Victims of Crime Assistance and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Victims of Crime Assistance and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- implement the recommendations of the *Final Report of the Review of the Victims of Crime Assistance Act 2009* (review report) and ensure the *Victims of Crime Assistance Act 2009* (VOCA Act) continues to provide an effective response to assist victims of crime;
- introduce a sexual assault counselling privilege; and
- give victims of a sexual offence who are to give evidence in a criminal proceeding against the accused automatic status as a special witness.

Victims of Crime Assistance Scheme

The VOCA Act commenced in December 2009, replacing the previous criminal compensation schemes that existed under the *Criminal Offence Victims Act 1995* and the *Criminal Code Act 1899* (Criminal Code). The current scheme aims to provide victims with timely assistance to help them recover from the act of violence, rather than receiving a lump sum payment after a lengthy court process.

The VOCA Act established Victim Assist Queensland (VAQ) to administer the financial assistance scheme and to improve access to services and support for victims of violent crime. Under the VOCA Act, a scheme manager is appointed to administer the financial assistance scheme and a Victim Services Coordinator (VSC) is responsible for promoting and protecting the interests and needs of victims. Government assessors, who are VAQ staff, are also appointed under the VOCA Act to assess applications for financial assistance.

Section 144 of the VOCA Act requires a review of the provisions of the Act to be undertaken within five years of its commencement. The statutory review of the VOCA Act was undertaken by the Department of Justice and Attorney-General (DJAG). The review report was tabled in the Legislative Assembly on 16 December 2015. A copy of the review report can be accessed at: http://www.justice.qld.gov.au/corporate/publications/reports.

While the review found that the financial assistance scheme works well and plays an important role in assisting victims of violent crime to recover from acts of violence, the review report contains 15 recommendations to build on the current statutory framework to ensure victims are able to access financial assistance and support when needed and that responses to assist victims are appropriate.

The Bill implements all 15 recommendations of the review report and addresses other technical and operational issues identified during the statutory review. The Bill also makes amendments to the VOCA Act as a result of the recent establishment of a National Injury Insurance Scheme (NIIS) for work-related accidents and motor vehicle accidents occurring in Queensland to clarify the relationship between the NIIS and victims' financial assistance scheme.

Sexual assault counselling privilege (SACP)

There is a high prevalence of sexual violence in Australia, with more than one in five women having experienced sexual violence (page 8, Queensland Violence Against Women Prevention Plan 2016–22; Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012, Australia's National Research Organisation for Women's Safety, Sydney, Australia, 2015).

A person's private, psychological and physical boundaries are invaded during a sexual assault and the harm inflicted on an individual can have long term impacts. Sexual assault counselling services play an integral role in assisting people to recover.

Currently in Queensland it is possible for documents recording communications between a victim of a sexual assault and a counsellor to be accessed during legal proceedings by the other party to assist with preparation for trial and for use during cross-examination of witnesses.

Since the late 1990s, all other Australian jurisdictions have introduced some form of statutory evidential privilege to limit the disclosure and use of sexual assault counselling communications during legal proceedings. These statutory protections seek to recognise the public interest in encouraging people who have been sexually assaulted to seek therapy to assist in their recovery and may also encourage them to report the crime to police.

The Special Taskforce on Domestic and Family Violence in Queensland (Domestic and Family Violence Taskforce) *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* report (the Domestic and Family Violence Taskforce Report) was released on 28 February 2015. Recommendation 130 of the Domestic and Family Violence Taskforce Report is that the Queensland Government introduce a SACP, based on the New South Wales (NSW) legislative model, which provides an absolute privilege in preliminary proceedings and a qualified privilege in other proceedings. In accepting this recommendation, the Queensland Government acknowledged the benefits of the NSW model as it seeks to ensure the appropriate balance in each case between the right to a fair trial and the public interest in preserving the confidentiality of counselling communications.

Special witnesses

Currently, section 21A of the *Evidence Act 1977* (Evidence Act) enables a court to make a range of orders or directions to support vulnerable people (special witnesses) when giving evidence, including directions and orders for:

- pre-recording evidence before the trial or hearing date;
- giving evidence from a remote witness room (or CCTV room);
- putting up a screen in the courtroom;
- having a support person in the courtroom; and
- closing the court to the public and the media so the witness only gives evidence in front of the people required to be in the court room.

Automatic recognition as a special witness will mean that a victim of a sexual assault does not need to satisfy the court that they fall under another element of the definition (for example that they would be likely to suffer severe emotional trauma if required to give evidence in the usual manner) and thereby minimises the impact of the criminal justice process on these vulnerable persons.

Achievement of policy objectives

Victims of Crime Assistance Scheme

The Bill achieves its policy objectives by:

- making the application process in the VOCA Act for financial assistance easier for victims of a crime by removing the requirement for applications to be verified by a statutory declaration and to be accompanied by a medical certificate;
- simplifying the amounts of financial assistance paid to victims under the VOCA Act, including an increase to the maximum amounts for some categories of financial assistance;
- expanding the scope of the financial assistance scheme in the VOCA Act to ensure all victims of domestic and family violence (DFV), including elder abuse, are able to access financial assistance;
- allowing all victims of DFV to provide a victim impact statement at the time of sentencing the offender;
- enhancing the rights of victims and how they are treated by –
    - renaming and redrafting the current fundamental principles of justice for victims in the VOCA Act to create a new Charter of Victims' Rights (the charter);
    - ensuring the charter applies to all victims of DFV;
    - ensuring the rights under the charter are consistent with other existing legislation;
    - placing a proactive duty on agencies to provide information to victims if appropriate and practicable to do so;
    - extending the charter to apply to non-government agencies that are funded to provide a service to victims to recover from a crime; and
    - expanding the role of the VSC in the VOCA Act to help victims resolve complaints;
- improving decision-making in the VOCA Act to:
    - allow VAQ to defer making a decision about an application in certain circumstances;
    - allow VAQ greater flexibility and access to information;
    - require applicants to provide certain information at particular times; and
    - clarify the relationship between the victims of crime financial assistance scheme and other financial schemes where a victim may also receive financial payments for the same act of violence;
- allowing VAQ to provide confidential information for genuine research purposes;

- limiting when actions for the recovery of financial assistance from an offender under the VOCA Act may be initiated to ensure more timely debt recovery action against an offender is taken;
- extending the time in which a person may apply for funeral expenses in the VOCA Act to be consistent with the circumstances prescribed for an application for other financial assistance;
- clarifying the *exceptional circumstances expenses* of victims granted under the VOCA Act must be reasonable;
- including the offence of cruelty to children (section 364 of the Criminal Code) as a category C offence in the VOCA Act, which is used to assess special assistance payable to an applicant;
- confirming that for the purposes of section 86 of the VOCA Act, when a government assessor is determining the amount of assistance under the VOCA Act, the government assessor is not to take into account other payments received by an applicant that are for matters to which the applicant will not be eligible to receive assistance for under the VOCA Act;
- clarifying an interim payment under section 98 of the VOCA Act may be granted in 'urgent' circumstances;
- clarifying the circumstances in which a person convicted of a fraud offence arising from their application for financial assistance under the VOCA Act cannot benefit from a fraudulent application;
- clarifying the time period in which a parent secondary victim is able to claim financial assistance for loss of earnings under the VOCA Act is two years from becoming aware of the act of violence, rather than two years from the date of the act of violence itself, to ensure fairness in decision-making;
- clarifying that a person 'aggrieved' by a decision to grant a victim financial assistance under section 124 of the VOCA Act is the applicant for financial assistance (for the purposes of requesting an internal review);
- allowing the scheme manager under the VOCA Act discretion to extend the timeframe in which to accept an application for internal review of a decision;
- ensuring the protection from civil liability for persons administering the VOCA Act is consistent with the provisions in the *Public Service Act 2008*;
- clarifying the time period in section 101 of the VOCA Act in which a person may apply to amend a grant of assistance is to commence from the date that the assistance was first granted and not from the date that the grant of assistance was last amended;
- ensuring the terminology used in section 51 of the VOCA Act is consistent with the *Guardianship and Administration Act 2000*;
- clarifying that advice by the victim that they do not want to make a submission to the scheme manager under section 88 of the VOCA Act falls within the meaning of a submission for that section; and
- removing redundant provisions in the VOCA Act that provide for a statutory review of the Act and a temporary regulation-making power.

Making the application process for financial assistance easier for victims

The Bill amends the VOCA Act to remove the requirements that an application for financial assistance be verified by statutory declaration and that the victim provide a medical certificate with their application for financial assistance (implementing recommendations 2 and 3 of the review report respectively). This reduces the burden on victims when making an application for assistance by providing a more flexible approach that allows government assessors, appointed under the VOCA Act, to later obtain the necessary evidence needed in relation to a victim's injury. These changes will be supported by administrative policies and checks to confirm the victim's identity and prevent fraud.

Simplifying the amounts of financial assistance paid to victims, including an increase to the maximum amounts for some categories of financial assistance

The Bill amends the VOCA Act to increase the maximum amount of funeral assistance payable to an eligible victim from $6,000 to $8,000 to reflect the increased cost of funerals and to provide a higher level of assistance to victims who have prematurely lost a loved one as a result of an act of violence (implementing recommendation 1 of the review report).

The Bill amends the VOCA Act to remove pools of assistance for secondary and related victims so each application for financial assistance is considered on its own merits (implementing recommendation 4 of the review report). The Bill amends the VOCA Act to remove the minimum and maximum amounts of special assistance and instead prescribes fixed amounts for each category (Category A – most serious, to Category D – least serious) (implementing recommendation 5 of the review report).

Expanding the scope of the financial assistance scheme to ensure all victims of DFV, including elder abuse, are able to access financial assistance

The Bill amends the VOCA Act to expand the definition of 'act of violence' to ensure all victims who have suffered injuries as a result of DFV are able to access financial assistance, including those who have suffered emotional or economic abuse (implementing recommendation 7 of the review report and recommendation 95 of the Domestic and Family Violence Taskforce Report).

Allowing all victims of DFV to provide a victim impact statement at the time of sentencing the offender

Sections 15 to 15B of the VOCA Act provide for how a victim of a prescribed offence can give details of the harm that the offence has had on the victim (whether or not in the form of a victim impact statement) to the prosecutor conducting a sentencing proceeding for the offender. If a person (the victim, or someone else authorised on their behalf) makes a victim impact statement, that person is generally permitted to read the victim impact statement aloud, or the person may ask the prosecutor to read it aloud for them.

The Bill omits sections 15 to 15B of the VOCA Act and creates new part 10B of the *Penalties and Sentences Act 1992* (PS Act) to provide for the process for making victim impact statements. New part 10B of the PS Act builds on sections 15 to 15B to:

- also allow victims of offences involving DFV, including breaches of domestic violence orders, police protection notices and release conditions under the *Domestic and Family Violence Protection Act 2012* (DFVP Act), to give details of the harm that the victim has suffered (whether or not in the form of a victim impact statement) as a result of the offence to the prosecutor so that the prosecutor can inform the sentencing court of the details; and

- permit a person to give the prosecutor a victim impact statement electronically (for example, by email).

Enhancing the rights of victims and how they are treated

The Bill amends the VOCA Act to replace the 'fundamental principles of justice for victims' with the new charter (implementing recommendation 12 of the review report). The charter is written in simple, easy to understand language. Included in the charter is the responsibility for agencies such as the Queensland Police Service (QPS), the Office of the Director of Public Prosecutions (ODPP) and Queensland Corrective Services (QCS) to proactively provide information about the Victims Registers, investigations and prosecutions without the victim having to ask for the information, when it is appropriate and practicable to do so (implementing recommendation 13 of the review report). The Bill extends the charter to apply to non-government entities (and employees of these entities) that receive funding from a Commonwealth, State or Territory government to provide services to victims of crime (implementing recommendation 14 of the review report).

The Bill also amends provisions of the VOCA Act to allow the VSC to be more involved in the complaints process. The VSC will be able to help victims resolve complaints if the victim is dissatisfied with the response from an agency (implementing recommendation 15 of the review report).

Improving decision-making in the VOCA Act

- Allowing VAQ to defer making a decision about an application in certain circumstances

The Bill amends the VOCA Act to allow a government assessor to defer deciding an application when either the conduct of the primary victim has been alleged to have contributed to the offending behaviour or where the death of the primary victim is unknown. The Bill also inserts new provisions into the VOCA Act to allow a government assessor to defer deciding an application where the scheme manager has made a complaint to a police officer that the applicant has provided false or misleading information in their application or where the victim is a previous offender who is disputing liability to repay a debt to the State (implementing recommendation 6 of the review report).

- Allowing VAQ greater flexibility and access to information

The Bill amends the VOCA Act to permit VAQ (government assessors and the scheme manager) greater access to confidential information relevant to making a decision about granting financial assistance or recovering paid financial assistance from convicted offenders. VAQ will have greater powers to obtain information that it requires to decide applications, or to start recovery action from: the chief executive of the Department of Transport and Main Roads; the registrar of the State Penalties Enforcement Registry (SPER); and registrars of Queensland courts.

The Bill expands and clarifies the information a government assessor can obtain from QPS. The Bill allows a government assessor to obtain statements made by an alleged offender for the act of violence and details of the injury suffered by a victim. The Bill amends the VOCA Act to ensure that VAQ (government assessors and the scheme manager) can use information obtained under the VOCA Act after the application for financial assistance has been decided (for example, the scheme manager may use the information to decide whether to start recovery action against a convicted offender). These amendments implement recommendation 9 of the review report.

- Requiring applicants to provide certain information at particular times

The Bill places a continuing obligation on victims, for a period of six years after financial assistance is granted, to inform the scheme manager of any relevant payment that the victim has received, or may receive.

- Clarifying the relationship between the financial assistance scheme and other financial schemes where a victim may also receive financial payments from the same act of violence

Motor accident claims: The Bill inserts new provisions into the VOCA Act to provide that a government assessor must defer deciding an application for financial assistance if a person is entitled to make a motor accident claim under the *Motor Accident Insurance Act 1994* (MAI Act) and either has made a claim and it has not been finally dealt with, or has not yet made a claim. The Bill will allow a government assessor to decide the application to the extent that it relates to counselling expenses (implementing recommendation 8 of the review report).

Workers' compensation claims: The Bill amends the VOCA Act to clarify that a victim of an act of violence who is also entitled to make a workers' compensation claim (WCC) for injuries suffered as a result of the act of violence must have that claim finally dealt with before an application can be made for financial assistance under the VOCA Act.

The Bill also removes sections 35 and 36 from the VOCA Act, which allow a government assessor to make a decision about the payment of certain expenses to a victim even though a WCC has not been finalised. The omission of these provisions will avoid the potential for a double payment to be made and the need to seek recovery of the payment from the victim by VAQ.

National Injury Insurance Scheme: The Bill amends the VOCA Act as a result of the NIIS being established for motor vehicle and work-related accidents occurring in Queensland. The NIIS was established for work-related accidents occurring in Queensland on or after 1 July 2016 as a result of the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*. Eligibility to participate in the NIIS because of a work-related accident is decided as part of the WCC process. Therefore, the Bill makes minor amendments to the VOCA Act to ensure that care, treatment and support payments made, or services provided, under the NIIS are taken into account by the government assessor when deciding a victim's application for financial assistance. A victim may only make an application for financial assistance under the VOCA Act after the victim's WCC is finally dealt with (including any NIIS participation application).

The NIIS was established for motor vehicle accidents occurring in Queensland on or after 1 July 2016 as a result of the *National Injury Insurance Scheme (Queensland) Act 2016*. Applications by eligible persons to participate in the NIIS are determined by the National Injury

Insurance Agency (the Agency). Because there is a small degree of overlap between the assistance that a victim may receive under the VOCA Act and the care, treatment and support payments that can be made, and the services that may be received under the NIIS for motor vehicle accidents, the Bill amends the Act to:

- require the government assessor deciding the victim's application for financial assistance to defer deciding the application until the victim's application to the Agency to participate in the NIIS is decided by the Agency;
- allow the government assessor, during the deferral, to decide all components of financial assistance which may be payable to the victim, except for reasonable medical expenses (which may be covered under the NIIS if the Agency accepts the victim's application); and
- allow the government assessor to take into account any care, treatment and support payments made to, or services received by, the victim in determining the final amount of assistance which may be granted to the victim.

Allowing VAQ to provide confidential information for genuine research purposes

The Bill amends the VOCA Act to allow the scheme manager to disclose confidential information to a person undertaking genuine research (implementing recommendation 10 of the review report). Before the scheme manager can disclose the information, the researcher must give the scheme manager a written undertaking that the confidentiality of the information, and the anonymity of the person to whom the information relates, will be preserved. Contravening the written undertaking is an offence (maximum penalty: 200 penalty units). The Bill clarifies that, if by contravening the undertaking the researcher also contravenes section 189 of the *Child Protection Act 1999* (CP Act), the researcher may be prosecuted under either the VOCA Act or the CP Act, at the election of the prosecutor.

Limiting when actions for the recovery of financial assistance from an offender under the VOCA Act may be initiated

The VOCA Act provides that the State may recover assistance, or part of an amount of assistance, granted for an act of violence from an offender who has been convicted of a relevant offence for the act of violence. There is currently no time limit within which action may be started by the State to recover an amount of assistance paid to a victim from an offender. The Bill amends the VOCA Act to provide that the State may only recover a grant of assistance from an offender if action to recover the assistance is started within six years after the later of the following days:

- the day the offender was convicted of the relevant offence; or
- the day the application for the grant of the financial assistance was made.

This amendment implements recommendation 11 of the review report.

Extending the time in which a person may apply for funeral expenses in the VOCA Act

The Bill amends the VOCA Act to provide that the scheme manager may, on application by a person applying for funeral assistance, extend the time limit for making an application (which is three years from the date of the act of violence) if the scheme manager considers it would be appropriate and desirable to do so. To determine whether it is appropriate and desirable to do so, the scheme manager must have regard to: the person's age when the death occurred; whether

the person has impaired capacity; the physical or psychological effect of the act of violence on the person; whether the delay in making the application undermines the possibility of a fair decision; and any other matters the scheme manager considers relevant. If the scheme manager decides not to extend the time for making an application for funeral assistance, the decision is a reviewable decision for the purposes of section 124 of the VOCA Act.

Clarifying the 'exceptional circumstances expenses' of victims granted under the VOCA Act must be reasonable

The Bill amends the VOCA Act to clarify that 'exceptional circumstances expenses' (referred to in sections 39, 42, 45 and 49) must be 'reasonable'. This gives legislative effect to the Queensland Civil and Administrative Tribunal (QCAT) decision of *Victim Assist Queensland v BN* [2012] QCATA 254, which found that reasonableness is implied into the meaning of expenses for exceptional circumstances expenses because of the purpose of the VOCA Act.

Amendments related to the sexual assault counselling privilege (SACP)

The Bill will achieve its policy objective of introducing a SACP in Queensland by making the following amendments.

Evidence Act 1977

The SACP will apply to counselling involving a victim ('counselled person') of any offence of a sexual nature ('sexual assault offence') and will not be limited to counselling arising from the offence. The SACP will apply to counselling communications the victim has had at any time with a counsellor. A protected counselling communication will include an oral or written communication made in confidence by the counselled person to a counsellor, by the counsellor to or about the counselled person to further the counselling process or a communication about the counselled person by a parent, carer or other support person made to facilitate communication between the counselled person and the counsellor or further the counselling process.

The SACP will not apply to evidence collected during a physical examination and communications made to or by a health practitioner about a physical examination of a victim of a sexual assault in the course of an investigation into an alleged sexual assault are excluded from the definition of 'protected counselling communication'. The principal purpose of these communications is not the therapeutic rehabilitation of the victim. However, communications made to or by a health practitioner that are not about the physical examination may amount to a protected counselling communication.

It is also not intended that the SACP will impinge on investigations or evidence gathering by the police.

To reflect the realities of sexual assault counselling, which is a self-regulated profession, as well as to accommodate the needs of people from Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities, a 'counsellor' will not need to have formal qualifications or training. However, counselling must be provided in the course of the counsellor's paid or voluntary employment. This will ensure that communications with a mere friend or confidant are not caught. Also, the definition does not cover a religious representative.

In line with the NSW model, the Bill will introduce an absolute privilege in committal or bail proceedings (preliminary criminal proceedings), so that the accused will not be able to compel, subpoena, produce, adduce, otherwise use or otherwise disclose, inspect or copy a protected counselling communication. An absolute privilege in these types of proceedings is not considered to impede a person's right to a fair trial but may mean certain issues cannot be clarified or dealt with until the trial.

Amendments are also made to provide that a qualified privilege applies in a criminal trial or sentencing proceeding or a proceeding relating to a domestic violence order under the DFVP Act. A proceeding relating to a domestic violence order would include an application for any such order or an adjournment.

The qualified privilege means that a person (regardless of whether they are legally represented) cannot, without leave of the court, compel, subpoena, produce, adduce, otherwise use or otherwise disclose, inspect or copy a protected counselling communication.

In deciding whether to grant leave for the qualified privilege the court must be satisfied that:

- the protected counselling communication has substantial probative value;
- there is no other evidence available; and
- the public interest in preserving the confidentiality and protecting the counselled person from harm is substantially outweighed by the public interest of allowing it into evidence.

When considering an application for leave, the court may consider an oral or written statement provided by the victim outlining the harm they are likely to suffer if the application for leave is granted. 'Harm' is widely defined and is not limited to harm suffered as a direct result of the sexual assault.

In determining the 'public interest' test as part of the application for leave, the court must also have regard to a number of matters, including the need to encourage victims of sexual assault offences to seek counselling, that disclosure of a protected counselling communication may damage the therapeutic relationship between the counsellor and the victim, and the extent to which the evidence is necessary to enable the accused person to make a full defence.

When the victim provides an oral statement about the harm they are likely to suffer if the application for leave is granted, and when a court is considering if a document or evidence is a protected counselling communication, the Bill provides that the court must exclude from the court room any person who is not an essential person. An essential person includes for example a Crown law officer, the prosecutor and a person who is a support person for the witness. To maintain the victim's confidentiality, the definition of an essential person does not include members of the jury.

In recognition of the personal nature of the counselling, the Bill provides that the victim, in certain circumstances, can waive the SACP. The SACP may also be lost if the communication was made in the commission of an offence, such as fraud.

To preserve the integrity of the SACP, the Bill also provides that a person cannot adduce evidence in a civil proceeding that arises from the act that gave rise to the criminal proceeding,

unless the court hearing the criminal matter had given leave to access the evidence or the SACP has been waived or lost.

Criminal Code

Currently, under the Criminal Code, the prosecution has an obligation to provide the accused with full and early disclosure of all evidence the prosecution intends to rely on and things in the prosecution's possession that would tend to help the accused.

Consistent with the purposes of the SACP, the Bill contains amendments to provide that the prosecution will not be under an obligation to disclose a protected counselling communication unless the court has given leave or the privilege is waived or lost under the Evidence Act provisions. However, the prosecution will be required to provide a notice to the accused advising of the nature and particulars of any document it has that it considers qualifies as a protected counselling communication.

An amendment will also be made to section 590AA of the Criminal Code to clarify that a pre-trial direction or ruling may be given regarding a protected counselling communication under the provisions in the Evidence Act.

Justices Act 1886

Consistent with the amendments to section 590AA of the Criminal Code, an amendment will be made to section 83A(5) of the *Justices Act 1886* to make it clear that for a proceeding in the Magistrates Court, a pre-trial direction or ruling may be given regarding a protected counselling communication under the provisions in the Evidence Act.

Domestic and Family Violence Protection Act 2012

The Bill also contains amendments to the DFVP Act to provide that, despite the general position that a court is not bound by the rules of evidence or any practices or procedures applying to courts of record, the SACP provisions in the Evidence Act apply to proceedings. This means that a person cannot, without leave of the court, compel, subpoena, produce, adduce or otherwise use or otherwise disclose, inspect or copy a protected counselling communication in a proceeding under the DFVP Act.

Amendments related to special witnesses

The Bill achieves its policy objective relating to special witnesses by making an amendment so that a victim of a sexual offence is included within the definition of 'special witness' in section 21A of the Evidence Act. This approach acknowledges the particular vulnerability of these victims and the need to reduce the trauma of the legal process on them as far as practicable.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

Estimated cost for government implementation

The 2016-17 State Budget included $2.2 million in funding over four years for a SACP legal assistance service.

Any other costs arising from implementation of the legislative amendments will be met from existing agency and departmental resources. The future allocation of resources will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

Victims of Crime Assistance Scheme

Requirement for applicant to inform scheme manager of relevant payments and not contravene mandatory conditions on assistance

Clause 88 of the Bill (new section 141A) requires an applicant for financial assistance, if the applicant receives a relevant payment before the application is decided, to inform the scheme manager in writing or orally of the relevant payment, unless the applicant has a reasonable excuse (maximum penalty: 100 penalty units).

Clause 88 of the Bill (new section 141B) also requires an applicant not to contravene a condition imposed on the applicant's grant of assistance under section 89(2) or 98(2) (maximum penalty: 100 penalty units). The mandatory condition, imposed under section 89(2), requires the recipient of a grant of financial assistance to notify the scheme manager orally or in writing within 28 days of receiving a relevant payment. The section 89(2) condition continues for a period of six years after the assistance was granted. The mandatory condition, imposed under section 98(2) requires the recipient of a grant of interim assistance to notify the scheme manager orally or in writing within 28 days of receiving a relevant payment. The section 98(2) condition continues until the general application for assistance is granted (after which a mandatory condition under section 89(2) is imposed).

In creating new offences, new sections 141A and 141B potentially infringe the principle that legislation has sufficient regard to the rights and liberties of the individual (section 4(2) *Legislative Standards Act 1992*). However, the potential infringement is justified. The financial assistance scheme under the VOCA Act is a scheme of last resort. Where victims receive relevant payments from other sources, the VOCA Act does not provide assistance to the extent payments are received from those sources (VOCA Act, section 21(4)). As the payments made under the financial assistance scheme are made from public funds, an offence provision is justified to ensure that applicants inform, and continue to inform, the scheme manager of payments received from other sources that may affect the amount of assistance granted to a victim. This ensures VAQ continues to have access to information about the correct amounts of assistance payable to the victim.

Disclosure of confidential information for genuine research

Clause 87 of the Bill (new section 140A) allows the scheme manager to disclose confidential information to a person undertaking genuine research. Before the scheme manager can disclose the confidential information, the researcher must give the scheme manager a written undertaking to preserve the confidentiality of the information and the anonymity of the person

to whom the information relates. Contravening the undertaking is an offence (maximum penalty: 200 penalty units).

The sharing of a victim's personal information with a researcher (clause 87) potentially infringes the principle that legislation has sufficient regard to the rights and liberties of the individual (section 4(2) *Legislative Standards Act 1992*). Any potential infringement is justified on the basis that providing confidential information is essential for the purpose of conducting research about victims. New section 140A will help to protect victims' personal information by imposing a penalty on researchers if they disclose confidential information to anyone else.

Expanding information-gathering powers

Various provisions of the Bill expand VAQ's information-gathering powers and allow VAQ greater access to information that is in the possession or control of:

- the QPS (clauses 47, 48 and 50);
- SPER (clauses 49 and 77) ;
- Queensland courts (clause 49); and
- the Department of Transport and Main Roads (clauses 72 and 77).

The Bill allows VAQ to use its expanded information-gathering powers when deciding applications for assistance. The Bill also allows VAQ to use its information-gathering powers in the following three circumstances:

- when deciding an application, made by a victim, for an amendment of the grant of assistance under section 103 (clause 69);
- when deciding whether or not to amend a grant of assistance because a victim has received, or is likely to receive, an uncounted relevant payment (clause 72); and
- when deciding to start action to recover a grant of assistance from an offender (clause 75).

By allowing VAQ to obtain certain types of information without the consent of the victim or the offender, it potentially constitutes an infringement of the rights of the individual (section 4(2) *Legislative Standards Act 1992*). Any potential infringement is justified on the basis that information about an act of violence, and any relevant payments that a victim has received or may receive, is essential to enable VAQ to decide an application for assistance. VAQ requires continued access to information-gathering provisions to continue to make decisions about whether the amount of assistance granted to a victim continues to be the appropriate amount.

It is also essential that VAQ has access to information to recover assistance from an offender. The VOCA Act is based on obtaining the victim's consent where possible (see, for example, section 77 of the VOCA Act). However, a victim cannot consent to the release of information concerning an offender.

Adequate safeguards are included in the Bill to ensure that VAQ only accesses confidential information when reasonably necessary, and places confidentiality obligations on 'relevant persons' involved in the administration of the VOCA Act (which includes government assessors and the scheme manager). Further, provisions which currently require the victim's consent before VAQ can access confidential information will continue to require the victim's consent before that information can be accessed. If a victim does not give the necessary consent, the decision on the applicant's application can be deferred.

Removal of applicant's ability to apply for financial scheme while a workers' compensation claim is pending

Clause 32 of the Bill omits sections 35 and 36 of the VOCA Act. These sections explain which components of financial assistance are payable to a victim of an act of violence who is also eligible to make a WCC. The VOCA Act provides that victims are not eligible for assistance if they are entitled to receive a payment for the act of violence from another source (which includes payments under the workers' compensation scheme). The effect of the omission of sections 35 and 36 is that a victim's WCC must be finally dealt with before applying for assistance under the VOCA Act.

Clause 32 potentially infringes the rights of the individual (section 4(2) *Legislative Standards Act 1992*). Any potential infringement is justified on the basis that the financial assistance scheme under the VOCA Act is a scheme of last resort. Where victims receive relevant payments from other sources, the VOCA Act does not provide assistance to the extent payments are received from those sources (VOCA Act, section 21(4)). It is essential that the applicant exhaust payments from other sources before applying under the VOCA Act to avoid the situation where there has been a double up of payments and VAQ are required to seek repayment from the applicant.

Deferral of application for financial assistance pending applicant's motor accident claim

Clause 33 (new section 36D) provides that a government assessor must defer deciding a victim's application for financial assistance if the applicant is eligible to make a motor accident claim (under the MAI Act) but has not yet made the claim. The deferral lasts until the motor accident claim is made and the claim is finally dealt with. The scheme manager may decide that the requirement to make a motor accident claim does not apply if: the claim is statute barred; or the applicant has tried (unsuccessfully) to give notice of the motor accident claim after the time for making the claim has expired; and the applicant has a reasonable excuse for not making a motor accident claim within the timeframe.

In deciding whether the applicant's excuse for not bringing a motor accident claim is reasonable, the scheme manager must have regard to: the applicant's age at the time the act of violence occurred; whether the applicant has impaired capacity; whether the person who allegedly committed the act of violence was in a position of power, influence or trust in relation to the applicant; the physical or psychological effect of the act of violence on the applicant; and any other matters the scheme manager considers relevant.

Because new section 36D confers a discretionary, administrative decision-making power on the scheme manager in deciding if the applicant has a reasonable excuse not to make a motor vehicle claim, the power should be sufficiently defined and subject to appropriate review (section 4(3)(a) *Legislative Standards Act 1992*). The Bill addresses this issue in the following

way. The scheme manager's discretion is exercised subject to clearly expressed statutory criteria. If the scheme manager makes a decision that the applicant does not have a reasonable excuse for not making a motor accident claim, the scheme manager must give the victim internal review details for the decision. After the internal review process, the decision may be externally reviewed by QCAT.

Discretion of scheme manager to extend time for making particular applications

Clause 45 amends section 58 to provide that the scheme manager may, on application by a person, extend the time for the person to make an application for funeral assistance. The scheme manager may extend the time, if the scheme manager considers it would be appropriate and desirable to do so, having regard to: the person's age when the death occurred; whether the person has impaired capacity; the physical or psychological effect of the act of violence on the person; whether the delay in making the application undermines the possibility of a fair decision; and any other matters the scheme manager considers relevant.

As clause 45 confers a discretionary, administrative decision-making power on the scheme manager, the power should be sufficiently defined and subject to appropriate review (section 4(3)(a) *Legislative Standards Act 1992*). The scheme manager's discretion is exercised subject to clearly expressed statutory criteria. The extension of the time for applying for funeral expense assistance will always operate beneficially for victims by removing the inflexibility of the time limits imposed by section 58. Because of this, only the scheme manager's decision not to extend the time in which to apply for funeral expense assistance is reviewable under section 124 of the VOCA Act.

Discretion to defer application

Clause 57 of the Bill inserts new sections 84A to 84C, which provide the government assessor with additional discretion to defer deciding a victim's application if:

- the cause of death of the primary victim is unknown (new section 84A);
- the applicant has allegedly provided false or misleading information to VAQ and the scheme manager has made a complaint to a police officer about the allegation (new section 84B); and
- the victim is an offender who has previously been convicted of a relevant offence for an act of violence and the State is attempting to recover an amount of assistance from that victim because of the past offence (new section 84C).

The government assessor requires discretion to defer deciding an application for assistance for any of the reasons specified in new sections 84A to 84C because, until the reason for the deferral is resolved, the government assessor may not have all of the information that the government assessor requires to make a decision on the application.

As new sections 84A to 84C confer a discretionary, administrative decision-making power on a government assessor, the powers should be sufficiently defined and subject to appropriate review (section 4(3)(a) *Legislative Standards Act 1992*). The Bill addresses this potential issue in the following ways. Each time a government assessor decides to defer a victim's application under new section 84A to 84C, the government assessor must give the victim internal review

details for the decision. After the internal review process, the decision may be externally reviewed by QCAT. Each new section also contains provisions which lift the deferral on the happening of a stated event (for example, if the cause of death of a primary victim is unknown, the deferral is lifted when a coroner makes a finding about the death of the primary victim.)

Disclosure of confidential information to victims under the *Youth Justice Act 1992*

Clause 98 inserts new sections 282A to 282G into the *Youth Justice Act 1992* which require the chief executive to keep a register of persons eligible to receive information about certain children in detention centres.

Certain persons may apply to the chief executive to be an 'eligible person'. Eligible persons may receive information about particular children who are sentenced to a period of detention for a sexual offence or an offence of violence. New section 282D(1) restricts the type of people who can apply to be registered as an eligible person to receive information to: the victim of the offence; an immediate family member of the victim (if the victim has died because of the offence); the victim's parent or guardian (if the victim is a child or has a legal incapacity) and another person who can satisfy the chief executive that the person's life or physical safety could reasonably be expected to be endangered because of the child's history of violence against the person or because of some other connection between the person and the offence.

Under new section 282D(2), the chief executive may refuse an application if the chief executive reasonably believes that releasing information about a detained child may endanger: the security of a detention centre; the safe custody or welfare of a child detained in a detention centre; or the safety or welfare of another person. Also, if the person making the application is a child, the chief executive may only place the child on the register if it is in the child's best interests.

As new section 282D confers a discretionary, administrative decision-making power on the chief executive, the power should be sufficiently defined and subject to appropriate review (section 4(3)(a) *Legislative Standards Act 1992*). The Bill addresses this issue by providing that the chief executive's discretion is exercised subject to clearly expressed statutory criteria in new sections 282A and 282D. The provision balances the need to protect the safety and security of the youth justice system, including the children and young persons in the system, together with the need to protect the victims of young offenders.

New section 282F provides that the chief executive may, to the extent the chief executive considers it appropriate, give an eligible person registered under new section 282D(1) information about the particular child in relation to whom the eligible person is registered, for example, information about: the transfer of the child interstate or overseas to a corrective services facility; how long the child is to be in detention; whether the child is unlawfully at large; and when the child is eligible for release.

As new section 282F permits the chief executive to give a detained child's personal information to an eligible person, this potentially infringes the principle that legislation have sufficient regard to the rights and liberties of the individual (section 4(2) *Legislative Standards Act 1992*). Any potential infringement is balanced against the concern for the safety and wellbeing for the child's victim and any person who has reason to fear for their life or physical safety. Where a person has applied to join the Victims Register because they fear for their life or physical safety,

the child will have the opportunity to make a submission to the chief executive about why the person should not be registered as an eligible person.

Appropriate safeguards are included in the Bill to protect against public dissemination and further disclosure of a detained child's personal information. New section 282B requires the applicant to the Victims Register and a nominee, if the applicant nominated a person to receive the detainee information for the applicant, to sign a declaration stating that the applicant or nominee will not disclose a detained child's personal information received by the applicant or nominee, other than as permitted under section 282G(3). New section 282E permits the chief executive to remove an eligible person's details or a nominee's details from the register if the eligible person or nominee discloses a detained child's personal information received under the division other than as permitted under section 282G(3).

New section 282G prohibits the disclosure of a detained child's personal information received by a person to anyone else except if permitted under new section 282G(3) (maximum penalty: 100 penalty units or two years imprisonment). Under new section 282G(3), a person may disclose a detained child's personal information: for the Act; to discharge a function under another law or if it is otherwise authorised by law; for a proceeding in a court, if the person is required to do so by order of the court or otherwise by law; if authorised by the child to whom the information relates; or if reasonably necessary to obtain counselling, advice or other treatment.

In creating a new offence, new section 282G potentially infringes the principle that legislation has sufficient regard to the rights and liberties of the individual (section 4(2) *Legislative Standards Act 1992*). However, the potential infringement is justified. New section 282G is required to safeguard against further disclosure of a detained child's personal information. The offence provision ensures there are serious consequences for failing to maintain the confidentiality of the detained child's personal information.

Sexual Assault Counselling Privilege

There is a high prevalence of sexual violence in Australia. Many sexual assaults are not reported to anyone, let alone the police. A person's private, psychological and physical boundaries are invaded during a sexual assault and the harm inflicted on an individual can have long term impacts. Sexual assault counselling services play an integral role in assisting people to recover.

Clauses 4 and 7 of the Bill contain amendments to introduce a SACP. These provisions will completely restrict an accused's access to counselling communications relating to a victim of a sexual assault in certain legal proceedings (i.e. committal and bail proceedings). This restriction may raise a potential fundamental legislative principle issue on the basis that it adversely affects the rights and liberties of people accused of a criminal offence (section 4(3)(g) *Legislative Standards Act 1992*).

Generally, an accused person will seek access to counselling communications to call into question the credibility of a witness during cross-examination, which is an issue for trial. Any impact on an accused person in preliminary proceedings (i.e. committal and bail proceedings) is considered justified having regard to the underlying purpose of the SACP, which recognises the public interest in encouraging people who have been sexually assaulted to seek therapy to assist in their recovery and may also encourage them to report the crime to police.

In respect of other criminal proceedings, related civil proceedings and proceedings under the DFVP Act, a 'qualified privilege' applies. The 'qualified privilege' operates to allow the court to determine, in accordance with defined statutory criteria, whether or not information that contains a protected counselling communication should be accessed. Allowing the court to determine the issue is considered to strike an appropriate balance between the right of the accused to a fair trial with access to all relevant evidence and material, with the public interest in preserving the confidentiality of counselling communications and minimising harm to victims. In addition, the court is considered best placed to determine the value of the evidence.

Consultation

DJAG conducted extensive consultation and engagement with the community and key Government and non-government stakeholders which informed the review report recommendations that are being implemented through this Bill.

The Domestic and Family Violence Taskforce undertook extensive consultations in preparing its report. The consultation process included meeting with a range of different groups of victims, service providers and community leaders. This consultation informed the Taskforce recommendations that are being implemented through this Bill.

On 8 March 2016, the Attorney-General and Minister for Justice and Minister for Training and Skills released a Consultation Paper on the proposed SACP model.

On 11 October 2016, a consultation draft of the Bill was released for targeted consultation with: key non-government victims of crime, sexual assault, DFV and legal stakeholders; the Chief Justice of Queensland; President of the Court of Appeal; President of QCAT; Chief Judge of the District Court of Queensland; Chief Magistrate; Public Guardian; Queensland Family and Child Commissioner; Information Commissioner; Director of Public Prosecutions; Director of Child Protection Litigation; Motor Accident Insurance Commission; and National Injury Insurance Agency (Queensland).

The key non-government victims of crime, sexual assault, DFV and legal stakeholders consulted on the draft of the Bill were: Queensland Law Society; Bar Association of Queensland; Women's Legal Service; Queensland Indigenous Family Violence Legal Service; Legal Aid Queensland; Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd; Sisters Inside Inc.; North Queensland Women's Legal Service Inc; Community Legal Centres Queensland; Queensland Council for Civil Liberties; Gold Coast Community Legal Centre & Advice Bureau Inc; Aboriginal & Torres Strait Islander Women's Legal Service NQ Inc; LGBTI Legal Service Inc.; Caxton Legal Centre Inc; Bravehearts Inc; Court Network Inc; DV Connect; Protect All Children Today Inc.; Queensland Homicide Victims' Support Group; Relationships Australia Queensland; Multicultural Development Association Ltd.; Working Alongside People with Intellectual and Learning Disabilities – Sexual Violence Prevention Association; Queensland Sexual Assault Network; Brisbane Youth Service; Living Well; Queensland Domestic Violence Service Network; Gold Coast Centre Against Sexual Violence Inc.; Domestic Violence Prevention Centre – Gold Coast Inc.; Queensland Centre for Domestic and Family Violence Research; Women's Health Services Alliance Queensland; Services and Practitioners for the Elimination of Abuse Queensland; Domestic Violence Court Assistance Network; Combined Women's Refuge Group (South East Queensland); Central Queensland Combined Women's Refuge Group; Domestic Violence Action Centre; Working Against

Violence Support Service; Queensland Police Union of Employees; Immigrant Women's Support Service; Centacare Family & Relationships Services; Australian Association of Social Workers, Queensland Branch; Australian Medical Association, Queensland Branch; Australian Psychologists Society; Queensland Counsellors Association Inc.; and Ending Violence Against Women Queensland Inc.

The majority of stakeholders generally supported the amendments in the Bill. Stakeholders' comments were considered and, where appropriate, amendments were made to the Bill during the drafting process.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

All other Australian jurisdictions have introduced some form of statutory evidential privilege to limit the disclosure and use of sexual assault counselling communications during legal proceedings. These statutory protections seek to recognise the public interest in encouraging people who have been sexually assaulted to seek therapy to assist in their recovery and may also encourage them to report the crime to police. The Bill implements a SACP based on the NSW model.

Victims of sexual offences are automatically afforded special witness status in NSW, the Northern Territory, Victoria and Western Australia.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Victims of Crime Assistance and Other Legislation Amendment Act 2016*.

Clause 2 provides that the Bill commences on a date to be fixed by proclamation.

Part 2 Amendment of Criminal Code

Clause 3 states that this part amends the Criminal Code.

Clause 4 inserts a new section 590APA (Protected counselling communications) to provide that the prosecution will not be under an obligation to disclose a protected counselling communication unless certain provisions of the *Evidence Act 1977* apply.

Clause 5 inserts a new part 9, chapter 98 to provide a transitional provision for the Bill.

Part 3 Amendment of Evidence Act 1977

Clause 6 states that this part amends the *Evidence Act 1977*.

Clause 7 inserts a new part 2, division 2A (Sexual assault counselling privilege).

New section 14A (Meaning of *protected counselling communication*) provides that a protected counselling communication is an oral or written communication made in confidence by the counselled person to a counsellor, by the counsellor to or about the counselled person to further the counselling process or a communication about the counselled person by a parent, carer or other support person made to facilitate communication between the counselled person and the counsellor or further the counselling process. It will not matter whether the communication was made in connection with the sexual assault itself or whether the communication was made before or after the assault.

New section 14B (Other definitions for division) contains definitions for 'counsel', 'counselled person', 'counsellor', 'essential person', 'religious representative' and 'sexual assault offence', which are key terms used in the new division 2A.

New section 14C (Application of subdivision) provides that subdivision 2 will apply to a committal proceeding or a proceeding under the *Bail Act 1980*, including a proceeding relating to the remand of a person in custody.

New section 14D (Sexual assault counselling privilege) provides that in a proceeding to which the subdivision applies, a person is prevented from doing a range of things in relation to a protected counselling communication.

New section 14E (Application of subdivision) provides that subdivision 3 will apply to a trial or sentencing of a person, other than a proceeding to which subdivision 2 applies, or a

proceeding for a domestic violence order under the *Domestic and Family Violence Protection Act 2012* (DFVP Act).

New section 14F (Sexual assault counselling privilege) provides that in a proceeding to which the subdivision applies a person cannot do a range of things, without leave of the court, in relation to a protected counselling communication.

New section 14G (Application for leave) provides that a party to the proceeding may apply for leave to access protected counselling communication and must provide a notice to each other party to the proceeding and the counsellor, stating the nature and particulars of the communication to which the application relates. The section also provides that the court cannot decide the application within 14 days after the notice has been given unless notice has previously been given or the counselled person consents to the disclosure or the court considers there are both exceptional circumstances and it is in the public interest to waive compliance with the section.

New section 14H (Deciding whether to grant leave) sets out the test for granting leave concerning a protected counselling communication. The court must be satisfied that the protected counselling communication has substantial probative value, there is no other evidence available and that the public interest in preserving the confidentiality of the communication and protecting the counselled person from harm is substantially outweighed by the public interest of allowing it into evidence. In deciding the 'public interest' component, the court must have regard to a number of matters specified in subsection (2).

The provision also provides that the victim may provide an oral or written statement to the court outlining the harm the person is likely to suffer if the application for leave is granted. If an oral statement is made, this must be made in the absence of the jury and any other party. The provision contains a definition of harm, which includes physical, emotional or psychological harm, financial loss, stress or shock and damage to reputation.

New section 14I (Waiver of privilege by counselled person) provides that a counselled person may, if they are over 16 years of age, consent to the production of the protected counselling communication provided the person does not have an impaired capacity to provide the consent. The section also provides that consent must be in writing, or orally if the person has a disability which prevents them from providing consent in writing, and the consent must state that the person has had an opportunity to seek legal advice.

New section 14J (Loss of privilege if communication made in commission of offence) provides that a communication is not a protected counselling communication if it was made in the commission of an offence.

New section 14K (Court to inform of rights) provides that if a court considers a person has grounds to apply for leave to access a protected counselling communication, or object to the production of a document or adducing of evidence that is a protected counselling communication, the court must satisfy itself that a person is aware of the provisions relating to the privilege and that the person has an opportunity to seek legal advice. Subsection (4) clarifies that it is not the role of the Office of the Director of Public Prosecutions to provide this legal advice.

New section 14L (Standing of counsellor and counselled person) provides that if a counsellor or counselled person is not a party to the proceeding and the court is deciding whether or not a document or evidence is a protected counselling communication, the counsellor or counselled person may appear in the proceeding, including any appeal.

New section 14M (Deciding whether document or evidence is protected counselling communication) provides that the court may consider a document or evidence to decide if it is a protected counselling communication. This section applies despite section 14D (Sexual assault counselling privilege) and section 14F (Sexual assault counselling privilege).

New section 14N (Ancillary orders) provides that the court may make any order it considers appropriate to limit the extent of harm that a person may suffer if a protected counselling communication is produced or adduced. The section relies on the definition of harm as it appears in section 14H (Deciding whether to grant leave).

New section 14O (Application of division despite *Justices Act 1886*) provides that, to the extent of any inconsistency, the provisions of this division will apply despite a provision of the *Justices Act 1886*.

New section 14P (Application of privilege in civil proceedings) provides that in a proceeding to which subdivision 2 or 3 applies, a person cannot produce or adduce evidence in a civil proceeding that arises from the act that gave rise to the criminal proceeding unless leave has been granted for the purposes of the criminal proceeding or the privilege has been waived or lost.

Clause 8 amends section 21A (Evidence of special witness) to insert into the definition of *special witness* a person against whom a sexual offence has been, or is alleged to have been, committed by another person and who is to give evidence against that person. A related definition of *sexual offence* is also inserted.

Clause 9 inserts a new part 9, division 9 to provide for a transitional provision for the Bill.

Clause 10 amends schedule 3 (Dictionary) to include the terms 'counsel', 'counselled person', 'counsellor', 'essential person', 'protected counselling communication', 'religious representative' and 'sexual assault offence'. The terms will have the meaning as defined in section 14B.

Part 4 Amendment of Penalties and Sentences Act 1992

Clause 11 states that this part amends the *Penalties and Sentences Act 1992*.

Clause 12 inserts new part 10B (Victim impact statements) into the *Penalties and Sentences Act 1992* with new sections 179I to 179N.

New section 179I (Definitions for part) defines the terms 'harm', 'victim' and 'victim impact statement' for new part 10B, which are key terms used in part 10B.

New section 179J (Application of part) provides that new part 10B applies for sentencing an offender for an offence which is a crime under section 6 of the *Victims of Crime Assistance Act 2009*.

New section 179K (Giving details of impact of crime on victim during sentencing) provides for how a victim can give the prosecutor for the offence details of the harm caused to the victim by the offence and how and when the prosecutor may communicate those details to the court sentencing the offender who committed the offence. The prosecutor may give the details of the harm suffered by giving the court a victim impact statement prepared under new section 179L.

New section 179K also provides that just because details of the harm are not given to the court at sentencing that does not, of itself, give rise to an inference that the offence caused little or no harm to the victim. New section 179K provides that it is not mandatory for a victim to give a victim impact statement. It is for the sentencing court to decide if, and how, details of the harm are to be given to it, in accordance with the rules of evidence and the practices and procedures applying to the sentencing court.

New section 179L (Preparation of victim impact statement) provides that, for new section 179K, details of the harm caused to the victim of an offence may be given to the prosecutor in accordance with a victim impact statement prepared by the victim. If the victim cannot give a victim impact statement because of their age or because they have impaired capacity, another person can prepare the victim impact statement. New section 179L will clarify that if a victim impact statement is given to a prosecutor electronically, the person who gives it is taken to have signed the victim impact statement.

New section 179M (Reading aloud of victim impact statement during sentencing) applies to a person who has prepared a victim impact statement under new section 179L and provides the process for how the victim impact statement may be read aloud before the court.

New section 179N (Special arrangements for reading aloud of victim impact statement during sentencing) explains the process for the court to make special arrangements for a person (called the 'reader') to read aloud the victim impact statement that the person prepared under new section 179L.

Clause 13 inserts new part 14, division 18 (Transitional provision for *Victims of Crime Assistance and Other Legislation Amendment Act 2016*) to provide for the transitional arrangements for the new part 10B.

Part 5 Amendment of Victims of Crime Assistance Act 2009

Clause 14 states that this part amends the *Victims of Crime Assistance Act 2009* (VOCA Act).

Clause 15 amends the long title to refer to the Charter of Victims' Rights (the charter) which is replacing the fundamental principles of justice for victims (the principles).

Clause 16 amends section 3 (Purposes of Act) to make consequential amendments as a result of the insertion of the charter by the Bill.

Clause 17 amends the heading of chapter 2 by replacing it with a new heading as a result of the insertion of the new charter by the Bill.

Clause 18 omits the heading of chapter 2, part 1 as a consequence of the restructure of chapter 2 and replacement of the principles with the charter by the Bill.

Clause 19 amends section 5 (Meaning of *victim*) to expand the definition of 'victim' for sections 18 to 20 and divisions 1 and 3 of the charter (contained in new schedule 1AA, part 1) to include a person (other than a person who has suffered harm under existing section 5(1)) who has suffered harm:

- because domestic violence is committed against them;
- because the person is a family member or dependent of a person who has suffered harm because domestic violence was committed against that person; or
- as a direct result of intervening to help a person who suffered harm because domestic violence was committed against that person.

Clause 20 replaces section 6 (Purposes of declaring principles) and inserts new sections 6A to 6C into the VOCA Act.

New section 6 (Meaning of *crime* for chapter) defines the term 'crime' for chapter 2 of the VOCA Act, including the charter in new schedule 1AA.

New section 6A (Meaning of *prescribed person*) provides for the definition of a 'prescribed person' to mean: a government entity; a non-government entity; or an officer, member or employee of a government entity or a non-government entity. Non-government entity is defined in amendments made to schedule 3 by the Bill.

New section 6B (Charter of victims' rights) provides that the charter is set out in schedule 1AA. It explains that the charter is, as far as practicable and appropriate, to govern the conduct of 'prescribed persons' in dealing with victims.

New section 6C (Purposes of victims charter) explains the purposes of the charter are to: (1) advance the interests of victims by stating the rights that are to be observed by 'prescribed persons'; and (2) inform victims of the rights they can expect will underlie the conduct of 'prescribed persons' in dealing with victims.

Clause 21 amends section 7 (Principles do not give legal rights or affect legal rights or obligations) to change references to 'principles' to instead refer to the charter and to clarify that section 7 does not prevent disciplinary action being taken against a prescribed person (defined in new section 6A) who contravenes processes for implementing rights stated in the charter that have been adopted by a government entity or non-government entity.

Clause 22 omits chapter 2, part 2 as a consequence of the charter replacing the principles by the Bill.

Clause 23 omits the heading of chapter 2, part 3. Chapter 2 will no longer be divided into parts.

Clause 24 omits section 17 (Guidelines and processes for compliance with principles) because the charter replaces the principles.

Clause 25 amends section 18 (Conduct to be consistent with principles) to change references to the principles to instead refer to the charter and victims' rights in the charter.

Clause 26 amends section 19 (Victim may make complaint) to refer to the charter and victims' rights in the charter instead of to the principles. The clause also amends section 19 to provide that a victim can complain to:

- if the prescribed person is a non-government entity – the non-government entity;
- if the prescribed person is a government entity – the government entity; or
- if the prescribed person is either a non-government entity or a government entity – the victim services coordinator (VSC).

The clause also provides that a complaint may be made for the victim by another person acting with the victim's consent.

Clause 27 replaces section 20 (Dealing with complaint) and inserts new section 20A. New section 20 (Dealing with complaint – government entity or non-government entity) provides the process for how a government or non-government entity is to deal with a complaint.

New section 20A (Dealing with complaint – victim services coordinator) explains how the VSC is required to deal with complaints. It provides that the VSC may liaise with the government or non-government entity to which the complaint relates in order to facilitate the resolution of the complaint. The VSC can also refer the complaint to the government or non-government entity.

Clause 28 amends section 21 (Scheme for financial assistance). Because domestic and family violence (DFV) may not always result in the arrest or prosecution of the person who perpetrated the DFV, the amendment to subsection (3)(b) clarifies that, in order to be eligible for financial assistance under the VOCA Act, a victim is only required to give reasonable assistance in the arrest or prosecution of a person who allegedly committed an act of violence that is a crime, or a series of related crimes, within the meaning of sections 25A or 25B(1) of the Act.

Clause 29 replaces section 25 (Meaning of *act of violence*) and inserts new sections 25A and 25B. New section 25 extends the definition of 'act of violence' to cover victims of DFV. The consequence of the amendment is that people who are victims of DFV and are not already eligible for financial assistance under section 25(1), will be eligible for financial assistance under the Act.

New section 25A (Meaning of *crime*) defines the term 'crime' for chapter 3.

New section 25B (Meaning of *series of related crimes and series of related acts of domestic violence*) defines the terms 'series of related crimes' and 'series of related acts of domestic violence'.

Clause 30 amends section 27 (Meaning of *injury*) as a consequence of the amendments to section 25 which extends eligibility for financial assistance under the financial assistance scheme to victims of DFV.

Clause 31 amends section 33 (When a person's workers' compensation application is finally dealt with) to ensure that the National Injury Insurance Scheme (NIIS) for work-related accidents established by the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* is included in the consideration of a person's total entitlement to compensation under the *Workers' Compensation and Rehabilitation Act 2003.*

Clause 32 omits sections 35 (Application for particular victim assistance can be made earlier) and 36 (Amendment of assistance after workers' compensation application decided). This amendment will require that a victim who is entitled to make a workers' compensation claim to have that claim finally dealt with before applying for financial assistance under the VOCA Act.

Clause 33 inserts new parts 3A (new sections 36A to 36F) and 3B (new sections 36G to 36J) into the VOCA Act.

New part 3A (Relationship with Motor Accident Insurance Act 1994) is a new part which explains the relationship between the financial assistance scheme and the *Motor Accident Insurance Act 1994* (MAI Act).

New section 36A (Application of part) provides that part 3A applies if the act of violence resulted in a motor vehicle accident within the meaning of the MAI Act and the victim is entitled to make a motor accident claim in relation to the motor vehicle accident.

New section 36B (Making of victim assistance application not affected by motor accident claim) provides that a person may apply for victim assistance in relation to the act of violence whether or not a motor accident claim has been made, or if a claim has been made that it has not been finally dealt with.

New section 36C (When motor accident claim is finally dealt with) explains when a motor accident claim is finally dealt with for the VOCA Act. A motor accident claim is finally dealt with if one of the following things happens:

- an insurer denies liability for the claim;
- an offer, or counter offer, of settlement of the claim is accepted; or
- a proceeding in a court based on the claim ends, including any appeal.

New section 36D (Requirement to defer decision—motor accident claim not made) sets out the process for when a government assessor must defer deciding an application for assistance if an applicant is eligible to make a motor accident claim in relation to the act of violence and the applicant has not made a motor accident claim. Under section 36D(2) the deferral lasts until the applicant has made a motor accident claim and it has been finally dealt with. The government assessor does not have to defer deciding the motor accident claim if the matters detailed in section 36D(3) apply, which are:

- that: any motor accident claim is barred under section 37(3) of the MAI Act or the applicant has tried (unsuccessfully) to give notice of a motor accident claim under section 37(3) after the period mentioned in section 37(2); and
- the applicant has a reasonable excuse for not making the motor accident claim within the period mentioned in section 37(2) of the MAI Act.

The scheme manager's determination as to whether the applicant has, or does not have, a reasonable excuse is guided by the factors prescribed in section 36D(4)(a) to (e). If the scheme manager decides that the applicant does not have a reasonable excuse, the decision is reviewable for the purposes of section 124 of the VOCA Act.

New section 36E (Requirement to defer decision – motor accident claim made but not finally dealt with) provides that if an applicant for assistance who is eligible to make a motor accident claim has made a claim, but it has not been finally dealt with, the government assessor must defer deciding the application until the motor accident claim is finally dealt with.

New section 36F (Decision about assistance for counselling expenses) provides that if a person has applied for victim assistance and the government assessor has deferred deciding the application under either of sections 36D or 36E, the government assessor must decide the application to the extent that it relates to counselling expenses under sections 39(a), 42(a), 45(a), 46(a) or 49(a).

New part 3B (Relationship with the national injury insurance scheme—motor vehicle accidents) is a new part which explains the relationship between the financial assistance scheme and the NIIS for motor vehicle accidents established by the *National Injury Insurance Scheme (Queensland) Act 2016* (NIISQ Act).

New section 36G (Application of part) provides that new part 3B applies to the primary victim of an act of violence if the primary victim (or another person on their behalf) has made, or is entitled to make, an application under the NIISQ Act for approval to participate in the NIIS (a NIISQ application) because of an injury that the primary victim suffered as a direct result of the act of violence.

New section 36H (Making of victim assistance application not affected by application for approval to participate in scheme) provides that a primary victim may apply for financial assistance in relation to the act of violence whether or not a NIISQ application has been made, or, if a NIISQ application has been made, whether or not the NIISQ application has been decided by the agency under the NIISQ Act.

New section 36I (Deferring decision if NIISQ application not made or not decided) provides that if a primary victim applies for victim assistance in relation to the act of violence and a NIISQ application has not been made, or, a NIISQ application has been made but not decided, the government assessor has discretion to defer deciding the primary victim's application for financial assistance until the NIISQ application is decided. However, new section 36I also provides that if two years has elapsed since the application has been made, the government assessor must decide the application despite a deferral in place under part 3B.

New section 36J (Decision about assistance for particular expenses) applies if the government assessor deciding a victim's application for assistance has deferred deciding the application or the amount of assistance under section 36I and section 36F doesn't apply. The government assessor must decide the application to the extent that it relates to assistance for counselling expenses (section 39(a)), incidental travel expenses (section 39(c)), report expenses (section 39(d)), loss of earnings (section 39(e)), expenses for loss or damage to clothing (section 39(f)), exceptional circumstances payments (section 39(g)) and special assistance payments (section 39(h)).

Clause 34 amends section 39 (Composition of assistance) to clarify that expenses for 'exceptional circumstances' must be reasonable.

Clause 35 amends section 41 (Amount of assistance) to remove pools of assistance for parent secondary victims so that each application for financial assistance is considered on its own merits.

Clause 36 amends section 42 (Composition of assistance) to: provide that parent secondary victims are eligible for loss of earnings for a period of two years after they become aware of the act; clarify that expenses for 'exceptional circumstances' under section 42(1)(f) must be reasonable; and removes pools of assistance for parent secondary victims for loss of earnings.

Clause 37 amends section 45 (Composition of assistance—witness to more serious act of violence) to: clarify that expenses for 'exceptional circumstances' under section 45(1)(f) must be reasonable; and removes pools of assistance for witnesses to more serious acts of violence for loss of earnings.

Clause 38 amends section 48 (Amount of assistance) to: remove pools of assistance for related victims; and provides that the maximum amount of assistance that can be granted to a related victim is $50,000.

Clause 39 amends section 49 (Composition of assistance) to: correct section references; and clarify that expenses for 'exceptional circumstances' under section 49(1)(g) must be reasonable; and removes pools of assistance for related victims for loss of earnings.

Clause 40 amends section 50 (Eligibility and assistance) to provide that the maximum amount of grantable assistance for a funeral expense is $8,000.

Clause 41 amends section 51 (Who may apply for victim assistance) to ensure the terminology in the Act is consistent with the *Guardianship and Administration Act 2000*.

Clause 42 replaces section 52 (Form of application) and omits section 53 (Details of other victims).

New section 52 removes the requirement that an application for victim assistance be verified by statutory declaration and be accompanied by a medical certificate, and require the victim, when completing their application for assistance, to give the assessor consent to obtain information mentioned in sections 74, 77(1) or 77(4).

Section 53 is omitted as a consequence of removing pools of assistance because the requirement that a parent secondary victim or a related victim provide details of other parent secondary victims or related victims in their application is no longer necessary.

Clause 43 amends section 55 (Applying for victim assistance and funeral expense assistance together) to omit subsection (3) because of the omission of section 71 (Clause 52).

Clause 44 amends section 57 (Form of application) to remove the requirement that an application for funeral assistance be verified by statutory declaration.

Clause 45 amends section 58 (Time limit) to provide the process for when the scheme manager may, on application by a person, extend the time for making an application for funeral expense assistance if the scheme manager considers it would be reasonable to do so. If the scheme

manager decides not to extend the time for making an application, the decision is reviewable for the purposes of section 124 of the VOCA Act.

Clause 46 amends section 64 (Further information, document or consent) to insert a note to section 64 which explains that section 140 of the Act places restrictions on disclosing or giving access to information or documents obtained under the VOCA Act.

Clause 47 amends section 65 (Obtaining information about act of violence) to:

- amend the heading of the section to clarify that the information is requested by the government assessor from the police commissioner;
- clarify that 'information about the circumstances of the act of violence' includes details of the injury suffered by a victim of the act of violence;
- provide that a government assessor may ask for a copy of a statement (including a record of questioning under section 436 of the *Police Powers and Responsibilities Act 2000* (PPR Act)) made by the person who allegedly committed the act of violence (alleged offender statement);
- require the police commissioner to comply with the government assessor's request for information:
    - for an alleged offender statement—if the police commissioner is reasonably satisfied that the government assessor reasonably requires the alleged offender statement to decide the victim's application for assistance;
    - for information requested about the investigation or prosecution of an alleged offender—except if the giving of the information may lead to the disclosure of methods, practices or systems used generally by police in investigating alleged offences; and
- clarify that 'information' includes a document and includes, for example, a recording from a body-worn camera under section 609A of the PPR Act.

Clause 48 amends section 66 (Obtaining copies of witness statements, or information about particular conduct, in relation to act of violence) to:

- be consistent with section 65 by removing separate references to 'documents' and clarifying that information includes a document;
- clarify that the government assessor can obtain statements made by persons who did not directly witness the act of violence;
- clarify that the government assessor can, where the applicant for assistance is not the primary victim, request information about whether the applicant was aware of the primary victim's involvement in a criminal activity; and
- allow a police officer or the commissioner of police to not comply with the government assessor's request for the information if the information may lead to the disclosure of methods, practices or systems used generally by police in investigating alleged offences.

Clause 49 inserts new sections 67A (Obtaining information about act of violence from court) and 67B (Obtaining information about relevant payments from SPER registrar).

New section 67A provides the process for how and when a government assessor may obtain from the registrar of a court, information about an act of violence, including details of the injury suffered by the primary victim of the act, for which an application for victim assistance has been made.

New section 67B provides the process for how and when a government assessor may obtain from the registrar of SPER, information about compensation amounts for an act of violence in relation to which assistance is sought. Compensation amount is defined to mean an amount ordered by a court to be paid as compensation or restitution under the *Penalties and Sentences Act 1992*, which is registered with SPER.

Clause 50 amends section 69 (Obtaining primary victim's criminal history from police commissioner) to clarify that the government assessor may only use the contents of an applicant's criminal history for the following purposes:

- deciding whether the applicant's application should be refused under section 80;
- deciding an application for amendment of a grant of assistance under section 103; or
- recovering an amount of assistance under part 16.

The clause also provides for when the government assessor must destroy a written report of a primary victim's criminal history.

Clause 51 amends section 70 (Deciding applications for series of related crimes) because of the inclusion of a series of related acts of DFV as an act of violence (clause 29)

Clause 52 omits sections 71 (Notifying other victims etc.) and 72 (Notified victims failing to make application). Because pools of assistance will be removed so that each application for assistance is determined on its own merits, notifying other victims who are limited to the maximum amount of the pool is no longer necessary.

Clause 53 amends section 77 (Obtaining information about relevant payments) to allow a government assessor, if the government assessor has the consent of the victim, to obtain information from the chief executive officer (NIISQ) about whether or not a victim is participating in the NIIS and details of the treatment, care and support being provided to the victim under the NIIS.

Clause 54 amends section 81 (No grant if act of violence not reported) to provide that a special primary victim means a person who is the victim of an act of violence involving DFV. The persons to whom a special primary victim may report an act of violence are expanded to include a domestic violence service.

Clause 55 makes consequential amendments to section 82 (No grant if reasonable assistance not given) as a result of the amendments in the Bill which expand the definition of an act of violence for which a victim may be eligible for financial assistance to include DFV.

Clause 56 makes consequential amendments to section 83 (Dealing with application if applicant has earlier application) as a result of the amendments in the Bill which expand the definition of an act of violence for which a victim may be eligible for financial assistance to include a series of related acts of DFV.

Clause 57 inserts new sections 84A (Deferring decision if cause of death unknown), 84B (Deferring decision if false or misleading information allegedly provided by applicant) and 84C (Deferring decision if recovery of assistance granted to someone else is disputed).

New section 84A provides that the government assessor may defer deciding an application for assistance if the primary victim has died as a direct result of the act of violence and the police commissioner has informed the government assessor that the cause of the primary victim's death is unknown. The deferral lasts until one of the matters mentioned in new section 84A(2)(a) to (d) happens. If the government assessor decides to defer the application for assistance, the decision is internally reviewable by the scheme manager (or, if the scheme manager asks, another government assessor) and may be externally reviewed by QCAT.

New section 84B provides that the government assessor may defer deciding an application, or the amount of assistance to be granted under the application, if the scheme manager has made a complaint to a police officer alleging that an applicant for assistance has committed an information offence. The deferral lasts until one of the matters mentioned in section 84B(2)(a) or (b) happens. If the government assessor decides to defer the application for assistance, the decision is internally reviewable by the scheme manager (or, if the scheme manager asks, another government assessor) and may be externally reviewed by QCAT.

New section 84C provides that the government assessor may defer deciding the application, or the amount of assistance to be granted under the application, if the victim applying for financial assistance was a previous offender, against whom a debt to the State is being recovered, and the victim is disputing their liability to pay the debt. The deferral lasts until the liability of the victim to repay the previous debt is no longer in dispute. If the government assessor decides to defer the application for assistance, the decision is internally reviewable by the scheme manager (or, if the scheme manager asks, another government assessor) and may be externally reviewed by QCAT.

Clause 58 amends section 86 (Reduction if relevant payment received) to provide that a government assessor is not required to reduce an amount of assistance under section 86(2) if the government assessor is satisfied that the purpose for which the relevant payment was, or will be, received does not, or will not, include compensating the applicant for expenses in relation to which the applicant is eligible for assistance.

Clause 59 amends section 87 (Deferring decision if victim's conduct may be relevant) to broaden the application of section 87 to allow the government assessor to take into account a relevant justification, defence or excuse of the primary victim, as well as the applicant for assistance, if those two people are different.

Clause 60 amends section 88 (Inviting submissions from applicant) to clarify that if an applicant advises the government assessor that the applicant does not intend to make a submission under section 88, the government assessor may decide the application before the stated time required for the applicant to make a submission has elapsed.

Clause 61 amends section 89 (Deciding application) to require the government assessor to impose a mandatory condition under each grant of assistance that the applicant must give the scheme manager oral or written notice of any relevant payment received within 28 days after receiving the payment. The condition only applies for six years after the assistance is granted.

Clause 62 makes consequential amendments to section 90 (Notice of decision to grant assistance) as a result of the requirement for the government assessor to impose a mandatory condition on all grants of assistance under amended section 89 made in the Bill.

Clause 63 makes consequential amendments to section 94 (Paying assistance to someone else) as a result of amendments to section 49 made in the Bill.

Clause 64 amends section 97 (Application of part 14) to clarify that a person who is applying for interim assistance under part 14 must demonstrate that the expenses, which the applicant is reasonably likely to incur before the general application is decided, are urgent and immediate.

Clause 65 amends section 98 (Deciding application for interim assistance) as a result of the amendments to section 97 (urgent and immediate expenses) made in the Bill, and also to clarify that the government assessor must, on a grant of interim assistance, impose a condition on the grant that, if the applicant receives a relevant payment for the act of violence before the general application is decided, the applicant must give the scheme manager oral or written notice of the payment within 28 days after receiving it.

Clause 66 makes consequential amendments to section 99 (Steps after application for interim assistance decided) as a result of the amendments to section 98 in the Bill.

Clause 67 amends chapter 3, part 15 (Amendment of grants) by inserting a new division 1 heading (Amendment on application).

Clause 68 amends section 101 (Application for amendment) to:

- make consequential amendments as a result of the amendments made to section 89 in the Bill;
- clarify that an application for the amendment of a grant of assistance, where the assistance was granted to an adult, must be made within six years after the assistance was originally granted; and
- clarify that section 101(5) does not prevent an application being made if the person has been given an amendment notice under division 2 for the grant of assistance.

Clause 69 amends section 103 (Considering application) as a consequence of the omission of section 36 made by the Bill, and also to amend the reference in section 103(2) to the provisions which apply to an amendment application, in the same way that they apply in relation to the original application for assistance.

Clause 70 makes a consequential amendment to section 104 (Decision on application) as a result of the amendments in the Bill removing pools of assistance for secondary and related victims.

Clause 71 amends chapter 3, part 15 (Amendment of grants) by inserting a new division 2 heading (Amendment without application—uncounted relevant payments).

Clause 72 omits section 106 and inserts new sections 106 to 106G into chapter 3, part 15, division 2 (Amendment without application—uncounted relevant payments).

New section 106 (Definitions for division) provides the definitions for key terms used in division 2.

New section 106A (Notice proposing to amend grant of assistance) provides that the scheme manager must give a person who applied for assistance an amendment notice if the scheme manager reasonably suspects that the person has received, or is likely to receive an uncounted relevant payment. The notice must state the matters specified in new section 106A(2)(a) to (d). The person has at least 14 days to respond to the notice. The notice is required to be given in the time limits specified in new section 106A(4)(a) (for a person who was an adult when the person's assistance was granted) or new section 106A(4)(b) (for a person who was a child when the person's assistance was granted).

New section 106B (Obtaining information from chief executive (transport) for giving amendment notice) allows the scheme manager to ask the chief executive (transport) for the address of the person to whom the scheme manager proposes to give an amendment notice. The chief executive (transport) must comply with the request if the chief executive (transport) is reasonably satisfied that the scheme manager reasonably requires the information to give the person an amendment notice. If the scheme manager uses the information obtained under new section 106B to give the person an amendment notice, the notice is required to state that the scheme manager obtained information under new section 106B.

New section 106C (Obtaining information for making decision about uncounted relevant payment) provides that sections 65 to 67B and 74 to 77 (the applied provisions) apply in relation to an amendment notice as if the notice were an application for assistance. New section 106C provides guidance on how to interpret and apply the applied provisions for the purposes of the amendment notice.

New section 106D (Decision about receipt of uncounted relevant payment) provides for how the scheme manager decides whether or not the person has received, or is likely to receive an uncounted relevant payment. The scheme manager, when making a decision, is required to consider all oral or written representations made by the person during the response period and observe the principles of natural justice.

New section 106E (Amendment of grant of assistance) provides that, if the scheme manager has decided under new section 106D that a person has received, or is likely to receive, a relevant payment, the scheme manager must amend the amount of assistance granted to reduce it to the amount that would have been granted under section 86 if the government assessor had taken the uncounted relevant payment into account when the assistance was granted. If, after reducing the assistance, an amount still remains payable, the scheme manager must decide the component of assistance for which the amount is payable. In deciding this, the scheme manager must take into account the factors in new section 106E(4)(a) to (c).

New section 106F (Notice of decision) provides that the scheme manager must give the person a notice of the decision containing the matters stated in section 106F(a) to (e). The decision is internally reviewable by the scheme manager and externally reviewable by QCAT.

New section 106G (Refund of excess assistance) provides that if a grant of assistance is amended under new division 2 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. New

section 106G provides that an amount refundable under this section is a debt payable to the State by the person.

Clause 73 inserts new section 110A (Recovery available only if action taken within 6 years) which provides that the State may, under part 16, recover assistance granted for an act of violence only if action to recover the assistance is started within six years after the later of the following days:

- the day the person was convicted of a relevant offence for the act of violence; or
- the day the application for the grant of financial assistance was made.

Clause 74 makes consequential amendments to section 111 (Recovery limited to category of act of violence for which assistance granted) as a result of the amendments in the Bill removing pools of assistance for secondary and related victims and as a result of other amendments in the Bill to change the amounts of special assistance payable to certain victims listed in schedule 2.

Clause 75 amends section 113 (Using information obtained for application) to provide that information obtained under part 12, division 1 or sections 74, 75, 76 or 77 may be used for the purpose of recovering an amount from a person under part 16 or obtaining information from a court under section 114.

Clause 76 amends section 114 (Obtaining information from court) to clarify that the giving of information by the registrar of a court to the scheme manager under section 114 is authorised despite any other Act or law.

Clause 77 inserts new sections 114A (Obtaining information from SPER registrar) and 114B (Obtaining information from chief executive (transport)).

New section 114A sets out the process for the scheme manager to obtain information for the purpose of recovering an amount from a person under part 16 from the registrar of SPER. The information the scheme manager can ask for is information about an unpaid amount of compensation or restitution that the person was ordered to pay to a victim by a court and details of the offender's address.

New section 114B sets out the process for the scheme manager to obtain information for the purpose of the State recovering an amount from a person under part 16 from the chief executive (transport). The information that can be provided under this section is the address of a stated person who has been convicted of a relevant offence for a stated act of violence.

Clause 78 makes a consequential amendment to section 115 (Notice of intended recovery) as a result of the amendments to section 89 made by the Bill.

Clause 79 amends section 121 (Application of part 17) to provide that part 17 applies if a person, in relation to a person's application for assistance, is convicted of an offence against the Criminal Code, section 408C (Fraud).

Clause 80 amends section 124 (Internal review of decision) to clarify that only the applicant to whom a decision identified in schedule 1 applies may apply to the scheme manager for a review of the decision. The amendment responds to the QCAT decision of *Richardson v Department*

of Justice and Attorney-General [2014] QCAT 405, which confirmed that the applicant in this section does not include the person who is convicted of the relevant offence and against whom the State has started recovery action. The amendment to section 124 also permits the scheme manager to, at any time, extend the time for applying for a review of a decision if the scheme manager considers that it is reasonable in the circumstances to do so.

Clause 81 makes a consequential amendment to section 125 (External review of reviewed decision) as a result of the amendments made in the Bill removing pools of assistance for secondary and related victims.

Clause 82 makes a consequential amendment to section 130 (Disclosure of interests) as a result of the omission of section 36 made by the Bill.

Clause 83 omits section 136 (Obtaining information about other victims) as a result of the amendments made in the Bill removing pools of assistance for secondary and related victims.

Clause 84 makes a consequential amendment to section 137 (Inadmissibility of particular matters) as a result of the omission of section 36 made by the Bill.

Clause 85 makes consequential amendments to section 139 (Functions of victim services coordinator) as a result of the:

- provisions in the Bill that replace the principles with the charter; and
- amendments to sections 19 and 20 made by the Bill, which provide for how complaints are investigated and resolved.

Clause 86 makes a consequential amendment to section 140 (Confidentiality) as a result of the omission of section 136 and the insertion of new section 140A made by the Bill.

Clause 87 inserts new section 140A (Disclosure by scheme manager of information for research purposes) which provides that the scheme manager may disclose confidential information to a person undertaking research if the scheme manager is satisfied that the research is genuine and the researcher gives the scheme manager a written undertaking to preserve the confidentiality of information and the anonymity of the person to whom the information relates. New section 140A provides that the person must not contravene the undertaking. The maximum penalty for contravening the undertaking is 200 penalty units. Section 140A provides that if, by contravening the undertaking, the researcher also contravenes section 189 of the *Child Protection Act 1999* (CP Act), the person may be prosecuted under the VOCA Act or the CP Act, at the election of the prosecution. 'Confidential information' is defined to mean 'information about a person'.

Clause 88 inserts new sections 141A (Requirement to notify scheme manager about relevant payment) and 141B (Requirement to comply with mandatory condition)

New section 141A provides that if before an applicant's application for assistance has been decided under section 89 (and interim assistance has not been granted under section 98), the applicant receives a relevant payment for the act of violence, the applicant must give written or oral notice of the relevant payment within 28 days after receiving it unless the applicant has a reasonable excuse. The maximum penalty for contravening new section 141A is 100 penalty units.

New section 141B provides that an applicant who is granted assistance (including interim assistance) must not, without a reasonable excuse, contravene the condition imposed on the grant of the assistance under section 89(2) or 98(2). The maximum penalty for contravening this section is 100 penalty units.

Clause 89 amends section 143 (Protection from civil liability) to provide that section 143 does not apply to the extent that an official is a State employee within the meaning of the *Public Service Act 2008* section 26B(4).

Clause 90 omits section 144 (Review of Act) to remove the requirement that the VOCA Act be reviewed because a review of the Act has been undertaken.

Clause 91 omits section 147 (Temporary regulation-making power) because this power is no longer required.

Clause 92 inserts new chapter 8 (Transitional provisions for Victims of Crime Assistance and Other Legislation Act 2016) that includes new sections 197 to 219.

New section 197 (Definitions for chapter) defines certain terms for use in the chapter.

New section 198 (Complaints about prescribed persons and victims charter) explains the transitional arrangements for new chapter 2 and schedule 1AA.

New section 199 (Definition of *act of violence*) explains the transitional arrangements for the amended definition of act of violence for section 25 of the VOCA Act.

New section 200 (New ch 3, pts 3 – 3B) explains the transitional arrangements for the amendments to chapter 3, parts 3 to 3B that provide for the relationship between the victims of crime financial scheme under the VOCA Act and the workers' compensation claim scheme, the compulsory third party insurance scheme for motor vehicle accidents and the NIIS for motor vehicle accidents.

New section 201 (Other expenses) explains the transitional arrangements for the amendments to sections 39(g), 42(f), 45(f) and 49(g) which clarify that expenses mentioned in those sections must be reasonable.

New section 202 (Pools of assistance) explains the transitional arrangements for the amendments removing pools of assistance for secondary and related victims.

New section 203 (Amount of funeral expense assistance) explains the transitional arrangements for the amendment to section 50 increasing the amount of funeral assistance for eligible victims.

New section 204 (Series of related acts of domestic violence that started before commencement) explains the transitional arrangements that provide for a victim's entitlement to assistance for a series of related acts of domestic violence that started before commencement.

New section 205 (Form of applications) explains the transitional arrangements for the amendments to section 52 and 57 that remove the requirement for an application to be accompanied by a medical certificate and statutory declaration.

New section 206 (Extension of time for applying for funeral expense assistance) explains the transitional arrangements for the amendments to section 58 which permit the scheme manager to extend the time for applying for funeral assistance.

New section 207 (Obtaining information etc.) explains the transitional arrangements for the amendments to chapter 3, part 12, division 1 and new sections 84A to 84C which are about increasing the government assessor's powers to obtain information or defer applications in certain circumstances.

New section 208 (Reduction if relevant payment received) explains the transitional arrangements for the amendments to section 86 made by the Bill.

New section 209 (Deferral if victim's conduct may be relevant) explains the transitional arrangements for the amendments to section 87 made by the Bill.

New section 210 (Inviting submissions from applicant) explains the transitional arrangements for the amendments to section 88 made by the Bill.

New section 211 (Mandatory conditions) explains the transitional arrangements for the amendments to sections 89 and 90 made by the Bill.

New section 212 (Interim assistance) explains the transitional arrangements for the amendments to chapter 3, part 14 which are about grants of interim assistance.

New section 213 (Amendment of grants) explains the transitional arrangements for the amendments to chapter 3, part 15 about the amendment of grants on application by a victim.

New section 214 (Amendment of grant without application) explains the transitional arrangements for the amendments to chapter 3, part 15, division 2 which are about the amendment of grants by the scheme manager without application.

New section 215 (Recovering assistance from offender) explains the transitional arrangements for the amendments to chapter 3, part 16 which are about the recovery of assistance from an offender.

New section 216 (Effect of conviction for fraud etc.) explains the transitional arrangements for the amendment to chapter 3, part 17 which is about the effect of a victim's conviction for fraud on an application.

New section 217 (Review of decisions) explains the transitional arrangements for the amendments to chapter 3, part 18 which are about the internal and external review of decisions (including new reviewable decisions created by the Bill).

New section 218 (Requirement to notify scheme manager about relevant payment) explains the transitional arrangements for the insertion of new section 141A inserted by the Bill.

New section 219 (Primary victims – special assistance) explains the transitional arrangements for the amendments to schedule 2 which are about removing the minimum and maximum amounts of special assistance and instead prescribing fixed amounts.

Clause 93 inserts new schedule 1AA (Charter of victims' rights) to replace the principles. New schedule 1AA sets out the rights that govern how prescribed entities are to treat victims. Chapter 2 of the VOCA Act provides for the creation of the charter and explains the purpose of the charter and how it is to apply.

Clause 94 amends schedule 1 (Reviewable decisions) to remove references to reviewable decisions under sections of the VOCA Act omitted by the Bill and insert new reviewable decisions created by the Bill.

Clause 95 amends schedule 2 (Amounts and categories for special assistance) to:

- remove the minimum and maximum amounts of special assistance payable for category A (most serious) acts of violence to category D (least serious) acts of violence and replace the amounts with single payment amounts of:
  - for category A acts of violence, $10,000;
  - for category B acts of violence, $3,500;
  - for category C acts of violence, $2,000; and
  - for category D acts of violence, $1,000;
- insert an offence of cruelty to children under 16 as a category C act of violence; and
- insert an act of violence that is domestic violence as a category D act of violence.

Clause 96 amends schedule 3 (Dictionary) to omit redundant terms; and include definitions for the new terms 'amendment notice', 'chief executive (transport)', 'crime', 'domestic violence', 'eligible person', 'more serious act of violence', 'motor accident claim', 'NIISQ Act', 'NIISQ application', 'non-government entity', 'prescribed person', 'relevant entity', 'response period', 'scheme manager', 'series of related acts of domestic violence', 'uncounted relevant payment' and 'victims charter'. The clause also amends the definitions for the terms: 'diversionary program'; 'relevant payment' and 'relevant person'.

Part 6 Amendment of Youth Justice Act 1992

Clause 97 provides that part 6 amends the *Youth Justice Act 1992*.

Clause 98 inserts new part 8, division 7 (Releasing information to eligible persons) into the Act with new sections 282A to 282F.

New section 282A (Eligible persons register) provides that the chief executive must keep a register of persons who are eligible to receive information under new section 282F (detainee information) about a child who has been sentenced to detention for an offence of violence or a sexual offence. The persons listed in new sections 282A(2)(a) to 282A(2)(d) may apply to the chief executive to register as an eligible person.

New sections 282B (Non-release declaration) provides that a declaration must be signed by the applicant and if applicable, the person nominated by the applicant under new section 282A(4).

The declaration states that the applicant or nominated person will not disclose detainee information released to them other than as permitted under new section 282G(3).

New section 282C (Application by child) provides that if the applicant is a child, the chief executive must give the child information about registering. The chief executive must tell the child that the child's parent or guardian may register to receive the detainee's information for the child, prior to registering the child as an eligible person.

New section 282D (Deciding application) provides that the chief executive may refuse an application to be an eligible person if the chief executive believes, on reasonable grounds, that the release of detainee information to the applicant may endanger the security of a detention centre, the safe custody or welfare of a detainee or the safety or welfare of someone else. The chief executive may only register a child if the child's registration is in the child's 'best interests'. The principle of 'best interests of the child' is set out in the United Nations *Convention on the Rights of the Child.*

New section 282E (Removing details from eligible persons register etc.) provides circumstances in which the chief executive may remove a person's details from the register including if the chief executive reasonably considers the person's continued registration may endanger the security of a detention centre, the safe custody or welfare of a detainee, or the safety or welfare of someone else. The chief executive may also remove a person's details if the eligible person or nominee discloses detainee information released to the person under this division, other than as permitted under new section 282G(3).

New section 282F (Releasing information) provides the type of information the chief executive may release to an eligible person, or a person nominated by the eligible person, to the extent that the chief executive considers appropriate.

New section 282G (Confidentiality of detainee information) provides that a person who receives detainee information must not disclose it to another person other than allowed under section 282G(3). A maximum penalty of 100 penalty units or two years imprisonment may apply. Under section 282G(3), a person may disclose detainee information: for the Act; to discharge a function under another law or if the disclosure is otherwise authorised under another law; for a court proceeding if required to do so by order of the court or otherwise by law; if authorised by the child to whom the information relates; or if reasonably necessary to obtain counselling, advice or other treatment.

Clause 99 inserts new part 11, division 16 (Transitional provisions for Victims of Crime Assistance and Other Legislation Amendment Act 2016) which provides transitional arrangements for the amendments to the *Youth Justice Act 1992*.

New section 392 (Eligible persons register) provides that a person who has requested to receive information under repealed section 16 of the VOCA Act is taken to be included on the eligible persons register.

Clause 100 amends schedule 4 (Dictionary) to include new definitions for the terms 'applicant', 'detainee information', 'eligible person', 'eligible persons register' and 'nominee'.

Part 7 Amendments of other legislation

Clause 101 provides that the schedule to the Bill amends the legislation mentioned in it.