and 176, related victims will be treated differently depending on whether all related victims of the same kind apply after the commencement or some apply before and some after commencement.

This potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals, including by adversely affecting rights.

If all related victims of the same kind apply after the commencement, they are entitled to a pool of $100,000, and up to $50,000 each within that pool.

If one or more related victims apply before the commencement (in which case they are entitled to a pool of only $39,000), and other later related victims apply after commencement, the other later related victims are only eligible for the remainder of that pool of $39,000.

A related victim's entitlement is therefore dependant on the actions of other related victims. Under COVA, the State would have tried to contact all related victims under the repealed Act, and any related victim who applies after a decision is made is restricted to the remainder of the pool.

On the other hand, allowing a related victim access to the assistance limit under the new scheme would disadvantage related victims who have already had their applications decided because they could only have obtained a maximum of $39,000 between them, and the new applicant could obtain up to $50,000, within the total pool of $100,000.

Given the above, the potential FLP breach is justified. The Bill adopts the approach that is considered to cause the least disadvantage.

Consultation

On 26 November 2007, the Premier and the then Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland (the Attorney-General) announced the Victims of Crime Review to examine how to make the scheme simpler and easier to access, and whether victims' services can be more effectively coordinated.

An Issues Paper was released on 6 December 2007 canvassing various questions for consideration in the Review. The Issues Paper was available

on the DJAG website and copies of the paper were sent to key stakeholders from the legal profession and organisations involved with victims' services. Over thirty submissions were received from a variety of individuals, community groups and government agencies from November 2007 to February 2008. The submissions were analysed and taken into account in making the Review recommendations. The five key themes raised in the public submissions were:

- The current eligibility criteria for compensation are too narrow;
- Administration of the scheme should be simpler and more transparent;
- Assistance to victims needs to be timely;
- The legal and medical costs to victims of crime need to be reduced; and
- There is currently poor coordination and knowledge of existing services available to victims.

In addition, an Inter-departmental Working Group (IDWG) was established in December 2007 and an External Community Reference Group (ECRG) was established in February 2008. Both groups informed the Review recommendations. The IDWG comprised the key government departments that deal with victims, and the ECRG comprised key victim support groups and legal associations.

The Review also gathered information from public submissions, comparative research on victims schemes in operation in Australia and internationally, and consultation with Victoria and New South Wales in relation to their victims schemes. Overwhelmingly, the results of consultation showed that the government response to victims of crime should focus on the recovery of the victim. The key findings of the Review were:

(a) the scheme should provide financial assistance to a more comprehensive range of victims through interim and final payments for specific needs related to their recovery from the effects of the crime;

(b) the scheme should be simpler and easier to access and reduce victims' costs and contact with the court and offender; and

(c) services available to victims should be more coordinated to provide a continuum of care that will assist victims to recover and get on with their lives sooner.

In May 2009, a consultation draft of the Bill was sent to providers of domestic violence services and funeral service providers. The consultation draft of the Bill was also sent to members of the ERCG comprising: Queensland Homicide Victims Support Group; Aboriginal and Torres Strait Islander Legal Service; Relationships Australia; Bravehearts; Gold Coast Centre Against Sexual Violence Inc.; Australian Lawyers Alliance; Queensland Law Society; Working Against Abuse Service; Protect All Children Today Inc.; Immigrant Women's Support Service; Elder Abuse Prevention Unit; Women's Legal Service Queensland; Domestic Violence Court Assistance Network; Queensland Domestic Violence Services Network; Women Working with Women with Intellectual and Learning Disabilities; Queensland Advocacy Incorporated; Caxton Legal Centre; and Court Network. Three meetings were held were the ERCG in December 2008, May 2009 and July 2009.

In May 2009, a consultation draft of the Bill was sent to all Government departments and including members of the IDWC comprising: the Department of the Premier and Cabinet; Queensland Health; Queensland Treasury; Department of Communities; Department of Community Safety; Legal Aid Queensland; Office of the Director of Public Prosecutions; Commission for Children and Young People and Child Guardian Office of the Adult Guardian; and the Queensland Police Service.

Notes on Provisions

Chapter 1 Preliminary

Clause 1 establishes the short title of the Bill as the *Victims of Crime Assistance Act 2009*.

Clause 2 provides that the Bill, other than clauses 127, 128, 131 and 138 and certain definitions in the schedule 3 dictionary will commence on a day to be fixed by proclamation.

Clauses 127, 128 and 138 provide for the appointment of the scheme manager, government assessors and the victim services coordinator. These clauses commence on assent to enable these positions to be appointed prior to the Bill commencing.

Clause 131 provides for guidelines to be made about the performance of a function or exercise of a power under the Bill by the scheme manager or a government assessor. This clause commences on assent to enable the guidelines to be made and training of the scheme manager and government assessors to occur ready for commencement of the scheme.

The schedule 3 dictionary definitions mentioned in this clause relate to the provisions that are to commence on assent.

Clause 3 provides that the purpose of the Bill is to declare the fundamental principles of justice to underlie the treatment of victims by certain entities dealing with them; to provide a mechanism for implementing the fundamental principles and processes for making complaints about conduct inconsistent with the principles; and to provide a scheme to give financial assistance to certain victims of acts of violence.

Subsection (2) states that the objectives of the scheme to provide for financial assistance are—

(a) to help victims of acts of violence to recover from the acts by giving them financial assistance; and

(b) for primary victims, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the injuries suffered by them; and

(c) for related victims who have suffered distress, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the distress suffered by them; and

(d) to add to other services provided by or for government to victims of acts of violence.

Subsection (3) provides that grants of financial assistance (including special assistance and assistance as mentioned in clause 49(1)(f)) to victims of acts of violence under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.

Clause 4 states that the dictionary in schedule 3 defines particular words used in this Bill.

Chapter 2 Fundamental Principles of Justice for victims

Part 1 Preliminary

Clause 5 defines who a "victim" is for the purposes of the application of the fundamental principles of justice for victims of crime. By virtue of subsection (1), a victim is a person who has suffered harm because: a crime is committed against that person; or because the person is a family member or dependant of a person who has died or suffered harm; or as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against that person.

The terms "family member" and "dependant" are defined in the schedule 3 dictionary.

The definition is intentionally broader than what appears in part 2 of COVA because the definition of "crime" in clause 25 now incorporates all offences against the person of someone and not just indictable offences or indictable offences dealt with summarily. The definition of victim in clause 5(1)(a) is consistent with the definition of a primary victim under chapter 3 (although a primary victim under chapter 3 must also fall within the definition of act of violence). This is to ensure the type of offences against the person of someone is consistent throughout the principles and chapter 3.

The reference to "against the person of someone" in clause 25(8) is adopted from COVA as it is only intended to extend the principles to victims of acts of violence, and not property offences (for example, break and enter, fraud, extortion), or other offences that are not committed against the person of someone (for example, commit public nuisance).

Victims of prescribed offences are eligible for assistance if they suffer an injury within the meaning of the definition of injury in clause 27. It is not intended that the term "against the person of someone" be restricted to bodily injuries but that it also includes other injuries within the definition of clause 27, for example, a mental illness or disorder.

The definition of "prescribed offence" in clause 25(8) provides that primary victims who suffer an injury from attempts or conspiracy to commit an offence against the person or from threats, fear or apprehension

of violence are included as well as those who suffer harm through the application of direct violence.

Clause 5 has also been broadened from COVA by removal of references to "violence" being committed against the person "in a direct way" that were used in section 5 of COVA. This ensures there is no doubt that victims who suffer harm from threats, fear or apprehension of violence are included as well as those who suffer harm through the application of direct violence.

Clause 6 provides that the purposes of declaring the principles are to advance the interests of victims by stating some fundamental principles of justice that prescribed persons are to observe in dealing with them, and inform victims of principles they can expect will underlie the treatment of them by prescribed persons.

"Prescribed person" is defined in the schedule 3 dictionary to mean a government entity within the meaning given by the *Public Service Act 2008*, an investigatory agency, a prosecuting agency or an officer, member or employee of those entities.

Clause 7 sets out the limitations of the application of the principles. It states the principles: are not enforceable by criminal or civil redress; do not affect the validity or give grounds for review, of anything done or not done, or a decision made or not made in contravention of them; do not affect the operation of any law (including the *Criminal Practice Rules 1999*, the rules of evidence in criminal proceedings and obligations of disclosure); and do not affect confidentiality obligations.

It preserves disciplinary action being taken against a prescribed person who contravenes internal processes adopted by government entities in implementing the principles (subsection (2)).

Part 2 Declaration of Fundamental Principles

Clause 8 is a general principle applicable to all prescribed persons requiring them to treat victims with courtesy, compassion, respect and dignity when dealing with them and to take into account and be responsive to the particular needs of the victim. The clause lists examples of those

needs which are consistent with characteristics identified in anti-discrimination legislation.

In clause 8, the definition of victim in clause 5 is extended to include people who suffer harm as a direct result of witnessing a crime committed against someone else (subsection (2)).

Clause 9 is a general principle applicable to government entities requiring them not to disclose a victim's personal information held by them other than as authorised by law.

The clause 5 definition of victim is extended in clause 9 to include people who suffer harm as a direct result of witnessing a crime committed against someone else (subsection (2)).

Clause 10 is a general information provision requiring government entities to provide victims with timely information about a broad base of services including: available welfare, health, counselling, medical, legal help; financial assistance, compensation and restitution entitlements; and any other relevant support services available.

Examples of other relevant support services are: the Victims Assistance Unit within the Department of Justice and Attorney-General; Queensland Health Victims Support Service; non government organisations that provide support services to victims; and Victim Liaison Officers within the Office of the Director of Public Prosecutions.

The provision of such information, in clause 10, is limited to: the extent giving the information is relevant to the entity's function; and it is reasonable and practicable to provide the information. This is to avoid burdening entities with the responsibility when it is not relevant to their functions and ensures workability having regard to practical limitations that may be experienced by entities from time to time.

Clause 11 requires an investigating agency, as far as reasonably practicable, to provide to a victim certain information about the investigation of the crime committed against the victim, if the victim asks for it. The provision ensures victims who wish to be updated throughout the course of an investigation can be provided with the information detailed under clause 11. The clause includes a "reasonably practicable" element to ensure workability having regard to practical limitations that may be experienced by investigating agencies from time to time.

Clause 139 states the victim services coordinator's functions which include raising awareness amongst victims of their entitlement to ask for such information.

Clause 12 requires a prosecuting agency, as far as reasonably practicable, to provide to a victim certain information about the prosecution of the crime committed against the victim, if the victim asks for it. The provision ensures victims who wish to be updated throughout the course of a prosecution can be provided with the information detailed under clause 12. It includes a "reasonably practicable" element to ensure workability having regard to practical limitations that may be experienced by prosecuting agencies from time to time.

Clause 13 states that a victim who is a witness for the prosecution is to be informed about the trial process and the victim's role as a witness by the prosecuting agency.

Clause 14 requires investigating agencies, prosecuting agencies and court staff to minimise a victim's contact with, and protect the victim from violence and intimidation by, an accused person (as well as defence witnesses and family members supporting the accused) throughout a court proceeding and within a court building. Investigating and prosecuting agencies' responsibilities are limited to when they are present during court proceedings and within a court building to avoid imposing a positive obligation on agencies whose primary place of business may not be those locations. To allow for flexibility having regard to the various set up of court (for example some rural and remote court houses), the principle applies as far as reasonably practicable.

Clause 15 permits a victim to give the prosecutor the details of the harm caused to the victim for the purposes of sentence proceedings. There is no requirement of the victim to provide the details; however, there is also no inference of little or no harm if they nominate not to provide the details.

The provision stipulates the details may be provided by way of a Victim Impact Statement (VIS). The VIS may be prepared by the victim or someone else if the victim can not provide a statement because of the victim's age or impaired capacity. VIS is defined within the clause as a written statement signed and dated, stating the particulars of the harm. The VIS may have relevant documents such as medical reports, photographs or drawings attached to it.

The prosecutor maintains the discretion on what information is submitted during the proceeding (subsection (3)) and continuing the sentence in the

absence of details of harm in certain circumstances (subsection (2)). This is to ensure justice is conducted efficiently, that flexibility within the sentencing system is maintained and to preserve the prosecutor's role in the sentence proceeding. This is particularly necessary given the extension of the principles to all offences against the person, the large proportion of offenders who plead guilty and the time consuming processes associated with such proceedings on any given day in the lower and higher courts throughout the State.

As noted above in relation to clause 7, the rules of evidence regarding the admissibility of the details of harm (whether presented verbally or via VIS) are preserved. However, to ensure clarity in relation to this aspect of the principles, the clause reiterates the current rules, practices and procedures relating to a court's discretion on what and how it receives the evidence of harm. For example, from time to time, victims may request (via the prosecutor) to read the VIS aloud during the sentence proceeding. The clause does not prevent such requests, but maintains the current process by leaving the question of whether the victim can read the VIS aloud to the sentencing court's discretion.

Clause 16 requires Queensland Corrective Services (in relation to adult offenders) and the Department of Communities (in relation to juvenile offenders) to give the victim specific information about a convicted offender, if the victim asks for it. This principle will run in conjunction with the victims register administered under the *Corrective Services Act 2006*.

Part 3 Implementing principles

Clause 17 imposes an obligation on government entities to prepare and adopt appropriate guidelines and processes for implementing the principles. The guidelines and processes must be directed at helping officers, members and employees of the entity to conduct themselves in a way that is consistent with the principles.

Clause 18 imposes an obligation on prescribed persons to comply with the principles that apply to them. It states that a prescribed person must not, in dealing with the victim, engage in conduct that is inconsistent with the principles. This is limited to dealings with a person they are aware or

ought reasonably to be aware is a victim and only to the extent each of the principles specifically apply to them. For example, a nurse at a public hospital who treated a victim would not be obliged under clause 11 to provide information to a victim on the police investigation if the victim requested it. A refusal by the nurse to provide the information would not be a breach of the principles.

Clause 19 applies where a victim believes an officer, member or employee of the entity has engaged in conduct that is inconsistent with the principles. In those circumstances a victim may make a complaint about the conduct to either the government entity responsible for the prescribed person's conduct, or the victim services coordinator (VSC).

The VSC is established under clause 139 of the Bill. The role will exist within a new Victims Assistance Unit to be created within the department when the Bill commences. The VSC's functions are set out in clause 139. Its functions include facilitating the resolution of complaints, but only where provided for under the complaint resolution process of a government entity (clause 139(1)(g)), that is, only by arrangement with the government entity. Under clause 19(3), if the victim complains to the VSC, the VSC must then either facilitate the complaint after informing the government entity of the receipt of the complaint, or (in cases where no such facilitating arrangement exists) refer the complaint to the government entity for resolution.

The VSC will fall under the definition of a "prescribed person". To ensure consistency, compliance with the Bill and an open and accountable victims unit, the unit will have its own guidelines for dealing with complaints on the principles of justice, to which a victim could be referred in the event they wish to complain about the VSC or another member of the unit.

Clause 20 applies once a complaint is received by a government entity in relation to a breach of the fundamental principles, whether the complaint came directly from the victim or via the VSC. The government entity must give the victim information about the complaints process and take all reasonable steps to resolve the complaint as soon as is reasonably practicable (subsection (2)). It must also refer the complaint to the VSC if, by arrangement with the entity, the VSC is to facilitate the resolution of the complaint (subsection (4)).

In cases where the VSC has referred the complaint to a government entity for resolution and played no further role, subsection (5) requires the entity, as soon as practicable after the complaint is resolved, to inform the VSC of

how the complaint was resolved. This allows the VSC to keep a record of complaints processes referred through that person and identify any systemic issues or concerning patterns that may be addressed through other functions of the VSC, for example: to develop educational and other programs to promote awareness of the needs of victims and of the principles; and to help government entities to develop and comply with processes for implementing the principles; and processes for resolving complaints.

The use of the term "resolve" contemplates a number of possible outcomes when dealing with the complaint. The processes under clause 19 do not assume that the complaint will necessarily be resolved in a way satisfactory to the person who made it.

Chapter 3 Victims Financial Assistance Scheme

Part 1 General

Clause 21 states that this chapter establishes a scheme for the payment of financial assistance to a victim of an act of violence, or 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.

Subsections (2) and (3) set out when chapter 3 does not entitle a person to the payment of financial assistance for an act of violence. All the matters listed in subsection (2) and (3) are contained in separate clauses of chapter 3, for example, the person committed the act (see clause 26(6)) or conspired to commit the act (clause 79).

Subsection (4) provides that this chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence to the extent the person has received, or will receive, payment of an amount in relation to the act of violence from another source. Clauses 86 and 106 outline how relevant payments from other sources are treated under the Bill.

Clause 22 provides that the granting of financial assistance under the scheme to a person does not limit a right, entitlement or remedy the person has under common law or otherwise.

Clause 23 applies if a person is a victim of an act of violence in 2 or more of the following capacities—

(a) primary victim;

(b) parent secondary victim;

(c) witness secondary victim;

(d) related victim.

The person is eligible for victim assistance for the act of violence in only 1 of the capacities. However, this section does not prevent a witness secondary victim or related victim of an act of violence also applying for assistance for funeral expenses for the death of a primary victim of the act. Funeral expenses are treated as separate applications under the Bill (see chapter 3, part 10) although if the application for victim assistance and funeral expenses are on the one approved form, the government assessor may consider the applications at the same time (see clause 55).

Clause 24 provides for the effect of death on eligibility for assistance. Subsection (1) provides that despite any other Act or law, if a person entitled to assistance dies, the person's entitlement to assistance does not survive for the benefit of the person's estate.

Subsection (2) provides that if a person applies for assistance but dies before the application is decided, the application lapses.

Subsection (3) provides that if a person is granted assistance but dies before the assistance is paid to the person, the assistance is taken to never have been granted and the person's application lapses.

If a primary victim dies as a result of an act of violence, although their entitlement does not survive, a close family member or dependant may apply for assistance as a related victim, subject to the eligibility criteria.

Part 2 Basic concepts

Clause 25 defines the term "act of violence" for the purposes of Chapter 3. This is a key term in the Bill as there must be an act of violence for a person to seek assistance under chapter 3. An "act of violence" is a crime or series of related crimes, both of which are defined in clause 25.

Under subsection (2), a crime includes an act or omission constituting a prescribed offence disregarding any justification, excuse or defence. It does not matter whether the person who did the act or made the omission has been identified, arrested, prosecuted or convicted of the prescribed offence. The reference to a justification, excuse or defence in subsection (2)(a) is clarified under subsection (3) to not include a matter mentioned in the Criminal Code section 31(1)(a) or (b) or is authorised under an Act.

An example of an act of violence is an assault by family member. The victim may report this matter to the police but may choose not to press charges but instead seeks a domestic violence order against the offender. This type of act of violence is captured by the definition of "crime" as it constituted a prescribed offence (assault) and it is immaterial whether that the person who committed the act or made the omission has been identified, arrested, prosecuted or convicted in relation to the act or omission. If the domestic violence did not constitute a prescribed offence (e.g. it was a property offence) it does not fall within the definition of "crime: and therefore is not an act of violence.

The reference to "against the person of someone" in clause 25(8) is adopted from COVA as it is only intended to extend the principles to victims of acts of violence, and not property offences (for example, break and enter, fraud, extortion), or other offences that are not committed against the person of someone (for example, commit public nuisance).

Victims of prescribed offences are eligible for assistance if they suffer an injury within the meaning of the definition of injury in clause 27. It is not intended that the term "against the person of someone" be restricted to bodily injuries but that it also includes other injuries within the definition of clause 27, for example, a mental illness or disorder.

The definition of "prescribed offence" in clause 25(8) provides that primary victims who suffer an injury from attempts or conspiracy to commit an offence against the person or from threats, fear or apprehension of violence are included as well as those who suffer harm through the

application of direct violence. For example, stalking is captured as an offence against the person of someone.

Subsection (7) provides that for chapter 3 a reference to an act of violence in relation to an application for assistance includes a reference to an alleged act of violence. This is because the perpetrator of the act of violence may not have been apprehended or charged, let alone convicted of the offence.

Clause 26 defines who is a primary, secondary, parent secondary, witness secondary or related victim for the purposes of the Bill

Under subsection (1), a primary victim, of an act of violence, is a person who dies or is injured as a direct result of the act being committed against the person.

Subsection (2) defines a secondary victim, of an act of violence, as a person who is a parent secondary victim or witness secondary victim of the act.

Under subsection (3), a parent secondary victim, of an act of violence, is a person who is a parent of a child who is injured as a direct result of the act being committed against the child; and is injured as a direct result of becoming aware of the act. For example, where a parent of a child suffers an injury of post-traumatic stress disorder (that is, a mental illness or disorder) as a result of becoming aware of a sexual offence being committed against their child. The term "child" is defined in the schedule 3 dictionary as a person under the age of 18 years.

The meaning of 'parent' is defined in the schedule 3 dictionary.

Subsection (4) defines a witness secondary victim, of an act of violence, as a person who is injured as a direct result of witnessing the act. Witness is defined in the schedule 3 dictionary to include hearing the act or crime being committed, for example, a child in another room hearing an act of violence being committed against their parent.

Subsection (5) provides that a related victim, of an act of violence, is a person who is a close family member, or a dependant, of a primary victim of the act who has died as a direct result of the act.

Subsection (7) provides, that in this section, a close family member of a primary victim of an act of violence who has died as a direct result of the act, means a family member of the primary victim who had a genuine personal relationship with the primary victim when the primary victim died.

Under subsection (6), a person is not a victim of an act of violence, of a kind mentioned in subsections (1) to (5), if the person committed the act of violence.

Clause 27 defines the term "injury" for chapter 3. The term "mental illness or disorder" is defined in the schedule 3 dictionary to mean an illness or disorder that is of a cognitive, neurological or psychiatric nature. It is only intended to apply to a diagnosed mental illness or disorder. However, for a victim of a sexual offence subsection (1)(f) provides for adverse impacts suffered by the victim. These adverse impacts are intentionally less than a diagnosed mental illness or disorder given the unique nature and effect on a victim of sexual offences.

Subsection (2) states that for chapter 3, an injury also includes an aggravation of an injury mentioned in subsection (1)(a) to (g), if the aggravation arises as a direct result of an act of violence. To remove doubt, subsection (3) provides that for chapter 3, an aggravation mentioned in subsection (2) is an injury only to the extent of the effects of the aggravation. For example, if a person suffered from a mental illness prior to the act of violence occurring, assistance under chapter 3 is only available to the extent of the effect of the aggravation of the injury by the act of violence. It is not the purpose of the scheme to provide assistance for a pre-existing injury, but rather to provide assistance to recover from the injury as a result of an act of violence to the extent of the aggravation.

Clause 28 states that for chapter 3, exceptional circumstances exist for a victim of an act of violence if, because of the victim's circumstances or the nature of the act, the act has had an unusual, special or out of the ordinary effect on the victim.

Clause 29 provides, for chapter 3, when a person incurs expenses. Chapter 3, part 13 provides for the payment of assistance to a person who is granted assistance, including providing for payments to someone else who has paid expenses on the person's behalf or who has given the person an invoice for the payment of expenses.

Clause 30 provides that, for chapter 3, a reference to the government assessor in relation to an application for assistance is a reference to the government assessor who, for the time being, is dealing with the application.

Part 3 Relationship with workers' compensation

Clause 31 states that chapter 3, part 3 applies to a person if they are a primary victim, witness secondary victim, or related victim, and they are entitled to compensation under the Workers' Compensation Act. The purpose of this part is to specifically deal with when a person who falls within clause 31 can apply for assistance, and for what type.

Parent secondary victim has not been included in this part because under the Workers' Compensation Act a parent of child who is injured will not get workers' compensation. They only receive workers compensation if their child dies and in this case they will be a related victim. As a parent secondary victim is excluded from this part they are eligible to apply for assistance under the new scheme without restriction by part 3, chapter 3.

Clause 32 states the assistance for which the person is eligible if the person is paid compensation under the Workers' Compensation Act. The purpose of this clause is to restrict a person, who is eligible for assistance under the Workers' Compensation Act, to financial assistance under the Bill to only those components that they cannot receive under the Workers' Compensation Act, and to be eligible for special assistance and non-expense assistance in certain circumstances.

Subsection(2) provides that if the person is a primary victim, the person is eligible for the following assistance—

(a) assistance under clause 38(1) for—

(i) the components mentioned in clause 39(f) and (g), (that is, expenses incurred by the victim for loss of or damage to clothing the victim was wearing when the act of violence happened; and if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence); and

(ii) special assistance as mentioned in subsection (6);

(b) additional assistance under clause 38(2), (that is, up to $500 for legal costs incurred by the victim in applying for assistance under the Bill).

Subsection (3) provides if the person is a witness secondary victim of a more serious act of violence, the person is eligible for the following assistance—

(a) assistance under clause 44(1)(a) for the component mentioned in clause 45(1)(f), (that is, if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence); and

(b) additional assistance under clause 44(2), (that is, up to $500 for legal costs incurred by the victim in applying for assistance under the Bill).

(c) funeral expense assistance.

Subsection (4) states that a person is eligible for funeral expense assistance, if the person is a witness secondary victim of a less serious act of violence.

Subsection (5) states that if the person is a related victim of an act of violence, the person is eligible for the following assistance—

(a) assistance under clause 48(2) for—

(i) the components mentioned in clause 49(1)(a), (b), (c), (d) and (g), (that is: reasonable counselling, medical, incidental travel expenses and report expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the primary victim's death; and if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the primary victim's death); and

(ii) non-expense assistance as mentioned in subsection (7);

(b) additional assistance under clause 48(3), (that is, up to $500 for legal costs incurred by the victim in applying for assistance under the Bill).

Subsection (6) provides that for subsection (2)(a)(ii) the person is eligible for special assistance as follows—

(a) if the person has not been paid lump sum compensation under the Workers' Compensation Act—special assistance of the amount that would ordinarily be payable to the person;

(b) if the person has been paid lump sum compensation under the Workers' Compensation Act of an amount that is less than the amount of special assistance that would ordinarily be payable to the person—special assistance of the difference between the special assistance that would ordinarily be payable and the lump sum compensation paid.

The purpose of this provision is to enable a person to apply for the difference between any lump sum compensation under workers' compensation and special assistance so they are not disadvantaged by

being required to apply to workers' compensation first. For example, if a person received medical and counselling expenses from workers' compensation for a workplace act of violence committed against them but they did not receive any lump sum compensation as they were assessed with a 0% permanent impairment, they can apply for special assistance.

Subsection (7) provides that for subsection (5)(a)(ii), the person is eligible for non-expense assistance—

(a) only if the amount of the compensation paid under the Workers' Compensation Act is less than the amount of the non-expense assistance that would ordinarily be payable to the person; and

(b) only for the difference between the non-expense assistance that would ordinarily be payable to the person and the compensation paid under the Workers' Compensation Act.

Non-expense assistance is defined in subsection (8) to mean the total amount of assistance for a component mentioned in clause 49(1)(e) or (f), that is, an amount of up to $20,000 that, but for the death of the primary victim, the related victim would have been reasonably likely to receive from the primary victim, during a period of up to 2 years after the primary victim's death, and an amount of up to $10,000 for distress suffered, or reasonably likely to be suffered, by the related victim as a direct result of the primary victim's death.

Clause 33 provides that for chapter 3, part 3, a person's workers' compensation application is finally dealt with, under the Workers' Compensation Act, when the person's total entitlement to compensation has been decided under that Act. If a person defers making a decision under the Workers' Compensation Act about when to accept an offer of lump sum compensation the decision is not finally dealt with until the person accepts or rejects the offer of lump sum compensation.

Clause 34 states when a person who falls within chapter 3 part 3 (see clause 31) may apply for victim assistance. The term "victim assistance" is defined in the schedule 3 dictionary. The person can only apply if they have made a workers' compensation application, and the workers' compensation application has been finally dealt with. Clause 33 provides for when a workers' compensation application has been finally dealt with. The dictionary in schedule 3 defines a workers' compensation application as an application for compensation under the Workers' Compensation Act.

Clause 34 only applies to victim assistance and not funeral assistance as a person who is eligible for funeral expenses (for example, witness secondary victim) can apply immediately under chapter 3 without having to make a workers' compensation application first as they will not receive workers' compensation for funeral expenses. A related victim is not eligible for funeral expenses under clause 32 as they will receive these expenses as workers' compensation.

Subsection (2) sets out the time limits for a person who falls within chapter 3 part 3 to apply for victim assistance. The time limits run from when the person's workers' compensation application is finally dealt with. For a person who is a child (that is, under the age of 18 years) when the compensation application is finally dealt with, they may apply for victim assistance before they turn 21. These time limits are consistent with the time limits for victim assistance under clauses 54(1) and 58, but run from when the workers' compensation application is finally dealt with as a person cannot apply for victim assistance prior to this time, other than in accordance with clause 35. As the time limits in subsection (2) apply to application under chapter 3, part 3, subsection (3) replaces the time limits for financial assistance under clauses 54(1) and 58.

Under subsection (4), if a person has not made a workers' compensation application, they may apply to the scheme manager for approval to make an application for assistance in the circumstances set out in subsections (a) to (c). The policy is that a person must apply for workers' compensation before applying for victims assistance, or if they are out of time to apply for workers' compensation they must apply to the insurer for a waiver of the time limits. If the waiver is not granted and the scheme manager is reasonably satisfied the person has a reasonable excuse for not making the workers' compensation application within the prescribed period, having regard to any of the matters listed, an application can be made for victim assistance.

Clause 35 provides that despite clause 34 the person may, after making an application for compensation under the Workers' Compensation Act but before the application is finally dealt with under that Act, apply for victim assistance for which the person is eligible under clause 32(2)(a)(i) or (b), (3)(a) or (b) or (5)(a)(i) or (b). A person who is eligible for funeral expense assistance under this part can apply at any time.

The government assessor may decide the application before the application is finally dealt with under the Workers' Compensation Act. As the application is for components of assistance that a person is not eligible for

under the Workers' Compensation Act, they are able to have this assistance under chapter 3 decided before the workers' compensation application is decided. This ensures that the applicant is not disadvantaged by being required to apply to, and have the application decided, under the Workers' Compensation Act before the chapter 3 application can be decided.

Clause 36 applies if a person makes an application under clause 35 (original application) and is granted victim assistance; and the person is eligible for special assistance under clause 32(6) or non-expense assistance under clause 32(7). The person may, within the period mentioned in clause 34(2), apply for an amendment of the victim assistance granted to the person to allow for the special assistance or non-expense assistance.

Subsection (3) provides for the information that must be included in the application for amendment (amendment application).

Under subsection (4), the amendment application must be decided by the government assessor who decided the original application or, if they are not available to decide, another government assessor nominated by the scheme manager.

Subsection (5) provides that certain clauses of the Bill, (that is, clauses 63, 64, 73, 74, 77 and part 12, division 5) apply in relation to the amendment application in the same way as they apply in relation to the original application.

Under subsection (6), the government assessor must give the person notice of the assessor's decision on the amendment application. If the decision is to refuse the application or to amend the assistance granted in a way other than sought by the person, under subsection (7), the notice must state the decision, the reasons for the decision, and the internal review details for the decision.

Under subsection (8), the government assessor deciding the amendment application may increase the victim assistance granted to the person even if the increase will cause an assistance limit to be exceeded.

Subsection (9) provides that part 13, division 2, applies to an increase in victim assistance granted under this clause in the same way as it applies to the original grant of victim assistance.

Subsection (10) provides that in this clause 'non-expense assistance' is defined by clause 32(8).

Part 4 Primary victims

Clause 37 states that a primary victim of an act of violence is eligible for assistance. Clause 26(1) defines who is a primary victim of an act of violence and clause 25 defines the term "act of violence". A primary victim is not eligible for assistance if they have died, whether from the act of violence or other causes (clause 24).

Clause 38 provides that $75,000 is the maximum amount of assistance that may be granted to a primary victim. Subsection (2) provides that, in addition to the $75,000, a primary victim may also be granted assistance of up to $500 for legal costs incurred by the primary victim in applying for assistance as a primary victim under the Act. Legal costs are defined in the schedule 3 dictionary.

Clause 39 outlines how the maximum assistance of $75,000 payable to a primary victim may be comprised. Reasonable counselling expenses, reasonable medical expenses, reasonable report expenses, and reasonable incidental travel expenses, of the primary victim may be granted. These terms are defined in the schedule 3 dictionary and refer to the table of costs. Clause 132 sets out that the table of costs are approved by the chief executive and it must be made publicly available and free of charge. When deciding reasonable costs, an official must give proper weight to the table of costs, but is not bound by it.

A primary victim may also receive loss of earnings up to $20,000 (within the $75,000 maximum amount of assistance) during a period of up to 2 years after the act of violence; expenses for loss of or damage to the primary victim's clothing when the act of violence occurred; if exceptional circumstances exist within the meaning of clause 28, other expenses to significantly help the victim recover from the act of violence; and special assistance as determined under schedule 2.

Part 5 Parent secondary victims

Clause 40 states that a parent secondary victim of an act of violence is eligible for assistance. Clause 26(3) defines who is a parent secondary

victim of an act of violence and clause 25 defines the term "act of violence".

Clause 41 provides that $50,000 is the maximum amount of assistance that may be granted to a parent secondary victim. Parent is defined in the schedule 3 dictionary.

Subsection (2) provides that if there is more than one parent secondary victim who was injured as a direct result of an act of violence against their child, a maximum pool of $50,000 is to be shared amongst all parent secondary victims. For example, if one parent's expense amounted to $30,000 and another parent's expenses amounted to $40,000 only a total of $50,000 can be granted to the parents, leaving $20,000 of expenses that cannot be recovered under the Bill as financial assistance.

Subsection (3) provides that, in addition to the $50,000, a primary victim may also be granted assistance of up to $500 for legal costs incurred by the parent secondary victim in applying for assistance as a parent secondary victim under the Act. Legal costs are defined in the schedule 3 dictionary.

Clause 42 outlines how the maximum assistance of $50,000 payable to a parent secondary victim may be comprised. Reasonable counselling expenses, reasonable medical expenses, reasonable report expenses, and reasonable incidental travel expenses, of the parent secondary victim may be granted. These terms are defined in the schedule 3 dictionary and refer to the table of costs. Clause 132 sets out that the table of costs are approved by the chief executive; it must be made publicly available and free of charge. When deciding reasonable costs, an official must give proper weight to the table of costs, but is not bound by it.

A parent secondary victim may also receive, if exceptional circumstances exist within the meaning of clause 28, loss of earnings up to $20,000 (within the $50,000 maximum amount of assistance) during a period of up to 2 years after the act of violence. Subsection (2) provides that if there is more than 1 parent of a child who was injured as a direct result of the act of violence, and there are exceptional circumstances for that parent also, only a combined total of $20,000 may be granted for the loss of earnings. This creates a pool of $20,000, within the pool of $50,000, to be shared amongst the parent secondary victims. It creates a cap on how much of the $50,000 maximum assistance may be granted for loss of earnings. If exceptional circumstances exist, other expenses to significantly help the parent secondary victim recover from the act of violence may also be granted.

Part 6 Witness secondary victims

Clause 43 states that a witness secondary victim of an act of violence is eligible for assistance. Clause 26(4) defines who is a witness secondary victim of an act of violence and clause 25 defines the term "act of violence".

Clause 44 provides that $50,000 is the maximum amount of assistance that may be granted to a witness secondary victim of a more serious act of violence, less any funeral expense assistance granted to the victim, and $10,000 is the maximum amount of assistance that may be granted to a witness secondary victim of a less serious act of violence. The terms "more serious act of violence" and "less serious act of violence" are defined in the schedule 3 dictionary. The term "funeral expense assistance" is also defined in the schedule 3 dictionary and clause 50 sets out the maximum amount of funeral expense assistance for the funeral of a primary victim as $6,000.

Subsection (2) provides that in addition to the $50,000 a witness secondary victim of a more serious act of violence may also be granted assistance of up to $500 for legal costs incurred by the witness secondary victim of a more serious act of violence in applying for assistance as a witness secondary victim under the Act. Legal costs are defined in the schedule 3 dictionary. Witness secondary victims of less serious act of violence are not entitled to legal costs as they are entitled to less components than other categories of victims and the maximum amount of assistance for this category is $10,000.

Clause 45 outlines how the maximum assistance of $50,000 payable to a witness secondary victim of a more serious act of violence may be comprised. Reasonable counselling expenses, reasonable medical expenses, reasonable report expenses, and reasonable incidental travel expenses, of the secondary victim of a more serious act of violence may be granted. These terms are defined in the schedule 3 dictionary and refer to the table of costs. Clause 132 sets out that the table of costs are approved by the chief executive, it must be made publicly available and free of charge. When deciding reasonable costs, an official must give proper weight to the table of costs, but is not bound by it.

A witness secondary victim of a more serious act of violence may also receive, if exceptional circumstance exist within the meaning of clause 28, loss of earnings up to $20,000 (within the $50,000 maximum amount of

assistance) during a period of up to 2 years after the act of violence. Subsection (2) provides that if there is more than 1 witness secondary victim of a serious act of violence for whom exceptional circumstances exist, only a combined total of $20,000 may be granted for the loss of earnings. This creates a pool of $20,000, within the pool of $50,000, to be shared amongst the witness secondary victims. It creates a cap on how much of the $50,000 maximum assistance may be granted for loss of earnings. If exceptional circumstances exist, other expenses to significantly help the witness secondary victim recover from the act of violence may also be granted.

Clause 46 outlines how the maximum assistance of $10,000 payable to a witness secondary victim of a less serious act of violence may be comprised. Reasonable counselling expenses, reasonable medical expenses, reasonable report expenses, and reasonable incidental travel expenses, of the secondary victim of a less serious act of violence may be granted. These terms are defined in the schedule 3 dictionary and refer to the table of costs. Clause 132 sets out that the table of costs are approved by the chief executive, it must be made publicly available and free of charge. When deciding reasonable costs, an official must give proper weight to the table of costs, but is not bound by it.

Part 7 Related victims

Clause 47 states that a related victim of an act of violence is eligible for assistance. Clause 26(5) defines who is a related victim of an act of violence and clause 25 defines the term “act of violence”.

Clause 48 provides that $100,000 is the combined total maximum amount of assistance that may be granted to related victims for an act of violence, less any funeral expense assistance granted for the act of violence to related victims. The term “funeral expense assistance” is defined in the schedule 3 dictionary and clause 50 sets out the maximum amount of funeral expense assistance for the funeral of a primary victim.

Subsection (2) provides that an individual related victim is only entitled to a maximum amount of assistance of $50,000, less any funeral expense assistance granted to them for the act of violence.

Subsection (3) provides that in addition to the $50,000 maximum assistance, a related victim may also be granted assistance of up to $500 for legal costs incurred by the related victim in applying for assistance as a related victim under the Act. Legal costs are defined in the schedule 3 dictionary.

Clause 49 outlines how the maximum assistance of $50,000 payable to a related victim may be comprised. Reasonable counselling expenses, reasonable medical expenses, reasonable report expenses, and reasonable incidental travel expenses, of the secondary victim of a more serious act of violence may be granted. These terms are defined in the schedule 3 dictionary and refer to the table of costs. Clause 132 sets out that the table of costs are approved by the chief executive, it must be made publicly available and free of charge. When deciding reasonable costs, an official must give proper weight to the table of costs, but is not bound by it.

A related victim may also be granted an amount of up to $20,000 (within the $50,000 maximum amount of assistance for the individual) that, but for the death of the primary victim, the related victim would have been reasonably likely to receive from the primary victim during a period of up to 2 years after the primary victim's death. Subsection (2) provides that if there is more than 1 related victim, only a combined total of $20,000 may be granted for the loss of earnings. This creates a pool of $20,000, within the pool of $100,000, to be shared amongst the related victims. It creates a cap on how much of the $100,000 maximum assistance may be granted for loss of earnings.

A related victim may also be granted up to $10,000 (within the $50,000 maximum amount of assistance for the individual) for distress suffered, or reasonably likely to be suffered, by the related victim as a direct result of the primary victim's death. If exceptional circumstances exist, other expenses to significantly help the related victim recover from the act of violence may also be granted.

Clause 71 sets out the steps a government assessor must take when deciding an application for assistance by a related victim. Clause 85(2)(b) sets out the matters a government assessor may have regard to when deciding the amount of assistance to be granted to a related victim. Clause 85(4) requires a government assessor to decide the proportion of the assistance limit to be granted to each related victim according to their relative need. Assistance limit is defined in the schedule 3 dictionary.

Part 8 Person who incurs funeral expenses for primary victim's funeral

Clause 50 provides that a person who incurs funeral expenses for the funeral of a primary victim of an act of violence who has died is eligible for assistance (funeral expense assistance). If the person is a witness secondary victim of a more serious act of violence or a related victim, they can claim funeral expense assistance but the amount granted is deducted from the maximum amount of assistance allowed for that category of witness.

Subsection (2) provides that a person who commits the act of violence that killed the primary victim is not eligible for assistance. This is consistent with the requirement under clause 26(6) that a primary, secondary or related victim is not a victim under chapter 3, if they committed the act of violence, and therefore not entitled to victim assistance under the Bill. This ensures that a person does not profit from their acts of violence.

Part 9 Applying for victim assistance

Clause 51 enables a victim to apply for assistance. Victim is defined in the schedule 3 dictionary, for the purposes of chapter 3, to mean a primary, secondary or related victim of the act of violence.

Subsections (2) – (5) set out who may make an application. Subsection (2) provides that in relation to children (that is, a person under the age of 18 years), the child's parent may make the application; or if the child is at least 12 years of age, and is represented by a lawyer, the child may make the application; or someone else approved by the scheme manager. If the child is over the age of 12, but not represented by a lawyer, the child's parent may still apply on their behalf. Under subsection (3), if a person is granted guardianship of the child under a child protection order under *Child Protection Act 1999*, or a court has decided or ordered that a person has the right and responsibility to make decisions about a child's daily care other than a temporary order, the reference to the child's parent in subsection (2)(a) is taken to be that person.

However, an approved carer of the child is excluded from being a parent of the child under subsection (3)(c) given that the chief executive of the department in which the *Child Protection Act 1999* (chief executive (child protection)) is administered, has guardianship or the right and responsibility to make decisions about a child's daily care whenever an approved carer is appointed. An approved carer (defined in the schedule 3 dictionary) is still considered a parent for the purposes of making an application for assistance as a parent secondary victim (see the definition of parent in the schedule 3 dictionary). However, the chief executive (child protection) is not a parent for the purposes of making an application as a parent secondary victim (see the definition of parent in the schedule 3 dictionary).

If a person has a temporary order for the right and responsibility to make decisions about a child's daily care, they are not considered the parent for the purposes of subsection (2)(a) by virtue of subsection (3). Temporary order is defined in the schedule 3 dictionary to include a temporary assessment order or a court assessment order under the *Child Protection Act 1999*. However, a person with a temporary assessment order, such as the chief executive (child protection), could seek the approval of the scheme manager to apply on behalf of the child under subsection (2)(c). For example, where the parents were the perpetrator of the act of violence or if the parents were unwilling to make an application and it is in the best of the child to make the application for assistance. Each application under subsection (2)(c) will be decided on a case by case basis.

Subsection (4) provides that if the victim is an adult with an impaired capacity certain persons may make an application on behalf of the victim. The range of decision-makers in subsection (4)(a) to (d) follows the range of substitute decision-makers in the *Guardianship and Administration Act 2000.*

Under subsection (6) the applicant is the victim even though someone else may be making the application on their behalf and signing the statutory declaration on their behalf (see clause 52(1)(d)). For example, if the victim has an impaired capacity and the application is made by their guardian for a legal matter under subsection (4), the victim is still the applicant for the purposes of the Bill.

A lawyer may submit an application for a victim as the victim's representative (just as any other representative may) but does not mean they are making the application on behalf of the victim within the meaning of clause 51. Clause 51 sets out specifically when a person is making an

application on behalf of the victim and must sign the statutory declaration under clause 52(1)(d). If a lawyer submits an application on behalf of a victim, the victim must sign the statutory declaration (or a person specified in clause 51), not the lawyer.

Subsection (7) defines certain terms used in clause 51.

Clause 52 states that an application for victim assistance must be in the approved form; accompanied by a medical certificate in the approved form, if the applicant is a primary or secondary victim or a related victim applying for assistance for an injury; and contain the relevant person's consent to enable the information mentioned in clauses 74 or 77(1) to be obtained. The application must be verified by a statutory declaration by the person making the application. For example, if the victim has an impaired capacity and the application is made by their guardian for a legal matter under section 51(4), the guardian for the legal matter must verify the application by way of statutory declaration.

Clause 53 provides that if the applicant for victim assistance is a parent secondary victim or a related victim, the application must state the name and address of each other person the applicant knows or reasonably suspects may also be a victim in that category or may claim to be a victim in that category. Subsection (3) provides that if the applicant does not know the name or address of the other person, it is enough for them to state what they know about the other person. The purpose of including this information in this section is to enable the government assessor to notify other victims under clause 71 before deciding an application for assistance by a related victim.

Clause 54 provides the time limits for a victim to make an application for victim assistance as: 3 years after the act of violence happens; 3 years from the death of a primary victim for applications by related victims; and for a victim who is a child, 3 years from the day the child turns 18.

Victim assistance is defined in the schedule 3 dictionary as financial assistance under the scheme for a person in their capacity as a primary, secondary or related victim. It does not include funeral expense assistance. The time limit for funeral expense assistance is set out in clause 58 as 3 years after the death of the primary victim.

Subsection (2) provides that the scheme manager may, on application by a person, extend the time for the person making an application for victim assistance, if the scheme manager considers it would be appropriate and desirable to do so having regard to the matters listed in subsection (2).

Under subsection (3), the scheme manager must give the person a notice of their decision and if they do not extend the time for making the application, under subsection (4) the notice must state the decision, the reasons for the decision and the internal review details for the decision.

Clause 55 enables a victim to apply for both victim assistance and funeral expense assistance on the same approved form, and for the government assessor to consider both the applications together. Under subsection (3), the government assessor cannot consider the applications together if the application for victims assistance has been delayed under clause 71(3) because the applicant is part of a category of assistance where there is a pool of victim assistance to be shared and the decision is to be deferred for 3 months whilst the other victims are contacted and invited to make an application.

Part 10 Applying for funeral expense assistance

Clause 56 enables a person who incurs, or is reasonably likely to incur, funeral expenses for the funeral of a primary victim to apply to the scheme manager for funeral expense assistance. For example, the funeral may have taken place and a person has paid for/received an invoice for the funeral (that is, incurred funeral expenses – see clause 29 for the definition of "incur:) or the funeral may be for a future date and the person has received a quote for the funeral (that is, reasonably likely to incur). Clause 50 sets out the maximum amount of funeral expense assistance for the funeral of a primary victim as $6,000.

Clause 57 states that an application for funeral expense assistance must be in the approved form, and verified by the applicant by a statutory declaration.

Clause 58 provides that an application for funeral expense assistance must be made within 3 years after the death of the primary victim. This is consistent with the time limits for victim assistance under clause 54.

Part 11 Withdrawal, amendment or lapse of application

Clause 59 enables an applicant for assistance to withdraw an application, by giving a notice to the scheme manager, at any time before the application is decided. Assistance is defined in the schedule 3 dictionary as financial assistance under the scheme and includes both victim assistance and funeral expense assistance.

Clause 60 provides that an applicant for assistance may amend the application, by giving a notice to the scheme manager, at any time before the application is decided. Assistance is defined in the schedule 3 dictionary as financial assistance under the scheme and includes both victim assistance and funeral expense assistance.

Subsection (2) clarifies that the applicant may amend the application to change the capacity in which the applicant is applying for assistance. For example, if a person applies as a parent secondary victim and their child later dies as a result of the act of violence, the parent can apply to amend their application to change their capacity to a related victim for the purposes of assistance.

Clause 61 provides that an application lapses in certain circumstances. The purpose of the clause is to ensure that applications do not continue indefinitely where there has been no contact from the applicant. There is a time limit of 12 months of no contact by the applicant with the government assessor. If the applicant has not made contact with the government assessor for 6 months, the government assessor may give the applicant a notice stating that the application will lapse, if the applicant does not contact the government assessor within a further 6 months after the notice is given.

Under subsection (3), the notice must be sent to the address stated on the application for assistance, or if the applicant has provided another address for service of notices, that other address.

Under subsection (4), the application lapses if there is no contact by the applicant with the government assessor within 6 months after the notice under subsection (2) is given.

Subsection (5) clarifies that if the application lapses under this clause.

, it does not prevent the applicant making another application for assistance under chapter 3 if they are within the time limits set out under clause 54 or 58.

Contact with the government assessor is defined in subsection (6).

Part 12 Considering applications for assistance

Clause 62 sets out that the scheme manager must, as soon as practicable after receiving an application for assistance, choose an appropriately qualified government assessor to deal with the application. Subsection (3) defines the term "appropriately qualified".

Under clause 130, a government assessor must disclose interests that may conflict with the performance of functions in relation to the application and allocate another government assessor to deal with the application if there is a conflict of interest.

Subsection (2) enables the scheme manager to assign another appropriately qualified government assessor to deal with the application, whether in addition to or in place of the government assessor. For example, if a government assessor resigns another government assessor can be assigned to decide the application.

Clause 63 sets out the general principles the government assessor must act under when deciding an application for assistance. The philosophy of the scheme is to provide for timely assistance to victims of acts of violence to assist their recovery.

Clause 64 enables a government assessor, before deciding the application, to ask the applicant for further information or documents reasonably required to decide the application. For example, further information about the nature of the injury. The government assessor may also ask the relevant person for their consent for the government assessor to ask a third party for stated information or a document the assessor reasonably requires to decide the application. For example, to ask Medicare for information about any claims made by the applicant in relation to the act of violence.

The schedule 3 dictionary defines the term "relevant person" for the purpose of giving consent. The definition of relevant person provides for

the situation where the person (such as a parent) who made the application on behalf of the person may have changed in the meantime. For example, if the application is made by the child's mother, but since that time another person has been granted guardianship of the child under a child protection order under the *Child Protection Act 1999*, the person who has been granted guardianship is the parent for the purposes of clause 64(1)(b).

Under subsection (2), the government assessor may stop considering the application until the further information, document or consent is given, and under subsection (3) if it is not given with 42 days or a longer period agreed to by the scheme manager, the application lapses.

Subsection (4) clarifies that if the application lapses under this clause, it does not prevent the applicant making another application for assistance under chapter 3 if they are within the time limits set out under clause 54 or 58.

Clause 65 enables the government assessor to ask the police commissioner for certain information about an act of violence for which assistance is sought and for further details, including any changes to information previously given. This information is necessary to decide the application because it will help verify or otherwise the victim's account of events. It will also provide information about whether the victim's involvement in a criminal activity was the only, or the main, reason the act of violence was committed against them or their conduct contributed to their injury.

Under subsection (2), the police commissioner must comply with the request. However, subsection (3) clarifies that the police commissioner's obligation to comply applies only to information or statements in the police commissioner's possession or to which the police commissioner has access.

Subsection (4) states that if the police commissioner is reasonably satisfied of the matters listed in the subsection, the commissioner must not give the information to the government assessor.

Under subsection (5), the police commissioner may give the information, a copy of a statement or further details by allowing the government assessor access to an electronic database maintained by the police service. However, under subsection (6) access to the database is limited to the extent it is connected with the requested information.

Subsection (7) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or

law, including a law imposing an obligation to maintain confidentiality about the information. However, subsection (4) still applies, for example, if the police commissioner is reasonably satisfied the giving of the information may lead to the identification of an informant or a person who is a notifier under the *Child Protection Act 1999*, section 186, the police commissioner must not give the information.

Clause 66 enables the government assessor to request from the investigating police officer or the police commissioner (the relevant police official) witness statements and other information the relevant police official reasonably considers may be relevant to the deciding the application. This information is necessary to decide the application because it will help verify or otherwise the victim's account of events. It will also provide information about whether the victim's involvement in a criminal activity was the only, or the main, reason the act of violence was committed against them or their conduct contributed to their injury.

Under subsection (3), the relevant police official must comply with a request if, and to the extent, the relevant police official is reasonably satisfied the government assessor reasonably requires the documents and information to decide the application.

Disclosure under section 66 about a witness is limited by subsection (4) which provides that the police officer is only to disclose the identifying particulars of a witness if it is relevant to deciding the application.

Under subsection (6), the police officer must not give the information if: it would prejudice or hinder an investigation; it may lead to the identification of an informant; or it may affect the safety of a police officer, complainant or other person.

Subsection (7) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information. However, subsection (6) still applies, for example, if the police commissioner is reasonably satisfied the giving of the information may lead to the identification of an informant or a person who is a notifier under the *Child Protection Act 1999*, section 186, the police commissioner must not give the information.

Clause 67 provides that the government assessor may ask the Director of Public Prosecutions for information about an act of violence for the purpose of deciding an application for assistance. The information includes: details of the charges laid for the act of violence; details of the

place and date of hearing for the proceeding for the charge; a decision to substantially change the charge; and the outcome of a proceeding for a charge.

This information is necessary to decide the application because it will help verify or otherwise the victim's account of events. It will also provide information about whether the victim's involvement in a criminal activity was the only, or the main, reason the act of violence was committed against them or their conduct contributed to their injury.

Subsection (3) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Clause 68 enables the government assessor to ask the chief executive of the department administering the *Corrective Services Act 2006* for certain information about an applicant for assistance who is in a correctional services facility. The government assessor may ask the date the applicant will be released or discharged. This information is necessary to decide whether the application is to be deferred under clause 84. An applicant will be made aware at the time of applying for assistance that this information may be sought.

Subsection (4) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Clause 69 allows the government assessor, where the application is a primary victim and with consent of the primary victim, to request from the police commissioner a written report about the primary victim's criminal history. Under subsection (2), where the primary victim has died, the government assessor may ask the police commissioner for a written report about a primary victim's criminal history, if it is relevant to deciding an application for assistance (for example, by a related victim or an application for funeral expenses).

Under subsection (3), the government assessor may also request a brief description of the circumstances of a conviction for an offence mentioned in the criminal history.

Subsection (9) provides that the primary victim's criminal history is necessary for the government assessor to decide whether the primary

victim was involved in a criminal activity for the purposes of clause 80 and is only permitted to be looked at in this context. Consent is required given the sensitive nature of the information and in accordance with Queensland Police Service requirements.

Under subsection (5), the police commissioner must comply with the request. However, subsection (6) clarifies that the police commissioner's obligation to comply applies only to information or statements in the police commissioner's possession or to which the police commissioner has access.

Subsection (7) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Subsection (10) requires the report to be destroyed when it is no longer required for deciding the application for which it was sought or a review or appeal, or potential review or appeal relating to the application.

The schedule 3 dictionary defines the term "relevant person" for the purpose of giving consent. The definition of relevant person provides for the situation where the person (such as a parent) who made the application on behalf of the person may have changed in the meantime. For example if the application is made by the child's mother, but since that time another person has been granted guardianship of the child under a child protection order under the *Child Protection Act 1999*, the person who has been granted guardianship is the parent for the purposes of clause 69(1).

Clause 70 applies where a person has made 2 or more applications for victim assistance and the scheme manager reasonably considers the applications relate to a series of related crime. Clause 25(4) defines the term "series of related crimes" and clause 25(6) provides that, for chapter 3, a series of related crimes is to be taken to be a single act of violence and assistance may be granted only for the single act of violence.

Subsection (3) provides that before the scheme manager decides that applications are to be decided together as a single act of violence, he/she must give the person a notice containing the matters stated in subsection (3). If the scheme manager, after having regard to any submission received from the person within the time stated in the notice, decides the applications are to be decided together, he/she must give the person a notice stating the decision, the reasons for the decision, and the internal review details for the decision.

Clause 71 applies if the applicant for victim assistance is: a parent secondary victim; a witness secondary victim of an act of violence who has applied for loss of earnings; or a related victim. That is, all those categories where the victims in the same category share a pool of assistance.

The government assessor, under subsection (2) must take all reasonable steps to identify each other person who is a victim in the same category and who has not already applied for assistance in that capacity. The government assessor must give each person identified a notice that the application has been made and inviting the person to apply for victim assistance within 3 months after the notice is given.

Under subsection (3), the government assessor must not decide the original application until the 3 month period has ended. This is to give other victims in the same category an opportunity to apply for assistance. Clause 85(2)(b) sets out the matters a government assessor may have regard to when deciding the amount of assistance to be granted to a related victim. Clause 85(4) requires a government assessor to decide the proportion of the assistance limit to be granted to each related victim according to their relative need. Assistance limit is defined in the schedule 3 dictionary.

Subsection (4) provides that the government assessor is not prevented from granting interim assistance under part 14 during the 3 month period to a parent secondary victim or a related victim. Interim assistance can only be granted in accordance with part 14. In addition, the government assessor must be satisfied it is necessary for the person to incur the expenses before the application is decided, and that the expenses will significantly help the victim to recover from the act of violence. The second factor is an additional requirement to part 14 as the assistance is to be shared amongst the victims and careful consideration needs to be made when granting interim assistance to ensure the pool of assistance is not unnecessarily distributed before the final decision is made. Witness secondary victims of a serious act of violence are not included in subsection (4) as the amount of assistance they share only relates to loss of earnings and they are dealt with separately in subsection (5).

Subsection (5) provides that for a witness secondary victim of a serious act of violence, the requirement in subsection (3) that the application is not to be decided for 3 months, only applies to the extent the application is for loss of earnings. The application for loss of earnings is taken to have been made as a separate application for this chapter.

Clause 72 provides that if a person is given a notice under clause 71(2)(b) and the person does not then apply for victim assistance within the 3 months and the original application has been decided, they can only apply if they have a reasonable excuse and with the scheme manager's approval. Under subsection (4), if the scheme manager decides not to give the approval, he/she must give the person a notice stating the decision, the reasons for the decision, and the internal review details for the decision.

If the scheme manager does give the person approval to apply, the person is only eligible for victim assistance up to the remaining pool amount (if any).

Clause 73 empowers a government assessor to ask an applicant for victim assistance to undergo an examination by a health practitioner nominated by the assessor so that a report can be given to the assessor. The government assessor may ask the relevant person for the applicant to give consent to the assessor to obtain the report from the health practitioner. Health practitioner is defined in the schedule 3 dictionary.

Under subsection (2), if the government assessor is given the consent by the relevant person the assessor can ask the health practitioner for the report. The health practitioner, under subsection (3), may give the report to the government assessor in the approved form under subsection (4) and include any other document/s the health practitioner considers should be read with the report. Under subsection (6), the government assessor may stop considering the application until the government assessor receives the requested report.

Subsection (5) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

The schedule 3 dictionary defines the term "relevant person" for the purpose of giving consent. The definition of relevant person provides for the situation where the person who made the application on behalf of the person may have changed in the meantime. For example, if the application is made by the child's mother, but since that time another person has been granted guardianship of the child under a child protection order under the *Child Protection Act 1999*, the person who has been granted guardianship is the parent for the purposes of clause 73(1).

Clause 74 enables a government assessor, if they have the necessary consent, to obtain medical information from a designated person, about an applicant for victim assistance.

The designated person, under subsection (2), may give the report to the government assessor.

Subsection (3) provides that the information, copy of a statement or further details provided under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Subsection (4) defines the certain terms used in clause 74.

Clause 75 applies if an applicant for victim assistance is a child who is in the custody or guardianship of the chief executive (child protection) under the *Child Protection Act 1999*. The government assessor may ask the chief executive (child protection) for information about the applicant's injuries and any special needs of the applicant. This information is necessary to decide what assistance should be provided to the child. The government assessor may also ask for confirmation that a stated person has been granted custody or guardianship of the applicant under a child protection order. This information is necessary to determine who is the parent of the child.

Under subsection (3), the chief executive (child safety) must comply with the request if the chief executive is reasonably satisfied that the government assessor reasonably requires the information to decide the application.

The provision is analogous to the government assessor asking the parent who made an application on behalf of his/her child for further information (see clause 64).

Subsection (4) provides that the disclosure of the information by the chief executive (child protection) under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Clause 76 applies if the government assessor knows, or reasonably suspects, an applicant for victim assistance has an impaired capacity. The government assessor can ask the QCAT principal registrar to advise whether a guardian or administrator has been appointed under the *Guardianship and Administration Act 2000* and, if so, the person's name and address. The government assessor can also confirm whether a stated person is the guardian or administrator of the applicant. This information is necessary to determine who can make an application on behalf of a victim with impaired capacity and to whom an award of assistance can be granted to administer on behalf of the victim.

Under subsection (3), the QCAT principal registrar must comply with the request if he/she is reasonably satisfied the government assessor reasonably requires the information to decide the application.

Subsection (4) provides that the disclosure of the information by the QCAT principal registrar under this section, is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Subsection (5) defines the term "QCAT principal registrar".

Clause 77 provides that the government assessor must have the necessary consent for obtaining information about relevant payments made to the applicant in relation to the act of violence. The government assessor can then ask the relevant entity for information about other payments for the act of violence to the applicant. Relevant entities include: the insurance commissioner about payments under the *Motor Accident Insurance Act 1994*, the police commissioner about compensation under the *Police Service Administration Act 1990*, and the Workers' Compensation chief executive officer about workers' compensation. This information is necessary to decide whether the applicant's award is to be reduced under clause 86 for receiving a relevant payment for the act of violence. Consent of the applicant is required by these agencies.

Subsection (2) provides that the government assessor may ask the chief executive of the department administering the *Corrective Services Act 2006* whether an applicant for victim assistance has started a proceeding under chapter 6, part 12B of that Act (the Victims Trust Fund). The government assessor may ask the status of the proceeding and any amount paid or payable to the applicant in relation to the proceeding. This information is necessary to decide whether the applicant's award is to be reduced under clause 86 for receiving a relevant payment for the act of violence. An applicant will be made aware at the time of applying for assistance that this information may be sought.

Subsection (3) applies where a dispute has been referred for mediation under the *Dispute Resolution Centres Act 1990* for a relevant offence for which assistance is sought. The government assessor may ask the director under that Act whether an agreement has been reached for the dispute, and if so, whether the agreement provided for the payment of an amount from the person who allegedly committed the offence to the victim of the act of violence. The government assessor can also ask for the amount paid or payable to the victim under the agreement. This information is necessary to

decide whether the applicant's award is to be reduced under clause 86 for receiving a relevant payment for the act of violence. An applicant will be made aware at the time of applying for assistance that this information may be sought.

Subsection (4) provides that the entity to whom a request is made under subsection (1), (2) or (3) must comply with the request. Subsection (5) provides that for subsections (2) or (3) the entity is only required to give the information if it is reasonably satisfied that the government assessor reasonably requires the information to decide the application. This is an additional requirement because consent is not necessary under these subsections.

Subsection (6) provides that the disclosure of the information by an entity under this clause is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Subsection (7) defines certain terms used in clause 77.

Clause 78 provides that the government assessor may grant assistance to a person only if the government assessor is satisfied, on the balance of probabilities, the person is eligible for the assistance under this chapter. For example, the government assessor must be satisfied on the balance of probabilities that a witness secondary victim witnessed an act of violence and that they were injured.

The victim has an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause.

Clause 79 states that the government assessor can not grant assistance to a person if the government assessor is satisfied, on the balance of probabilities, the person conspired with the person who committed the act of violence in relation to which assistance is sought. For example, the applicant is not eligible for assistance if the applicant and the person who committed the act (the offender) agreed for the offender to assault the applicant to enable the applicant to apply for assistance.

The victim has an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause.

Clause 80 provides for certain circumstances where a government assessor can not grant assistance to a victim due to the involvement of the primary victim in a criminal activity.

Subsection (1) states that if the government assessor is satisfied, on the balance of probabilities, the only reason, or the main reason, the act of violence was committed against the primary victim was—

(a) because the victim was involved in a criminal activity when the act of violence happened; or

(b) because of the victim's previous involvement in a criminal activity, whether or not the victim is currently involved in the criminal activity;

the government assessor cannot grant assistance to the primary victim.

An example of subsection (a) is that a person is trafficking drugs and in the course of a drug deal they are assaulted.

An example of subsection (b) is that a person is the member of a street gang that engages in criminal activity on an ongoing basis, and as retaliation for an attack by the person's gang on another gang, the other gang assaults the person.

Under subsection (2), the government assessor can not grant assistance to a person if the government assessor is satisfied, on the balance of probabilities—

(a) the only reason, or the main reason, the act of violence was committed against the primary victim of the act was a reason mentioned in subsection (1)(a) or (b); and

(b) the person was, or ought reasonably to have been, aware of the primary victim's involvement in the criminal activity.

Subsection (2) applies to victim assistance and funeral expense assistance for all persons other than primary victims (subsection (1) applies to primary victims). For example, if a person is aware of a primary victim's activities in a street gang because the person is also a member of the street gang, they are not entitled to assistance.

However, subsection (3) provides that subsection (2) does not apply if the person was aware of the primary victim's involvement in the criminal activity only because the person witnessed the act of violence. For example, if a person witnesses a bank robbery but has no prior knowledge of the bank robbery, they are eligible for assistance if they meet the other criteria. However, if a person is aware of a primary victim's activities in a street gang because the person is also a member of the street gang, even if they witness an assault by the primary victim, they are not entitled to assistance.

The government assessor may have regard to matters listed in subsection (4) when deciding whether a primary victim of an act of violence was involved in a criminal activity. These matters include: information or documents obtained under section 65 or 66; and the victim's criminal history. Clause 69(1) allows access to a primary victim's criminal history for an application by a primary victim and clause 69(2) allows access to a primary victim's criminal history for an application by a related victim. The primary victim's criminal history is necessary for the government assessor to decide whether the primary victim was involved in a criminal activity for the purposes of clause 80 and is only permitted to be looked at in this context.

The victim has an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause.

Clause 81 provides that the government assessor can not grant assistance in relation to an act of violence if the act of violence has not been reported to:

(i) a police officer; or

(ii) for an act of violence against a special primary victim—a police officer or the victim's counsellor, psychologist or doctor. Because it is not necessary for the primary victim themselves to report the act of violence, subsection (1)(a)(ii) requires the act of violence to be reported at least to the special primary victim's counsellor, psychologist or doctor. These means that if a third party makes the report they can not make it to any counsellor, psychologist or doctor. For example, if a child is a victim of a sexual offence their parent can report it to the child's doctor but not to the parent's doctor unless they are the same person.

If no such report has been made and the government assessor is reasonably satisfied there is a reasonable excuse for the report not being made, the government assessor can grant assistance.

Subsection (2) defines who is a special primary victim for the purposes of clause 81.

Although the scheme is about providing assistance to victims, it is not unreasonable that there be a mutual obligation on the victims receiving taxpayer funded assistance to report the act of violence unless they have a reasonable excuse. This enables offences to be investigated and offenders to be prosecuted. In addition, the report and any subsequent investigation and prosecution by the police will assist the government assessor in deciding the application and to verify the act of violence occurred.

The victim has an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause.

Clause 82 provides that the government assessor can not grant assistance to a person if the government assessor is satisfied, on the balance of probabilities of the matters listed in subsection (1) including: a person is to give reasonable assistance in the investigation, arrest and prosecution of an offender; and the failure to give reasonable assistance has prevented the arrest or prosecution of the person who committed the act of violence.

Subsection (2) provides that subsection (1) does not apply if the government assessor is reasonably satisfied the person had a reasonable excuse for not providing the assistance.

Clause 82(3) provides for the matters that a government assessor is to take into account when considering whether a person has a reasonable excuse for not providing assistance, including: the persons' age; an impaired capacity; a victim of a sexual offence; whether the alleged offender was in a position of power, influence or trust; any threats or intimidation; the victims injuries; any other special circumstance that prevented the person from providing assistance; and any other matter the government assessor considers relevant.

Although the scheme is about providing assistance to victims, it is not unreasonable that there be a mutual obligation on the victims receiving taxpayer funded assistance to assist in the investigation and prosecution of the offender, unless they have a reasonable excuse. This enables offences to be investigated and offenders to be prosecuted. In addition, any investigation and prosecution by the police will assist the government assessor in deciding the application and to verify the act of violence occurred.

The victim has an opportunity under clause 88 to make submissions about the government assessor exercising discretion under this clause.

Clause 83 applies if an applicant for assistance has made an earlier application for assistance for the same act of violence. The government assessor must refuse the later application. However, under subsection (3), if the earlier application has not been decided, the government assessor must first invite the applicant to withdraw the earlier application under clause 59 within a stated period of at least 7 days. The government assessor can only refuse the later application if the earlier application is not withdrawn within the stated time. An applicant could choose to amend an earlier application

to include any new information about an act of violence rather than making a later application.

However, under subsection (4), if the earlier application has not been decided and the government assessor considers the application relate to a series of related crimes, the government must not refuse the later application under subsection (2) and must refer the earlier and later application to the scheme manager to be dealt with under clause 70. Clause 70 provides for deciding 2 or more applications for a series of related crimes as 1 application for a single act of violence involving the series.

Subsection (5) provides that subsection (2) does not apply if the two applications relate to victim assistance and funeral expense assistance or the application has been separated under clause 71(5).

Clause 84 applies if the applicant for assistance is being detained in a correctional services facility under the *Corrective Services Act 2006*. Subsection (2) provides that the government assessor cannot decide the application until the applicant is released or discharged under the *Corrective Services Act 2006*. The rationale behind this clause is that the victim is entitled (as is any other prisoner) to access prison medical, psychological, and other health services. Therefore, during the time that a victim is in prison, there will be no need to pay for the cost of treatment to recover from the effects of the act of violence.

Clause 68 provides for the government assessor to ask the chief executive of the department administering the *Corrective Services Act 2006* for the date the applicant will be released or discharged.

If the application is not decided within 5 years after it is made, under subsection (3) the government assessor must as decide the application as soon as reasonably practicable.

If a victim is granted a lump sum after 5 years (for example, special assistance up to $10,000) while in prison, it will be given to the Public Trustee to hold on trust until their release. The *Public Trustee Act 1978* provides that the Public Trustee can administer all prisoners' accounts where the prisoner is serving a sentence of imprisonment greater than three years.

If the victim himself/herself owes a debt to the State as a result of the act of violence committed by the victim against another person, then this debt will be deducted from the assistance granted to the victim under clause 95.

Clause 85 sets out how an amount of assistance (if any) is to be granted to an applicant. Subsection (2) provides that the government assessor may have regard to, and may reduce the amount that would otherwise be payable to the applicant on the basis of: the extent to which the applicant's conduct directly or indirectly contributed to the injury suffered by the applicant; if the applicant is a related victim subsection (b) sets out certain matters that can be taken into account; and any matter prescribed under a regulation for this clause.

Subsection (3) provides the criteria for deciding the proportion of the assistance limit if there are 2 or more secondary victims of an act of violence to whom an assistance limit applies.

Subsection (4) requires a government assessor to decide the proportion of the assistance limit to be granted to each related victim according to their relative need. Assistance limit is defined in the schedule 3 dictionary.

Subsection (5) provides that a question of fact for deciding a matter under subsection (2)(a), or for deciding the category of the act of violence in relation to which special assistance is sought, must be decided on the balance of probabilities.

Subsection (6) provides that the government assessor may be satisfied on the balance of probabilities that an act of violence of a particular category has caused a person's injury even though—

(a) no person has been charged with, or convicted of, an act of violence of that category in relation to the injury; or

(b) a person has been charged with, or convicted of, an act of violence of a different category in relation to the injury.

The term "category" is defined in the schedule 3 dictionary and relates to category of act of violence for the purpose of determining special assistance.

Subsection (7) provides that if a regulation prescribes a matter for subsection (1)(c), the government assessor may reduce the amount of assistance that would otherwise be payable to a person on the basis of the matter only if the person's application for assistance is made after the matter is prescribed.

Clause 86 applies if the government assessor is reasonably satisfied an applicant for assistance in relation to an act of violence has received, or will receive, a relevant payment for the act. Relevant payment is defined in

the schedule 3 dictionary. Clause 77 enables the government to seek information from other entities about relevant payments.

Under subsection (2), the government assessor must reduce the amount of assistance that would otherwise be payable to the applicant by an amount equivalent to the relevant payment. This is consistent with clause 21(4).

Under subsection (3), if the assistance payable to an applicant is reduced under subsection (2), and an amount of assistance remains payable to the applicant after the reduction, the government assessor may decide the component of assistance for the amount payable having regard to the matters listed in (a)(i) to (iii).

Clause 87 enables a government assessor to defer deciding an application for assistance (victim assistance and funeral expense assistance) until the end of the matters in subsection (2). The government assessor can only defer the decision if a person has been charged with an offence that the government assessor reasonably considers is a relevant offence for the act; and the assessor reasonably believes that, in relation to the charge, the charged person intends to rely on a justification, excuse or defence involving the applicant's conduct that may be relevant to the deciding the matter mentioned in clause 85(2)(a).

Subsection (3) provides that if the trial has started in relation to the charge and the charged person raises a justification, excuse or defence involving the applicant's conduct, the government assessor must have regard to evidence recorded for the trial, that is relevant to deciding the matter mentioned in clause 85(2)(a). However, subsection (4) provides that this only applies to the extent the government assessor has lawful access to the evidence.

Under subsection (5), if the government assessor decides to defer deciding the amount of special assistance, they must give the person a notice stating the decision, the reasons for the decision, and the internal review details for the decision.

Part 13 Granting or refusing assistance

Clause 88 applies if under part 12, division 3 the government assessor proposes to refuse an application for assistance, or under part 12, division 5

the assessor proposes to reduce the assistance that would otherwise be payable to an applicant.

This clause provides for natural justice to be given to the victim. Under subsection (2) the government assessor must give the applicant a notice about the basis of their decision. If the assessor is proposing to reduce assistance under clause 86(2), the notice must state the component of assistance for which the government assessor is proposing to pay any remaining amount of assistance payable to the applicant. The notice must also invite the applicant to make, within a stated time at least 28 days after the notice is given, an oral or submission about the matters listed in the notice.

Subsection (4) provides that before deciding the application the government assessor must consider any submission made by the applicant within the stated time.

Clause 89 provides that the government assessor must consider the application and any information or documents obtained under chapter 3 and decide to either grant the assistance with or without conditions, or refuse the application.

Clause 90 sets out what must be included in the notice of a decision to grant assistance.

Clause 91 provides that if the decision is to refuse the application for assistance, the government assessor must give the person a notice stating the decision, the reasons for the decision, and the internal review details for the decision.

Clause 92 states that division 2 applies if an applicant is granted assistance.

Clause 93 sets out that assistance may be paid: to the applicant; partly to the applicant and partly to someone else for the benefit of the applicant (for example, a counsellor who is treating the applicant); or entirely to someone else for the benefit of the applicant (for example, funeral expense assistance to a funeral director).

Subsection (2) provides that if the applicant is granted assistance for expenses (for example, funeral expense assistance), the assistance is not payable until the government assessor receives a copy of an invoice (for example, an expense incurred not yet paid for) or a receipt (for example, an expense incurred and paid for).

Subsection (3) provides that this section is subject to clauses 94 and 95.

Clause 94 provides for when assistance may be paid for the benefit of someone else as set out in subsection (1).

Subsection (2) defines certain terms used in clause 94.

Clause 95 enables the government assessor to retain an amount of assistance that an applicant owes to the State under clause 117(4) or 191(4).

Subsection (2) provides that if after the assistance is granted to the applicant, the applicant becomes liable to pay an amount to the State under clause 117(4) or 191(4), the government assessor is to retain an amount of assistance to offset the amount owed to the State.

Under subsection (3), if the assistance payable to the person is reduced under subsection (1) or (2), and an amount of assistance remains payable to the applicant after the reduction, the government assessor must decide the component of assistance for the amount is payable having regard to the matters listed in (a). The government assessor must give the person a notice stating: the government assessor's decision; the reasons for the decision; and the internal review details for the decision.

Subsection (4) provides that the scheme manager must give notice to the SPER registrar of any amount taken to have been paid to the State under subsection (1)(b) or (2).

Clause 96 provides that if within 6 years of assistance being granted, the assistance is not paid to, or for the benefit of the applicant, the assistance that has not been paid is not longer payable. This assistance only stops being payable if the reason it has not been paid is due to the acts or omissions of the applicant.

Part 14 Interim assistance

Clause 97 applies if a person has applied for funeral expense assistance or victim assistance and the government assessor has not decided the application. If the person has incurred, or is reasonably likely to incur expenses that they may be eligible for assistance, and they have also applied for interim assistance under this clause, the government assessor may grant the person interim assistance for the expenses.

Clause 98 provides that interim assistance can be an amount of up to $6,000 and can be granted for both the funeral expense assistance and/or the victim assistance as they are separate applications. For example, if a person has applied for funeral expense assistance and victim assistance, and has applied for interim assistance for both, the government assessor can grant up to $6,000 for each application in interim assistance, subject to being reasonably satisfied that it is necessary for the person to incur the expenses before the general application is decided.

Subsection (2) provides that the government assessor can impose conditions on the grant of interim assistance.

Subsection (3) provides that section 88 does not apply to deciding an application for interim assistance, that is, that the government assessor is not required to invite submissions if he/she is to reduce or refuse the assistance.

Clause 99 provides that the government assessor must give the person a notice stating: the decision; the reasons for the decision; and the internal review details for the decision. If the decision is to pay an amount of interim assistance, the written notice must also state the amount payable to the applicant and any conditions imposed.

Subsection (2) provides that part 13, division 2 (Paying assistance) applies to interim assistance in the same way it applies to other assistance.

Clause 100 provides that if the government assessor decides to grant the general application for assistance, any interim assistance is deducted. If the interim assistance is more than the grant of assistance, the person must refund the excess to the State. Under subsection (2), if the government assessor refuses the person's general application for assistance, the person must refund the interim assistance to the State. Subsection (3) provides that an amount not refundable under this section is a debt owed to the State.

Part 15 Amendment of grants

Clause 101 enables an application to be amended in certain circumstances. Clause 101 applies if a person has been granted assistance and the person's circumstances have changed or are likely to change. The person may apply to the scheme manager for an amendment to the grant of assistance to

change the amount of assistance or the conditions imposed. Under subsection (4), the application must state the person's circumstances that have changed or are likely to change.

Under subsection (3), the application for amendment of the grant of assistance must be made within 6 years of the decision to grant assistance for an adult; or for a person who was a child when the assistance was granted before they turn 24.

Under subsections (5) and (6), only 1 application for amendment of the grant of assistance may be made under this section in a calendar year unless the scheme manager is reasonably satisfied that exceptional circumstances exist to allow more than 1 application in the calendar year.

Clause 102 provides that the scheme manager can decide an application for amendment of a grant of assistance under clause 101 or ask another government assessor to make the decision.

Clause 103 sets out the matters that the person deciding the application for amendment of a grant of assistance may have regard to. Subsection (2) provides that certain clauses of the Bill apply to the amendment application in the same way as they apply in relation to the original application for assistance.

Clause 104 provides that the person deciding an application for amendment of the grant of assistance under this part, may increase or decrease the amount of assistance or change the conditions imposed on the grant or add new conditions.

Subsection (2) provides that the person may decrease the amount of assistance only if the applicant has asked for it; the decrease relates to unpaid assistance; or the decrease relates to where loss of earnings were granted but not paid and the person no longer has that amount of loss of earnings.

Subsection (3) provides that the person may increase the amount of the assistance granted only up to the remaining pool amount (if any) for the act of violence.

Unpaid assistance is defined in subsection (4) to mean assistance that has been granted but not paid.

Clause 105 provides that the person who decides an application for amendment under part 3, must give the applicant a notice stating the decision. If the decision is to refuse the application or amend the assistance

in a way other than sought by the applicant the notice must also include the reasons for the decision and the internal review details for the decision.

Subsection (3) provides that part 13, division 2 (Paying assistance) applies to an increase in assistance in the same way it applies to the original grant of assistance.

Clause 106 applies if a person is granted assistance and the person later receives a relevant payment for the act of violence that was not taken into account when the assistance was granted. If it would have resulted in a reduction of assistance granted to the person under clause 86, if it had been taken into account at the time of the grant of assistance, the government assessor must give the person a notice about amending the amount of assistance to take into account the relevant payment.

Under subsection (3), if the assistance payable to the person is reduced under subsection (2), and an amount of assistance remains payable to the applicant after the reduction, the government assessor may decide the component of assistance for the amount is payable having regard to the matters listed in (a) to (c).

Subsection (4) provides that the notice under subsection (2) must state: the government assessor's decision under subsection (2) and (3); and the reasons for the decision; and the internal review details for the decision.

Subsections (5) and (6) provide that the person must refund to the State the amount of assistance paid to the person in excess of the amount of assistance granted following the amendment and that an amount not refunded under this section is a debt owed to the State by the person.

Part 16 Recovering assistance from offender

Clause 107 states that the purpose of this part is to help the State recover assistance granted for an act of violence from a person who is convicted of a relevant offence for the act. Relevant offence is defined in the schedule 3 dictionary.

Clause 108 clarifies that a reference to assistance granted for an act of violence under part 16 is a reference to assistance granted as victim assistance or funeral expense assistance for the act.

Clause 109 provides for recovery of assistance from a person who is convicted of a relevant offence only if the assistance or part of it has been paid to a person. That is, the State cannot recover assistance that has not been paid, for example, for future counselling expenses as the person may never access this assistance.

Clause 110 provides that recovery can only occur only if the person has appealed the conviction, after the appeal is decided and the conviction upheld, or otherwise, the period within which the person may appeal the conviction has passed.

Clause 111 limits the amount of special assistance the state may recover from a convicted person. If a person was granted special assistance for an act of violence and a person is convicted of offence for the act of violence in a lower category than the special assistance granted, the State can only recover the assistance for the lower category.

Subsection (3) clarifies that subsection (2) does not affect the amount of assistance other than special assistance the State may recover from the convicted person.

Clause 112 provides that if 2 or more persons are convicted of a relevant offence for an act of violence for which assistance is granted, the State may recover an equal amount from each convicted person and no more.

Clause 113 enables a government assessor to use information obtained under clauses 65, 66 or 67 for the purpose of the State recovering an amount from a person under this part and obtaining information from a court under clause 114.

Clause 114 empowers the scheme manager to ask the registrar of a court, for the purposes of recovering an amount from a convicted person, for certain information specified in subsection (1).

Subsection (2) provides that the registrar must give the requested information to the scheme manager if he/she is satisfied the information will enable the State to recover an amount under this part. Subsection (3) enables the registrar to give the requested information by way of access to an electronic database maintained for the court. If the scheme manager is given such access to the electronic database, under subsection (4) the access to, and use of, the database is limited to the extent it is connected with the requested information.

Subsection (5) states that the scheme manager may use information lawfully obtained under this section only for recovering an amount under this part.

Subsection (6) clarifies that the term "registrar" includes the clerk of the Magistrates Court.

Clause 115 requires the scheme manager, before recovering from a person all or part of the assistance granted to someone else, to give the person a notice stating the matters listed in subsections (a) to (i).

Clause 116 provides that if a person is given a notice under clause 115 and they dispute that the offence they were convicted of is a relevant offence for the act of violence, they may within 14 days of the notice being given, given a dispute notice to the scheme manager. The dispute notice must state the facts relied upon by the person to dispute the claim. The scheme manager, after considering the dispute notice, must decide whether the offence is a relevant offence and give the person a notice of the decision. If the scheme manager decides that the offence is a relevant offence for the act of violence, the notice must be a QCAT information notice. The person may apply to QCAT for a review of the scheme manager's decision.

Clause 117 creates the offender's liability to pay an amount to the State. The clause applies if the scheme manager has given the person a notice under clause 115 and the dispute is no longer in dispute. Subsection (2) sets out when a dispute is no longer in dispute.

Under subsection (3), the scheme manger must give the person a written notice stating: the amount payable that the State seeks to recover from the person under part 16; and that the person is liable to pay the amount within a stated period of at least 28 days; and if they do not pay within that time the scheme manager may give particulars of the amount to the registrar under the *State Penalties and Enforcement Act 1999* (SPE Act) for registration under that Act.

Subsection (4) creates the liability to pay the amount within the period stated in the notice.

Clause 118 provides that, if the amount of assistance granted to a person (the victim) is reduced under chapter 3 (the new amount), and it is less than the amount a person (the offender) owes to the State, the offender's liability to pay under subsection 117(4) is reduced to the new amount. The scheme manager must give the person a written notice stating the new amount and

the effect of the reduction. If the person has already paid more than the new amount, the State must pay the excess amount as assistance.

Under subsection (5), if the assistance granted to the offender was taken to be paid to the State under clause 95, any excess amount must be paid to the offender and if the excess amount is more than the offset amount, the part of the excess amount equivalent to the offset amount.

Subsection (6) provides that if an amount is paid to the offender as assistance, the government assessor must decide the component of assistance for the amount is payable having regard to the matters listed in (a) and give the offender a notice stating: the decision; and the reasons for the decision; and the internal review details for the decision.

Clause 119 applies if a person (offender) becomes liable to pay an amount (payable amount) to the State under section 117(4), and the chief executive is, under the *Corrective Services Act 2006*, paid an amount (the corrective services amount) from the offender's prisoner's account, or victim trust fund, under that Act. The corrective services amount is provided for under the *Corrective Services Act 2006*, section 314 and the *Corrective Services Regulation 2006*, section 44 (for payments from prisoner's accounts) and the *Corrective Services Act 2006*, chapter 6, part 12B, division 4 (for payments from victim trust funds).

Subsection (2) provides that the offender's liability under section 117(4) is reduced by the corrective services amount.

Under subsection (3) the scheme manager must give the offender a notice stating the effect of subsection (2), and new amount the offender is liable to pay after the reduction under subsection (2).

Subsection (4) provides that this clause does not limit the *Corrective Services Act 2006*, section 319ZD(4).

Clause 120 enables an amount under clause 117(4) that is not paid or only partly paid, to be registered with the State Penalties and Enforcement Registry (SPER) for recovery. The scheme manager may give particulars to the SPER registrar for registration under section 34 SPE Act. To enable the debt to be registered under section 34 of the SPE Act certain matters are taken to be matter under section 34 of the SPE Act as outlined in subsection (1)(a) to (c).

The SPER registrar must register the particulars under section 34 of the SPE Act.

Subsection (3) provides that the fine option order provisions and imprisonment provisions do not apply in relation to an amount payable under section 117(4). These provisions do not apply as the policy is the victim should not be punished twice for the offence. That is, any debt an offender owes should not result in the offender being able to perform community service or imprisoned to satisfy the debt. Other debt recovery provisions of the SPE Act apply. Subsection (5) defines the terms "fine option order provisions" and "imprisonment provisions".

Subsection (5) provides that if the person's liability to pay an amount is reduced under clause 118 or 119 (because their victim's assistance is reduced), the scheme manager must give the SPER registrar written notice of the reduction and the SPER registrar must amend the particulars registered under the SPE Act section 34 to reflect the reduction.

Part 17 Effect of conviction for fraud

Clause 121 states that part 17 applies if a person has been convicted of an offence under clause 141(1) or (2), that is, providing false or misleading information or documents, or under the Criminal Code section 408C(1)(d) (Fraud) or section 488 (Forgery and uttering).

Clause 122 provides that if clause 121 applies and the person's application has not been decided, the application lapses. This ensures a person cannot profit from a fraudulent application.

Clause 123 applies if a person has been granted assistance and in the prosecution of the person, the prosecuting agency proves the assistance was granted on the basis of the person's acts or omissions constituting the offence. Subsection (2) provides that assistance is taken to have never been granted and the person must refund the State any assistance granted. Subsection (3) provides that if the amount is refundable under this section, it is a debt owed to the State by the person.

Subsection (4) provides that any part of the amount of assistance not paid to the person stops being payable to the person.

Part 18 Internal and external review of decision

Clause 124 allows a person aggrieved by a decision identified in schedule 1 to apply to the scheme manager for a review of the decision (an internal review). Under subsection (2), an application for review of the decision must be made within 28 days after the person is given notice of the decision and must state in detail the basis on which the person is aggrieved by the decision.

Subsection (3) specifically provides that the application for an internal review does not stay the decision, that is, it does not affect the operation of the decision or prevent the decision being implemented.

Subsection (4) provides that a review of a decision of a government assessor must be conducted by the scheme manager or another government assessor nominated by the scheme manager. For decisions by the scheme manager, the review must be conducted by a departmental employee, of a classification level in the public service that is the same as or higher than the scheme manager's classification, who is nominated by the chief executive.

Subsection (5) states that if the review is conducted by a departmental employee under subsection (4)(b), any decision on the review is taken to be a decision of the scheme manager.

Subsection (6) sets out the powers of the person conducting the review. The person has the same powers as the original decision-maker, and they may confirm or amend the decision being reviewed, or substitute their own decision for the original decision. For example, if a government assessor has refused an application on the basis that on the balance of probabilities the act of violence did not occur, the scheme manager may decide that on the balance of probabilities the act of violence did occur and grant the assistance. The person conducting the review must give the applicant a QCAT information notice about the person's decision. QCAT information notice is defined in the schedule 3 dictionary.

Subsection (7) provides that if the person conducting the review decides that assistance is to be granted to a victim of an act of violence or the amount of assistance granted to a victim of an act of violence is to be increased, the grant or increase must occur even if it will cause an assistance limit to be exceeded. The assistance limit can be exceeded under

this provision as the applicant should not be disadvantaged because of an incorrect original decision.

Subsection (8) provides that an application for review must be decided within 42 days after it is made.

Clause 125 applies if a decision is confirmed, amended or substituted on an internal review under section 124. Subsection (2) enables an applicant to apply, as provided under the QCAT Act, to QCAT for a review of the internal review decision. Under section 22(3), of the QCAT Act, QCAT may stay the operation of the internal review decision, either on application by a person or its own initiative.

Subsection (3) clarifies that, without limiting the decisions QCAT may make under the QCAT Act, if QCAT decides that the assistance is to be granted to a victim of an act of violence, or the amount of assistance granted to a victim of an act of violence is to be increased, the grant or increase must occur even if it will cause an assistance limit to be exceeded. The assistance limit can be exceeded under this provision as the applicant should not be disadvantaged because of an incorrect decision by the person conducting the internal review.

Clause 126 applies if, following a review of a decision under clause 124 or 125, the amount of assistance to a person is reduced, the person must refund to the State the amount of assistance paid to the person in excess of the amount of assistance granted following the review. An amount that is not refunded under this section is a debt owed to the State by the person.

Part 19 Administration

Clause 127 requires the chief executive to appoint, in writing, a manager of victim assistance (scheme manager) and the appointment of the scheme manager is subject to the conditions stated in document of appointment (subsection (3)). Subsection (2) provides that a person is only eligible for appointment as the scheme manager if they are a public service employee and are appropriately qualified. Section 36 of the *Acts Interpretation Act 1954* defines the term "public service employee" by reference to the *Public Service Act 2008*, section 9(1). The term "appropriately qualified" is defined in the schedule 3 dictionary to the Bill.

Subsection (4) provides that the scheme manager's appointment ends either at the end of the term of appointment or if the scheme manager stops being a public service employee.

The scheme manager may do all things necessary or convenient to be done for the performance of the scheme manager's functions under the Bill (subsection (5)) and may perform all the functions and exercise all the powers of a government assessor under the Bill (subsection (6)).

Subsection (7) clarifies that a reference to a government assessor in the Bill includes a reference to the scheme manager performing a function or exercising a power of a government assessor under subsection (6).

Clause 128 provides that as many government assessors as are required for the proper administration of the scheme must be appointed by the chief executive in writing. The appointment of a government assessor is subject to the conditions stated in the document of appointment (subsection (4)). Subsection (3) provides that a person is only eligible for appointment as a government assessor if they are a public service employee and are appropriately qualified. Section 36 of the *Acts Interpretation Act 1954* defines the term "public service employee" by reference to the *Public Service Act 2008*, section 9(1). The term "appropriately qualified" is defined in the schedule 3 dictionary to the Bill.

Subsection (5) provides that a government assessor's appointment ends either at the end of the term of appointment or if the government assessor stops being a public service employee.

A government assessor may do all things necessary or convenient to be done for the performance of the government assessor's functions under the Bill (subsection (6)).

Clause 129 enables the scheme manager to delegate the scheme manager's functions under chapter 3 to an appropriately qualified government assessor or departmental employee.

Clause 130 requires the scheme manager, a government assessor or a departmental employee, who is to perform a function or exercise a power under chapter 3 in relation to a particular application, to disclose to specified persons if they have or acquire an interest, financial or otherwise, that may conflict with the proper performance of the function or exercise of the power (subsections (2) to (4)).

Subsection (5) provides that if a disclosure is made under subsections (2) to (4), the person who the disclosure was made to must choose another person specified in subsection (5) to deal with the application.

Subsection (6) defines the term "application" for the purposes of clause 130.

Part 20 Miscellaneous

Clause 131 provides that the chief executive may make guidelines about the performance of a function or the exercise of a power by the scheme manager or a government assessor under chapter 3.

The chief executive must ensure the guidelines are available for public inspection at the main office of the victims assistance unit during ordinary office hours on business days (subsection (2)). The term "victims assistance unit" is defined in the schedule 3 dictionary. The guidelines will be available on the department's website, which at the time of commencement of clause 131 was www.justice.qld.gov.au.

Subsection (3) provides that a person may obtain a copy of the guidelines from the scheme manager free of charge.

Subsection (4) provides that when a person is performing a function or exercising a power under chapter 3, they must have regard to the guidelines.

Clause 132 provides that the chief executive may approve a table of costs stating the costs the chief executive considers to be an appropriate guide, for the time being, for deciding whether costs are reasonable for the scheme. Reasonable counselling expenses, reasonable medical expenses, reasonable report expenses, and reasonable incidental travel expenses are components of victim assistance and are defined in the schedule 3 dictionary by reference to the table of costs.

The chief executive must ensure the table of costs are published on the department's website and are available for public inspection at the main office of the victims assistance unit during ordinary office hours on business days (subsection (2)). The term "victims assistance unit" is defined in the schedule 3 dictionary. The table of costs will be available on

the department's website, which at the time of commencement of clause 132 was www.justice.qld.gov.au.

Subsection (3) provides that a person may obtain a copy of the table of costs from the scheme manager free of charge.

Subsection (4) clarifies that in having regard to the table of costs a person must give proper weight to the table, but is not bound by the table.

Subsection (5) defines the term "costs" for the purpose of clause 132.

Clause 133 enables the scheme manager to give the information listed in subsection (1)(a) and (b) to a corresponding scheme manager if requested.

Subsection (2) states that the scheme manager may only give the information if reasonably satisfied that the corresponding manager needs the information for deciding an application for assistance under a corresponding scheme.

The terms "corresponding scheme manager" and "corresponding scheme" are defined in subsection (5).

Subsection (3) makes it an offence for a person who acquires information, or accesses a document under subsection (2) to disclose it, or give access to it, to anyone else. The maximum penalty for unauthorised disclosure or access is 100 penalty units or 2 years imprisonment.

Subsection (4) provides that the offence under subsection (3) does not apply: where the person who the information is about has consented to its disclosure; in connection with the performance of a function under the law that provides for the corresponding scheme; or as required or authorised by the Bill or another law.

Clause 134 provides that the scheme manager and a corresponding scheme manager may enter into a written arrangement by which information is given and received to the extent allowed by the Bill or another law.

The terms "corresponding scheme manager" and "corresponding scheme" are defined in subsection (5).

Subsection (3) provides that, without limiting subsection (2), the arrangement may provide for the electronic transfer of information, but under subsection (4) if the Bill or another law provides a limit on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

Clause 135 applies to the extent another provision of the Bill allows for another entity to give information to a government assessor. For example, clauses 65 and 66 enable a government assessor to access certain information from the police commissioner about an act of violence.

Subsection (2) enables the chief executive and the entity to enter into a written arrangement for the giving of the information and subsection (3) allows the arrangement to provide for the electronic transfer of the information.

Subsection (4) provides that if, under the Bill, there is a limit on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

Clause 136 enables a person to ask the scheme manager for prescribed information about someone else who has been granted assistance if: the person and the other person are both victims of the same act of violence; and they are eligible for assistance, or a component of assistance, that is subject to an assistance limit. For example, related victims are subject to an assistance limit of $100,000.

The term "prescribed information" is defined in subsection (6).

Subsection (2) provides that the scheme manager may give the person the prescribed information if the scheme manager is reasonably satisfied that: the person needs the information to decide whether to apply for a review of the decision about their application for assistance; or for the purposes of making a submission for a review under clauses 124 or 125. For example, if the decision on an application for assistance by a related victim is less than the amount requested because the government assessor has taken into account the relative needs of the related victims under clause 85(4), the person may request prescribed information in order to make a decision whether or not to seek a review of the decision.

Subsection (4) makes it an offence for a person who obtains prescribed information under clause 136 to disclose it, or give access to it, to anyone else. The maximum penalty for unauthorised disclosure or access is 100 penalty units or 2 years imprisonment.

Subsection (5) provides that offence under subsection (4) does not apply where the person who the information is about has consented to its disclosure; it is for a purpose under subsection (2) (for example, a review), or as required or authorised by another law.

Clause 137 states that the information set out subsections (1)(a) and (b) is inadmissible in any proceeding for the prosecution of a relevant offence for an act of violence. As decisions under the Bill are made on the balance of probabilities and are not reliant upon the offender being charged or convicted, the fact that a person has applied for or has or has not been granted assistance, or a decision on a question of fact or to grant or not grant assistance under the Bill, are not admissible in the prosecution proceeding.

Subsection (2) defines the term "application for assistance" for the purposes of clause 137.

Chapter 4 Victims services coordinator

Clause 138 provides that the victim services coordinator must be appointed by the chief executive in writing. The appointment of the victim services coordinator is subject to the conditions stated in the document of appointment (subsection (3)).

Subsection (2) provides that a person is only eligible for appointment as the victim services coordinator if they are a public service employee and are appropriately qualified. Section 36 of the *Acts Interpretation Act 1954* defines the term "public service employee" by reference to the *Public Service Act 2008*, section 9(1). The term "appropriately qualified" is defined in the schedule 3 dictionary to the Bill.

Subsection (4) provides that the victim services coordinator's appointment ends either at the end of the term of appointment or if the victim services coordinator's stops being a public service employee.

The victim services coordinator may do all things necessary or convenient to be done for the performance of the coordinator's functions under the Bill (subsection (5)).

Clause 139 provides for the functions of the victim services coordinator.

Chapter 5 Miscellaneous

Clause 140 applies to a prescribed person who in the course of administering the Bill, or because of an opportunity provided by involvement in administering the Bill, has acquired information or gained access to a document about someone else. Subsection (4) defines the term "prescribed person" for the purposes of clause 140.

Subsection (2) makes it an offence for a person who acquires the information, or accesses the document to disclose it, or give access to it, to anyone else. The maximum penalty for unauthorised disclosure or access is 100 penalty units or 2 years imprisonment.

Subsection (3) provides that an offence under subsection (2) does not apply where the person who the information is about has consented to its disclosure; it is in connection with the performance of a function under the Bill; or as required or authorised by the Bill or another law, including clause 133 or 136.

Clause 141 makes it an offence for a person to state anything (subsection(1)), or to give to an official a document containing information (subsection (2)), that the person knows is false or misleading in a material particular. The maximum penalty is 100 penalty units.

Subsection (3) provides that subsection (2) (providing false or misleading document) does not apply if: the person tells the official when giving the document it is false or misleading; or the person gives the correct information.

Clause 142 provides that an offences against this Act may be prosecuted in a summary way under the *Justices Act 1886*.

Clause 143 provides for protection from civil liability for an official for acts done, or omissions made, honestly and without negligence under the Bill The liability attaches instead to the State. The term "official" is defined in the schedule 3 dictionary.

Clause 144 provides that the Minister must review the Bill within 5 years after the commencement of clause 144 to decide whether the Bill's provisions remain appropriate. As soon as practicable after finishing the review, the Minister must table a report about the review outcomes in the Legislative Assembly.

Clause 145 provides that the chief executive may approve forms for use under the Bill.

Clause 146 enables the Governor in Council to make regulations under the Bill.

Clause 147 provides that a temporary regulation may be made if provided for under the Bill. The effect of the section is that regulations can only be made where they benefit individuals because, they either increase the types of victims who can seek assistance (by adding to the list of offences that are a "prescribed offence" under clause 25(8)) or they increase the amount of assistance a victim may receive (by moving an act of violence into a higher category under schedule 2, item 3).

The temporary regulation will be used where it is necessary for the department to respond quickly to a policy change. Because the regulation has a life of only 1 year (subsection (3)), the department is required to seek an amendment of the Act within that year.

Clause 148 provides for a time-limited regulation-making power for transitional provisions. The transitional regulation is beneficial as it directed at preserving a person's existing rights under the *Criminal Offence Victims Act 1995* (COVA) and the Criminal Code, chapter 65A, as continued to apply under COVA. In addition, the transitional regulation-making power, and any transitional regulation made under it, is given a limited life of 2 years after the commencement of the section.

Chapter 6 Repeal and transitional provisions

Part 1 Repeal provision

Clause 1409 peals the *Criminal Offence Victims Act 1995*.

Part 2 Transitional provisions

Division 1 Preliminary

Clause 150 defines certain terms used in part 2, chapter 6.

Clause 151 provides that if a person has made an application but has withdrawn it before it is decided, the person is taken to not have made the application.

Clause 152 provides that, subject to sections 155(6), 160(5) and 164(5), this part does not limit the *Acts Interpretation Act 1954*, section 20. These sections specifically state a person cannot apply under the repealed legislation.

Clause 153 provides that other than as provided under division 2 (Applications that could have been made to a court), division 3 (Applications that could have been made to the State), and division 5 (Special provision if a series of related offences), chapter 3 of the Bill does not apply in relation to an act of violence committed before commencement. These divisions specify how acts of violence committed prior to commencement are to be treated depending on, for example, whether there is an existing application or extension of time application at the time of commencement.

Division 2 Applications that could have been made to a court

Clause 154 states that division 2 applies where a person could have, if chapter 6 had not commenced (that is, COVA had not been repealed and the person is within the time limits to apply under COVA or the Code), applied to a court for an order for compensation because of a personal offence committed prior to commencement under section 24 of the repealed Act, or section 663B of the repealed Criminal Code chapter. If at the commencement a person has not made an application under these provisions or has withdrawn the application, they can apply under division 2 after the commencement as set out in clauses 155 and 156.

It is immaterial whether the injury was suffered before or after commencement, the conviction happened before or after commencement, or the entitlement to apply is the result of extension of time order made before the commencement under section 41 of COVA.

Clause 155 enables a person who falls within clause 154 to apply for an order under section 24 of the repealed Act, or section 663B of the repealed Criminal Code chapter, if the conviction occurs before commencement. The application must be made before the earlier of: the expiry of the period within which the person could have, if chapter 6 had not commenced (that is, COVA had not been repealed) applied for the court order; or 2 months after commencement.

Therefore, a person who has a right under COVA or the Criminal Code in relation to a conviction that occurred prior to commencement is not affected by the repeal of COVA as long as they lodge a court application for the COVA or Code matter within 2 months of commencement. The decision on the application will continue to be made under the previous legislation by the court to whom the application is made and appeals heard by the Court of Appeal. This two month 'grace period' has been included in the Bill to enable a person to engage a lawyer, prepare materials and lodge a court application, particularly for convictions that occur immediately before commencement.

For example, if a conviction occurred in October 2009 for a personal offence and the person could have applied under COVA, the person has until 2 months after commencement to make the application under COVA. If COVA had continued they would have 3 years to make the application, but as the 2 month period after commencement is earlier, they must make the application within that period to preserve their rights under COVA. If the person in the example does not make an application under this clause, they may make an application for victim assistance under clause 156 within the time limits set out in that clause.

Subsection (6) provides that this clause applies despite the *Acts Interpretation Act 1954*, section 20 as it states that a person cannot apply under the repealed legislation and therefore changes a person's rights under the repealed legislation.

Clause 156 applies if a person who falls within clause 154 and the conviction happens on or after commencement, or if the conviction occurred before the commencement and the person has not made an application under clause 155, and whether or not the two month 'grace

period' in clause 155(2)(b) has passed. The person may apply for victim assistance. This ensures that a person who would have otherwise been eligible under COVA or the repealed Criminal Code chapter can still apply for assistance after commencement of the Bill.

Subsection (3) provides that the person may apply for victim assistance within the time limits specified. The policy is that there is to be a minimum three year time limit under the Bill for Code applications or for a person who was a child at the time of the conviction/relevant event 3 years from when the person turns 21. This is consistent with COVA and the new scheme's limitation period, and will ensure that matters where a person could have applied under the Code are made in a timely manner. The repealed chapter 65A of the Code does not provide for time limits, however, the *Limitation of Actions Act 1974* section 10(1)(d) has been applied to section 663B of Code by the Court of Appeal in *Chong v. Chong* [2001] 2 Qd R 301, that is, there is a 6 year limitation period. Therefore, for applications under the Code for convictions that occur prior to commencement, they have specifically treated in relation to time limits under subsection (3).

Under subsection (3)(a)(i), for Criminal Code matters an application for assistance must be made, if the conviction happened 2 or more years before the commencement, within 6 years of the conviction or 1 year after commencement, whichever is earlier. In effect a person has a minimum of 3 years to make the application. For example, if the conviction happened in June 2005 the person will have until 1 year after commencement to apply. Although the person would have, but for the commencement of this chapter had until June 2011 to apply, they are given a minimum of 3 years to apply and 1 year's notice after commencement. The 3 year rule has not been applied absolutely as it would mean those who fall within the three to six year period prior to commencement would automatically be out of time. Instead a person has to make the application within 6 years of the conviction or 1 year after commencement, whichever is the earlier and this allows for a minimum period of 3 years.

Under subsection (3)(a)(ii) for Criminal Code matters where the person was a child at the time of the conviction the application for assistance must be made, if the conviction happened 2 or more years before the commencement, by the time the applicant turns 21 or 1 year after commencement, whichever is earlier. In effect a person has a minimum of 3 years from when they turn 18 to make the application. For example, if the

conviction happened in June 2005 and the child was 15 at this time, they will have until they turn 21 or 1 year after commencement to apply.

Clause 156 only applies if a person is not out of time on commencement. For example, if the conviction happened in 1980 the person will be out of time on commencement (that is, more than 6 years after the conviction or, for a child, when they turned 24 as per the *Limitation of Actions Act 1974* section 10(1)(d) and section 29). If this person wants to apply for assistance they must apply under division 6 for approval to do so.

Under subsection (3)(b), any other person must apply within 3 years after the conviction if they were an adult at the time of the conviction, or before they turn 21 if they were a child at the time of the conviction. This subsection will apply to persons where a conviction for a Code personal offence occurs within 2 years of commencement or after commencement. For COVA applications, whether or not the conviction occurred before or after commencement which is consistent with COVA time limits. This applies a 3 year time limit for Code applications for adults, or 3 years from when the child turns 18, consistent with the time limit policy for Code matters.

If a person becomes out of time after commencement under the time limits set out in this clause, under subsection (4) the scheme manager may, under section 54(2), extend the time for making an application for assistance under this clause.

Clause 157 provides that for applying clause 156 and chapter 3 to the application for victim assistance, the personal offence is taken to be an act of violence and the person is taken to be a primary victim of the act of violence. Subsection (2) states that deciding assistance under this division is subject to division 5 (that is, how a series of related offences must be treated).

Clause 158 provides that if assistance is granted under this division, chapter 3, part 16 (Recovering assistance from offender) applies in relation to a person convicted of a relevant offence for the act of violence. It applies whether the conviction happens before or after commencement.

Division 3 Applications that could have been made to the State

Clause 159 states that subdivision 1 applies where a person could have, if chapter 6 had not commenced (that is, COVA had not been repealed and if they are within the COVA time limits for COVA matters), applied to the State for an amount for an injury because of a previous prescribed offence committed prior to commencement under section 33 or 34 of the repealed Act, or section 663D of the repealed Criminal Code chapter. If at the commencement a person has not made an application under these provisions or has withdrawn the application, they can apply under part 3 after the commencement as set out in clause 160.

It is immaterial whether: the injury was suffered before or after commencement; certain relevant events that happened before or after commencement; or the entitlement to apply is the result of extension of time order made before the commencement under section 41 of COVA.

Clause 160 provides that the person cannot apply under the repealed legislation after commencement, however, they can apply for assistance.

The policy is that there is to be a minimum three year time limit under the Bill for Code applications, or for a person who was a child at the time of the conviction/relevant event 3 years from when the person turns 18. This is consistent with COVA and the new scheme's limitation period and will to ensure that matters where a person could have applied under the Code are made in a timely manner. The repealed chapter 65A of the Code does not provide for time limits for section 663D applications. The test under *Chong v. Chong* has only been applied to court applications.

Under subsection (3)(a)(i), for Code matters an application for assistance must be made, if the relevant happened 2 or more years before the commencement, within 1 year after commencement. In effect a person has a minimum of 3 years to make the application from the relevant event. For example, if the relevant event happened in June 2005 the person will have until 1 year after commencement to apply.

Under subsection (3)(a)(ii) for Code matters where the person was a child at the time of the relevant event the application for assistance must be made, if the relevant event happened 2 or more years before the commencement, by the time the applicant turns 21 or 1 year after commencement, whichever is later. In effect a person has a minimum of 3

years from when they turn 18 to make the application. For example, if the conviction happened in June 2005 and the child was 15 at this time, they will have until they turn 21 or 1 year after commencement to apply, whichever is later.

Under subsection (3)(b), any other person must apply within 3 years after the relevant event if they were an adult at the time of the relevant event, or before they turn 21 if they were a child at the time of the relevant event. This subsection will apply to persons where the relevant event for a Code personal offence occurs within 2 years of commencement or after commencement, and for COVA applications, whether or not the relevant event occurred before or after commencement and is consistent with COVA time limits. This again applies a 3 year time limit for Code applications for adults, or 3 years from when the child turns 18.

Under subsection (3)(b) the relevant event in some cases is different to the relevant event under COVA or the Code. In chapter 6 of the Bill, the relevant event is when the right to apply crystalises to ensure a person's rights are preserved from when they actually could have applied for assistance under the COVA or the Code. Under COVA, in certain circumstances the right could actually crystalise after the 3 year limitation period has ended. For example, if the offender was found to be of unsound mind at the end of a trial that occurs 3 years after the offence happened. In this case, the person currently would have to apply for an extension of time under section 41 of COVA. This clause effectively, extends the time a person can apply for assistance (if they are not out of time on commencement) and once they are out of time under this clause, they can then apply for an extension of time under subsection (4).

Clause 160 only applies if a person is not out of time on commencement. For example, if the relevant event happened in 1996 for a COVA personal offence (when the victim was an adult), the person will be out of time on commencement (it is more than 3 years after the relevant event). If this person wants to apply for assistance they must apply under division 2 for approval. This does not apply to applications for previous prescribed offences under the Code section 663D as there are no time limits applied prior to commencement of the Bill.

If a person becomes out of time after commencement under the time limits set out in this clause, subsection (4) provides that the scheme manager may, under section 54(2), extend the time for making an application for assistance under this clause.

Subsection (5) provides that this clause applies despite the *Acts Interpretation Act 1954*, section 20 as it states a person cannot apply under the repealed legislation and therefore changes a person's rights under the repealed legislation.

Clause 161 provides that for applying clause 160 and chapter 3 to the application for victim assistance: the personal offence is taken to be an act of violence, and the person is taken to be a primary victim of the act of violence. Subsection (2) states that deciding assistance under this subdivision is subject to division 5 (that is, how a series of related offences must be treated).

Clause 162 provides that if assistance is granted under this subdivision; chapter 3, part 16 (Recovering assistance from offender) applies in relation to a person convicted of a relevant offence for the act of violence. The clause applies whether the conviction happens before or after commencement and whether the conviction happens before or after the assistance is granted (this is, because a conviction is not relevant to these types of applications under COVA or the Code).

Clause 163 provides that this subdivision applies if a person could have, if chapter 6 had not commenced (that is, COVA had not been repealed), applied to the State for an amount for an injury because of a previous prescribed offence committed prior to commencement under section 35 of the repealed Act. If at the commencement a person has not made an application under section 35 of COVA or has withdrawn the application, they can apply under part 3 after the commencement as set out in clause 164.

Clause 164 provides that a person can not apply, after commencement, under the repealed legislation for the payment of an amount mentioned in clause 163(1)(a). However, the person can apply for assistance under the new scheme.

Subsection (3) sets out the time limits as 3 years after the relevant event if the person was an adult at the time of the relevant event, or if the person was a child when the relevant event happened, before they turn 21. These time limits are consistent with COVA.

Clause 164 only applies if a person is not out of time on commencement. For example, if the relevant event happened in 1996 for a COVA personal offence, when the victim was an adult, the person will be out of time on commencement (that is, more than 3 years after the relevant event). If such

a person wants to apply for assistance they must apply under division 2 for approval.

If a person becomes out of time after commencement under the time limits set out in this clause, subsection (4) provides that the scheme manager may, under section 54(2), extend the time for making an application for assistance under this clause.

Subsection (5) provides that this clause applies despite the *Acts Interpretation Act 1954*, section 20, as it states a person cannot apply under the repealed legislation and therefore changes a person's rights under the repealed legislation.

Clause 165 provides that for applying clause 164 and chapter 3 to the application for victim assistance: the previous prescribed offence is taken to be an act of violence committed after commencement; and the person is taken to be a related victim of the act of violence; and the person whose death in relation to which the person's entitlement to make the application arose is taken to be the primary victim. Subsection (2) states that deciding assistance under this subdivision is subject to division 6 (that is, how applications by dependants and family members are to be treated in certain circumstances).

Clause 166 provides that if assistance is granted under this subdivision, chapter 3, part 16 (Recovering assistance from offender) applies in relation to a person convicted of a relevant offence for the act of violence. This applies whether the conviction happens before or after commencement and whether the conviction happens before or after the assistance is granted (this is because a conviction is not relevant to these types of applications under COVA or the Code).

Division 4 Existing applications

Clause 167 applies if a person has applied to a court under section 24 of COVA or section 663B of the Code prior to commencement and the application has not been finally dealt with on commencement.

Subsection (2) provides that the court must hear, or continue to hear, and decide the application under the repealed provisions.

Subsection (3) provides that any provisions in the repealed legislation, that are necessary and convenient to be used in relation to the application, continue to apply.

Subsection (4) specifically provides that section 28(1) of the repealed Act continues to apply to an order under section 24 of COVA, that is, a convicted person must be notified of the application before the application is decided.

Division 8 applies to any order made under section 24 COVA or section 663B of the Code after commencement, that is, the person can still apply to the State for payment of the compensation order under section 32 of COVA or section 663C of the Code within certain time limits.

Clause 168 applies if, at commencement, the court has made an order under section 24 of COVA, and the person has applied under section 32 of COVA and the application has not been finally dealt with under section 32 COVA. Clause 168 also applies if, at commencement, the court has made an order under section 663B of the Code, and the person has applied under section 663C of Code and the application has not been finally dealt with under section 663C of Code. Subsection (2) provides that the entity to whom the application was made must deal with the application under the repealed provisions.

Subsection (3) provides that any provisions in the repealed legislation, that are necessary and convenient to be used in relation to the application, continue to apply.

Subsection (4) provides that without limiting subsection (3), the relevant appropriation provision continues to apply to any payment to be made in relation to the application as if this chapter had not commenced.

Subsection (5) provides that if at the end of 3 years after the commencement the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Subsection (6) provides that if the application lapses under subsection (5), the applicant cannot make a further application under this part and therefore cannot seek a payment from the State for the court order.

Subsection (7) provides that the scheme manager must give the applicant notice of the effect of subsection (5) and (6) and ensure all reasonable steps are taken to enable the applicant to give the information, documents or other assistance, within the 3 year period.

Subsection (8) defines the term "relevant appropriation provision" for the purposes of this clause.

Clause 169 applies if, at commencement, a person has applied for payment of an amount under sections 33, 34 or 35 of COVA or section 663D of the Code and the application has not been finally dealt with. Subsection (2) provides that the entity to whom the application was made must deal with the application under the repealed provisions.

Subsection (3) provides that any provisions in the repealed legislation that are necessary and convenient to be used in relation to the application continue to apply.

Subsection (4) provides that without limiting subsection (3), the relevant appropriation provision continues to apply to any payment to be made in relation to the application as if this chapter had not commenced.

Subsection (5) provides that if at the end of 3 years after the commencement the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Subsection (6) provides that if the application lapses under subsection (5) the applicant cannot make a further application under this chapter and therefore cannot seek a payment from the State for the court order.

Subsection (7) applies if at the end of the 3 years the application lapses. The person can apply for victim assistance if they are within the time limits set out under division 3, subdivision 1 for applications under sections 33 or 34 of COVA or section 663D of the Code; and division 3, subdivision 2 for application under section 35 of COVA.

The purpose of this provision is to ensure COVA and Code applications do not continue 3 years after commencement. The purpose of repealing COVA and the Code provisions is to ensure that there is only one scheme operating, that is, the new scheme. But if a person is still within the division 3, subdivision 1 time limits, they can still apply for assistance.

Subsection (8) provides that the scheme manager must give the applicant written notice of the effect of subsection (5) to (7) and ensure all reasonable steps are taken to enable the applicant to give the information, documents or other assistance, within the 3 year period.

Subsection (9) defines the term "relevant appropriation provision" for the purposes of this clause.

Division 5 Special provisions if series of related offences

Clause 170 applies if a person suffers an injury because of 2 or more personal offences against the person that are a series of related offences, and at least one occurred prior to commencement. The term "personal offence" is defined in clause 150 as a personal offence under COVA or the Code committed before commencement, or a prescribed offence under section 25(8) committed after commencement Subsection (2) defines when 2 or more personal offences are a series of related offences. This is consistent with the definition of series of related offences in clause 25(4) which relevant to granting assistance under chapter 3. Subsection (3) provides that a personal offence is not related to an earlier personal offence if the later offence is committed after assistance granted in relation to the earlier offence. This is consistent with clause 25(5).

Clause 171 states that for applying chapter 3 to an application for assistance mentioned in clause 170(1)(c) the personal offences are taken to be single act of violence and assistance is only granted for the single act of violence.

Subsection (2) applies if a person makes 2 or more applications for assistance as mentioned in clause 170(1)(c). For the purposes of the provisions of chapter 3 that apply to two or more applications that relate to a series of related crimes the definition of series of related offences in clause 170(2) is substituted for the definition of serious related crimes in those provisions.

Clause 172 applies if when an application mentioned in clause 170(1)(c) is made, the person has also made a repealed legislation application for 1 or more of the personal offences in the same series of related offences. Subsection (2) provides that the government assessor must reduce the amount of assistance otherwise payable for an application mentioned in clause 170(1)(c) by the amount of the compensation order. Subsection (3) defines the term "compensation order" for the purposes of this clause.

Clause 173 applies if 1 or more of the personal offences in a series of related offences occurred before commencement and 1 or more after commencement. Subsection (2) provides that the government assessor must defer the application mentioned in clause 170(1)(c) until the repealed legislation application is decided. If the repealed legislation application is granted, the government assessor must reduce the amount of assistance

otherwise payable for an application mentioned in clause 170(1)(c) by the amount of the repealed legislation application amount. Subsection (3) defines the term "repealed legislation application" for the purposes of this clause.

Clause 174 provides that if victim assistance payable to a person is reduced under clause 172(2) or 173(2)(b) or both clauses, and an amount of assistance remains payable, the government assessor must decide the component of assistance for which the amount is payable. The government assessor must take into account the person's needs, whether the person has incurred any expenses and anything else the government assessor considers relevant and also give the person notice with the decision, the reasons for the decision and the internal review details for the decision.

Division 6 Special provisions if mixed applications

Clause 175 applies where a person has died before the commencement, in circumstances constituting murder or manslaughter. The purpose of this clause is to provide that if a dependent of deceased person makes an application as a related victim under division 3, subdivision 2 of chapter 6, and other dependants have an existing or decided application as dependants under section 35 of COVA for the same act of violence, any grant of assistance under division 3, subdivision 2 of chapter 6, is limited to the remaining pool (if any) provided for under COVA. If no claim has been made under COVA (or it has been withdrawn prior to commencement before it has been decided), the available pool of assistance is the amount provided under chapter 3.

Clause 176 applies where a person has died before the commencement, in circumstances constituting murder or manslaughter. The purpose of this clause is to provide that if a family member who is not a dependent of a deceased person makes an application as a related victim under division 3, subdivision 2 of chapter 6, and other family members who are not dependants have an existing or decided application as family member under section 35 of COVA for the same act of violence, any grant of assistance under division 3, subdivision 2 of chapter 6, is limited to the remaining pool (if any) provided for under COVA. If no claim has been made under COVA (or it has been withdrawn prior to commencement

before it has been decided), the available pool of assistance is the amount provided under chapter 3.

Division 7 Extensions of time

Clause 177 applies if, at commencement, a person has applied for an extension of time order under section 41 of COVA, and the application has not been finally decided under COVA on commencement. The entity to whom the application was made must continue to decide the application under section 41 of COVA after the commencement. Subsection (4) provides that if the order is granted, despite division 2 and 3 of chapter 6, the person may make an application under COVA within the period allowed in the order and the application is to be decided under COVA.

Subsection (5) provides that the repealed Act continues to apply to the application.

Subsection (6) provides that if at the end of 3 years after the commencement, the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Subsection (7) provides that if the application lapses under subsection (6), the applicant cannot make a further application under this part and therefore cannot seek a payment from the State for the court order.

Subsection (8) provides that the scheme manager must give the applicant written notice of the effect of subsections (6) and (7), and ensure all reasonable steps are taken to enable the applicant to give the information, documents or other assistance, within the 3 year period.

Clause 178 applies if, at the commencement, an adult who could have made an application under section 33(1)(a), (b)(i) or (c) of COVA is out of time, but 3 years after the relevant has not passed. Subsection (2) defines the term “out of time”.

Subsection (3) states that they cannot apply under section 41 of COVA for an extension of time order but the person can apply for assistance under clause 160 as if they were a person mentioned in clause 159, that is, as if they were not out of time.

Subsection (5) defines the term ‘relevant event” which in some cases is different to the relevant event under COVA. In this clause the relevant event

is when the right to apply crystalises to ensure a person's rights are preserved from when they actually could have applied for assistance under the COVA. Under COVA, in certain circumstances the right could actually crystalise after the 3 year limitation period has ended. For example, if the offender was found to be of unsound mind at the end of a trial that occurs 3 years after the offence happened. In this case, the person currently would have to apply for an extension of time under section 41 of COVA. This provision effectively, extends the time a person can apply for assistance under the new scheme so they do not need to apply for an approval to apply out of time under clause 179 until after this time.

Clause 179 provides that if, at the commencement, a person who could have made a relevant COVA application is out of time, the person cannot apply for an extension of time order under section 41 of COVA. Subsection (2) defines an out of time COVA application, that is, the time limit under COVA has expired and the person has not made an application within that time.

Subsection (3) provides that the person cannot apply for an order under section 41 of COVA.

Subsection (4) provides that if the person has not previously applied for an order under section 41 of COVA they can apply to the scheme manager for approval to apply for assistance under division 2 or 3. Subsection (5) sets out what clause of chapter 6 the person can apply under (and that the time limits in those clauses will not apply to the application, as the scheme manager has given approval to apply out of time).

Subsection (6) sets out what the scheme manager can take into account when granting the approval to apply out of time.

Subsection (7) and (8) provide that the scheme manager must: give written notice of the decision on the approval; and the reasons for the decision; and the internal review details.

Subsection (9) provides that clause does not limit clause 178 which provides that even if a person is out of time in certain circumstances they can still apply for assistance without approval.

Subsection (10) defines the term "relevant COVA application" for this clause.

Clause 180 applies if, at the commencement, a person who could have made a relevant Code application (that is, an application to the court under section 663B of the Code) is out of time. Subsection (2) defines an

out-of-time Code application, that is, the time limit applied by the *Limitation of Actions Act 1974*. The Code does not provide for time limits, however, the *Limitation of Actions Act 1974* section 10(1)(d) has been applied to section 663B of Code by the Court of Appeal in *Chong v. Chong* [2001] 2 Qd R 301, that is, there is a 6 year limitation period for adults at the time of the conviction, and for a person who is a child at the time of the conviction, 6 years from when they turn 18.

Subsection (3) provides that person may apply to the scheme manager for approval to apply for assistance under division 2 of chapter 6.

Subsection (5) sets out what the scheme manager can take into account when granting the approval to apply out of time.

Subsection (6) provides that a notice of the decision must be provided. Under subsection (7), if the decision is to not grant the approval, the scheme manager must: give written notice of the decision on the approval; and the reasons for the decision; and the internal review details.

Subsection (8) defines the term "relevant Code application" for this clause.

Division 8 Compensation orders

Clause 181 provides that division 8 applies to a compensation order made by a court under section 24 of COVA or section 663B of the Code, whether before or after commencement.

Clause 182 provides, subject to clause 183, that the compensation order under section 24 of COVA or section 663B of the Code continues in effect and the repealed legislation continues as far as necessary and convenient.

Clause 183 provides that a person who has a compensation order in the their favour, whether it is made before or after commencement, may apply to the State under section 32 of COVA for an ex gratia payment, however, it must be made within 6 months after commencement (for orders made before commencement) or within 6 months after the order is made (if the order is made on or after commencement).

Subsection (2) provides that, if at the end of 3 years after the commencement, the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Subsection (3) provides that if the application lapses under subsection (2) the applicant cannot make a further application under this part and their rights to an ex gratia payment under COVA or the Code cease.

Subsection (4) provides that the scheme manager must give the applicant written notice of the effect of subsections (2) and (3), and ensure all reasonable steps are taken to enable the applicant to give the information, documents or other assistance, within the 3 year period.

Division 9 Provisions about amounts paid by State under repealed legislation

Clause 184 provides that the State's rights of subrogation under COVA and the Code continue after commencement for any amounts paid under the repealed Act, whether before or after commencement.

Clause 185 provides that the purpose of division 9, subdivision 2 is to assist the State recover an amount paid by the State to an offender in relation to: an amount paid by the State under a compensation order made against the person made under section 24 of COVA; an amount paid by the State for an order made under section 663B(1) of the repealed Criminal Code; and an amount payable under a repayment order or subrogation order made against the person.

This subdivision does not create a new liability for an offender to repay the State as section 38 of COVA currently provides that the State, is subrogated to the extent of any payment made by it to their victim, to all the rights and remedies the injured person has for the injury against anyone responsible for the injury. This subdivision simply creates another mechanism to recover from the offender but does not alter existing liabilities. The recovery provisions are consistent with the recovery provisions for assistance paid under the new scheme and enable a COVA or Code debt to be registered with SPER for recovery.

Clause 186 defines certain terms used in division 9, subdivision 2.

Clause 187 provides that the State cannot recover a COVA or Code debt under this division if an agreement is in force with the person (offender) who owes the debt.

Clause 188 sets out how an amount received under a subrogation provision is to be treated, that is, the offender's liability under clause 191(4) must be reduced accordingly.

Clause 189 states that the scheme manager must give the person that the recovery is being sought from a notice setting out the matters listed in subsections (a) to (h).

Clause 190 provides that if a person given a notice under clause 189 disputes the amount the State is seeking to recover, they must give a dispute notice to the scheme manager. The scheme manager must give the person a notice of the scheme manager's decision on the dispute. If the scheme manager's decision about the amount that is owed is higher than the amount the person claims they owe, the notice must be a QCAT information notice. The person may apply to QCAT for a review of the scheme manager's decision.

Clause 191 provides for the offender's liability to pay. The scheme manager is to give a person a notice stating they are to pay the amount within at least 28 days. This clause also provides for when an offender's liability is reduced.

Clause 192 applies if a person (offender) is liable to pay an amount to the State under section 191(4), and the offender's liability under section 191(4) is reduced under section 188(3) or 191(5). For this clause to apply the following circumstances must apply: if, because of the reduction, the State must refund an amount (refundable amount) to the offender, and under section 95, an amount of assistance granted to the offender (offset amount) was taken to be paid to the State for satisfying the offender's liability under section 191(4).

Under subsection (2) the State must –

(a) if paragraph (b) does not apply—pay the refundable amount to the offender as assistance; or

(b) if the refundable amount is more than the offset amount—pay the part of the refundable amount equivalent to the offset amount to the offender as assistance, and refund the remaining amount to the offender.

Subsection (3) provides that if, under subsection (2), an amount is paid to the offender as assistance, the government assessor must decide the component of assistance for which the amount is payable, having regard to the matters listed in (a) and give the offender a notice stating the decision; the reasons for the decision; and the internal review details for the decision.

Clause 193 provides that if a person does not pay the amount owed under clause 191(4) within the time set out in the notice the scheme manager may give the particulars of the unpaid amount to the SPER registrar for registration under the SPE Act. This is to enable SPER to undertake recovery of the amount. Subsection (3) provides that the fine option order provisions and the imprisonment provisions under SPE Act do not apply.

Clause 194 empowers the scheme manager to ask the registrar of a court, for the purposes of recovering an amount from a person, for certain information specified in subsection (1).

Subsection (2) provides that the registrar must give the requested information to the scheme manager if he/she is satisfied the information will enable the State to recover an amount under this subdivision. Subsection (3) enables the registrar to give the requested information by way of access to an electronic database maintained for the court. If the scheme manager is given such access to the electronic database, under subsection (4) the access to, and use of, the database is limited to the extent it is connected with the requested information.

Subsection (5) states that the scheme manager may use information lawfully obtained under this section only for recovering an amount under this subdivision.

Subsection (6) clarifies that the term "registrar" includes the clerk of the Magistrates Court.

Division 10 Other transitional provisions

Clause 195 provides that, if the context permits, in another Act or document, a reference to COVA is taken: to be a reference to COVA as it is continues to apply under this part; and to this Act.

Chapter 7 Amendment of Other Acts

Part 1 Amendment of Corrective Services Act 2006

Clause 196 provides that part 1, chapter 7, amends the *Corrective Services Act 2006*.

Clause 197 amends section 319J of the *Corrective Services Act 2006,* to replace a reference to COVA with a reference to the Bill.

Clause 198 amends section 319U(1)(c) and (4) of the *Corrective Services Act 2006,* to replace a reference to COVA with a reference to the Bill.

Clause 199 amends section 319Z of the *Corrective Services Act 2006,* to replace a reference to COVA with a reference to the Bill. Subsection (6) also clarifies that a reference to the repealed COVA is a reference to the *Criminal Offence Victims Act 1995*, as it continues to apply under the Bill. Also, a reference to the *Criminal Code*, repealed chapter 65A, is a reference to the *Criminal Code*, chapter 65A, as it continues to apply under the Bill.

Clause 200 amends section 319ZD of the *Corrective Services Act 2006,* to replace a reference to COVA with a reference to the Bill.

Clause 201 amends the dictionary in schedule 4 of the *Corrective Services Act 2006,* to replace the definition of "Criminal Offence Victims Act" with a definition of "Victims of Crime Assistance Act".

Part 2 Amendment of Criminal Code

Clause 202 provides that part 2, chapter 7, amends the Criminal Code.

Clause 203 amends section 695A of the Criminal Code, to provide that the section applies to a judge hearing and deciding a proceeding for a COVA application relating to an offence involving personal violence. A definition of "COVA application" is also inserted.

Part 3 Amendment of Evidence Act 1997

Clause 204 provides that part 3, chapter 7, amends the *Evidence Act 1977*.

Clause 205 amends section 131A of the *Evidence Act 1977*, to omit subsection (2) which refers to the fundamental principles of justice for victims of crime declared under COVA.

Clause 206 amends section 132C of the *Evidence Act 1977*, to omit a reference to COVA in the definition of allegation of fact and to instead include information given to the court under section 15 of the *Victims of Crime Assistance Act 2009*.

Part 4 Amendment of Juvenile Justice Act 1992

Clause 207 states that this part amends the *Juvenile Justice Act 1992*.

Clause 208 amends section 150(1)(h) of the *Juvenile Justice Act 1992* to provide that in sentencing a child for an offence, a court must have regard to the impact of the offence on the victim, including harm mentioned in information relating to the victim given to the court under section 15 of the *Victims of Crime Assistance Act 2009*.

Clause 209 replaces part 7, division 15, of the *Juvenile Justice Act 1992* to clarify that the Bill and COVA, as it continues to apply, apply to an offence committed by a child.

Part 5 Amendment of Penalties and Sentences Act 1992

Clause 210 provides that part 5, chapter 7, amends the *Penalties and Sentences Act 1992*.

Clause 211 omits section 9(2)(c)(i) of the *Penalties and Sentences Act 1992* which referred "to any physical or emotional harm done to a victim" and inserts "to provide that in sentencing an offender, a court must have regard to any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 15 of the *Victims of Crime Assistance Act 2009*". The inclusion of the "mental harm" makes this section consistent with section 15 of the *Victims of Crime Assistance Act 2009* and specifically states any information provided under section 15 can be taken into account by a court on sentence.

Clause 212 amends section 172A(1)(d) of the *Penalties and Sentences Act 1992* to replace a reference to COVA and with a reference to the *Victims of Crime Assistance Act 2009*, section 5.

Clause 213 amends section 172C(d) of the *Penalties and Sentences Act 1992* to replace a reference to COVA with a reference to the *Victims of Crime Assistance Act 2009*, chapter 2.

Part 6 Amendment of Personal Injuries Proceedings Act 2002

Clause 214 provides that part 6, chapter 7, amends the *Personal Injuries and Proceedings Act 2002*.

Clause 215 amends section 6 of the *Personal Injuries and Proceedings Act 2002* to ensure that the application of that Act does not affect the seeking of financial assistance under the Bill, COVA or the repealed Code section 663D as it continues to apply under the Bill.

Part 7 Amendment of State Penalties Enforcement Act 1999

Clause 216 provides that part 7, chapter 7, amends the *State Penalties Enforcement Act 1999*.

Clause 217 amends section 112 of the *State Penalties Enforcement Act 1999* to include in the order of satisfaction of other amounts, an amount liable to be paid to the State under the under clauses 117(4) and 191(4), and under COVA as it continues to apply.

Schedule 1 lists the decisions under the Bill that are reviewable.

Schedule 2 provides for the amounts and categories for special assistance.

Item 1 of schedule 2 provides for how an amount of assistance is payable. Generally it is an amount between the minimum and maximum amount stated for the act in section 2, having regard to the category the act of violence falls within. For example, an act of violence that, on the balance of probabilities, involves grievous bodily harm (as provided for in the Criminal Code) will fall within category B. Subsections (1)(a) to (d) provide when an act of violence can be treated as a higher category of act of violence, that is when a higher category circumstances apply.

Subsection (3) defines category A, B and C circumstances and other terms mentioned in item 1. For example, if a victim suffers an act of violence involving grievous bodily harm and the victim suffers category A circumstances, such as a very serious injury as defined in subsection (3), they are eligible for assistance under category A.

Subsection (2) provides that if an act of violence involves a series of related crimes, the special assistance payable in relation to the act of violence is only one amount based on the crime that is the highest in the series. For example, if the act of violence involved a robbery and attempted murder that was a series of related crimes, the attempted murder is the highest in the series and the victim is eligible for Category A assistance only.

Item 2 of schedule 2 provides for the minimum and maximum amounts of special assistance payable for an act of violence based on the category the act falls within.

Item 3 of schedule 2 provides for the acts of violence that fall within each category of special assistance. The Criminal Code offences for each of these acts of violence is to be referred to in determining which category the act of violence falls within. However, the determination is made on the balance of probabilities.

Item 4 of schedule 2 provides for the descending order of the category of acts of violence.

The schedule 3 dictionary defines certain terms used throughout the Bill.