



Queensland

Victims of Crime Assistance Act 2009

Act No. 35 of 2009



Queensland

Victims of Crime Assistance Act 2009

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Queensland

Victims of Crime Assistance Act 2009

Act No. 35 of 2009

An Act to declare and implement principles of justice for victims of crime, to provide a scheme to give financial assistance to certain victims, and to amend the Acts mentioned in chapter 7 for particular purposes

[Assented to 17 September 2009]

[s 1]

The Parliament of Queensland enacts—

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Victims of Crime Assistance Act 2009*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) sections 127, 128, 131 and 138;
- (b) schedule 3, definitions *appropriately qualified, government assessor, scheme manager, the scheme* and *victims assistance unit*.

3 Purposes of Act

- (1) The purposes of this Act are—
 - (a) to declare fundamental principles of justice to underlie the treatment of victims by certain entities dealing with them; and
 - (b) to provide a mechanism for implementing the principles and processes for making complaints about conduct inconsistent with the principles; and
 - (c) to provide a scheme to give financial assistance to certain victims of acts of violence.
- (2) The objectives of the scheme mentioned in subsection (1)(c) are—
 - (a) to help victims of acts of violence to recover from the acts by giving them financial assistance; and

- (b) for primary victims, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the injuries suffered by them; and
 - (c) for related victims who have suffered distress, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the distress suffered by them; and
 - (d) to add to other services provided by or for government to victims of acts of violence.
- (3) However, grants of financial assistance (including special assistance and assistance as mentioned in section 49(1)(f)) to victims of acts of violence under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.

4 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

Chapter 2 Fundamental principles of justice for victims

Part 1 Preliminary

5 Meaning of *victim*

- (1) A *victim* is a person who has suffered harm—
- (a) because a crime is committed against the person; or

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- (b) because the person is a family member or dependant of a person who has died or suffered harm because a crime is committed against that person; or
 - (c) as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against that person.
- (2) A person who commits a crime against a person as mentioned in subsection (1)(a) is not a victim of the crime under subsection (1)(b) or (c).

6 Purposes of declaring principles

The purposes of declaring the principles are to—

- (a) advance the interests of victims by stating some fundamental principles of justice that prescribed persons are to observe in dealing with them; and
- (b) inform victims of the principles they can expect will underlie the treatment of them by prescribed persons.

7 Principles do not give legal rights or affect legal rights or obligations

- (1) The principles—
- (a) are not enforceable by criminal or civil redress; and
 - (b) do not affect the validity, or give grounds for review, of anything done or not done, or a decision made or not made, in contravention of them; and
 - (c) do not affect the operation of any other law, including, for example—
 - (i) the *Criminal Practice Rules 1999* and the rules of evidence in criminal proceedings; and
 - (ii) the Criminal Code, chapter 62, chapter division 3; and

Editor's note—

Criminal Code, chapter 62, chapter division 3 (Disclosure by the prosecution)

- (d) do not affect confidentiality obligations applying to a prescribed person.
- (2) Subsection (1) does not prevent disciplinary action being taken against a prescribed person who contravenes processes for implementing the principles that have been adopted by the government entity responsible for the prescribed person's conduct.

Note—

Part 3 also provides for the implementation of the principles, including how victims may complain about prescribed persons who they believe have engaged in conduct that is inconsistent with the principles.

- (3) In this section—

confidentiality obligation means an obligation to maintain confidentiality about particular information under an Act, oath, or rule of law or practice.

criminal or civil redress means a proceeding for the enforcement of a right or obligation, whether the right or obligation is substantive or procedural, direct or indirect.

Part 2 Declaration of fundamental principles

8 Fair and dignified treatment

- (1) A prescribed person in dealing with a victim is to—
 - (a) treat the victim with courtesy, compassion, respect and dignity; and

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- (b) take into account, and be responsive to, the particular needs of the victim, including, for example, needs relating to the victim's—
 - (i) age; or
 - (ii) sex or gender identity; or
 - (iii) race or indigenous background; or
 - (iv) cultural or linguistic diversity; or
 - (v) sexuality; or
 - (vi) impairment; or
 - (vii) religious belief.

(2) In this section—

victim includes a person who has suffered harm as a direct result of witnessing a crime committed against someone else.

9 Privacy of victim

(1) A victim's personal information, including the victim's address and telephone number, held by a government entity is not to be disclosed to a person other than as authorised under an Act or law.

(2) In this section—

victim includes a person who has suffered harm as a direct result of witnessing a crime committed against someone else.

10 Information about services

(1) A government entity is to give a victim timely information about the following—

- (a) available welfare, health, counselling, medical and legal help;
- (b) financial assistance, compensation and restitution entitlements;

-
- (c) any other relevant support services available.
 - (2) Subsection (1) applies only—
 - (a) to the extent giving the information is relevant to the entity's functions; or
 - (b) if it is otherwise reasonable and practicable for the entity to give the information.

11 Information about investigation of offender

- (1) So far as is reasonably practicable, an investigatory agency is to, if asked by a victim, give the victim the following information about the crime committed against the victim—
 - (a) the progress of investigations being conducted about the crime, unless disclosure is likely to jeopardise the investigations;
 - (b) if the disclosure of the progress of investigations being conducted about the crime is likely to jeopardise the investigations—that no information can be given at that time because of the ongoing nature of the investigations;
 - (c) the availability of diversionary programs in relation to the crime;
 - (d) the charge laid for the crime and details of the place and date of hearing of the proceeding for the charge;
 - (e) the name of the person charged;
 - (f) the reasons for the investigatory agency's decision not to continue with the charge or to amend the charge or to accept a plea to a lesser charge;
 - (g) the outcome of an application for bail by the charged person and, if the charged person is released on bail or otherwise before the proceeding on the charge is finished—the arrangements made for the release, including any condition and any application for variation of the condition that may affect the victim's safety or welfare;

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- (h) the outcome of a proceeding relating to the crime, including an appeal.
- (2) So far as is reasonably practicable, an investigatory agency is to give a victim timely notice of the issue of a warrant for the arrest of the person accused of committing the crime against the victim.

12 Information about prosecution of offender

So far as is reasonably practicable, a prosecuting agency is to, if asked by a victim, give the victim the following information about the crime committed against the victim—

- (a) details about relevant court processes, and when the victim may attend a relevant court proceeding, subject to any court order;
- (b) details of the availability of diversionary programs in relation to the crime;
- (c) notice of a decision to substantially change a charge, or not to continue with a charge, or accept a plea of guilty to a lesser charge;
- (d) notice of the outcome of a proceeding relating to the crime, including any sentence imposed and the outcome of any appeal.

13 Victim to be advised on role as witness

A victim who is a witness for the prosecution in the trial for the crime committed against the victim is to be informed by a prosecuting agency about the trial process and the victim's role as a witness for the prosecution.

14 Contact between victim and accused to be minimised

- (1) So far as is reasonably practicable, investigatory agencies, prosecuting agencies and court staff are to, during a court proceeding and within a court building—

- (a) minimise a victim's exposure to unnecessary contact with the person accused of committing a crime against the victim, defence witnesses and family members and supporters of the accused person; and
 - (b) protect a victim from violence or intimidation by the accused person, defence witnesses and family members and supporters of the accused person.
- (2) Subsection (1) applies to an investigatory agency or prosecuting agency only to the extent an officer, member or employee of the agency is present during the court proceeding or in the court building.

15 Giving details of impact of crime on victim during sentencing

- (1) A victim of a prescribed offence is to be permitted to give the prosecutor for the offence details of the harm caused to the victim by the offence, for the purpose of the prosecutor informing the relevant sentencing court.

Note—

If the offender's mental condition relating to the offence is referred to the Mental Health Court under the *Mental Health Act 2000*, see section 284 of that Act for the information a victim of the offence may give that court to help it make a decision on the reference.

- (2) The prosecutor may continue with the sentencing proceeding without having received details of the harm if it is reasonable to do so in the circumstances, having regard to—
- (a) the interests of justice; or
 - (b) whether permitting the details of harm to be given would unreasonably delay the sentencing of the offender; or
 - (c) anything else that may adversely affect the reasonableness, or the practicality, of permitting details of the harm to be given.

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- (3) If details of the harm are given to the prosecutor, the prosecutor is to—
 - (a) decide what (if any) details are appropriate to be given to the sentencing court; and
 - (b) give the appropriate details to the sentencing court, whether or not in the form of a victim impact statement given under subsection (5).

Note—

In sentencing the offender, the sentencing court must have regard to the harm done to, or impact of the offence on, the victim under—

- (a) the *Penalties and Sentences Act 1992*, section 9(2)(c)(i); or
 - (b) if the offender is a child—the *Juvenile Justice Act 1992*, section 150(1)(h).
- (4) In deciding what details are not appropriate, the prosecutor may have regard to the victim's wishes.
 - (5) Details of the harm may be given to the prosecutor in the form of a victim impact statement prepared by—
 - (a) the victim; or
 - (b) someone else if the victim can not give the statement because of the victim's age or impaired capacity.
 - (6) The fact that details of the harm caused to a victim by the offence are absent at the sentencing does not of itself give rise to an inference that the offence caused little or no harm to the victim.
 - (7) To remove any doubt, it is declared that it is not mandatory for a victim to give the prosecutor details of the harm caused to the victim by the offence.
 - (8) The sentencing court is to decide if, and how, details of the harm are to be given to the court in accordance with the rules of evidence and the practices and procedures applying to the court.

Examples of how details of harm may be given to sentencing court—

- production of victim impact statement to the sentencing court
- victim reading details of harm aloud before the sentencing court

(9) In this section—

victim impact statement means a written statement that—

- (a) is signed and dated; and
- (b) states the particulars of the harm caused to a victim by an offence; and
- (c) may have attached to it—
 - (i) documents supporting the particulars, including, for example, medical reports; or
 - (ii) photographs, drawings or other images.

16 Information about convicted offender

- (1) This section applies if a person who commits a prescribed offence against a victim—
 - (a) is convicted of the offence; and
 - (b) sentenced to imprisonment or detention.
- (2) The relevant agency is to give the victim notice of the following if the victim asks for it—
 - (a) the day the convicted person's period of imprisonment or detention started and the length of the period;
 - (b) any escape from custody by the convicted person while undergoing the sentence;
 - (c) whether the convicted person is unlawfully at large within the meaning of the *Corrective Services Act 2006*;
 - (d) any further cumulative periods of imprisonment or detention imposed on the convicted person while in custody for the offence;
 - (e) the day on which the convicted person is—

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- (i) eligible for, or due for, release on parole; or
 - (ii) for a child, due for release under a supervised release order under the *Juvenile Justice Act 1992*; or
 - (iii) due for discharge;
- (f) the transfer of the convicted person interstate or overseas under a scheme for the transfer of persons imprisoned or detained under sentence;
- (g) if the convicted person is a child—
- (i) the transfer of the convicted person from a detention centre to a corrective services facility; or
 - (ii) the granting to the convicted person of leave of absence under the *Juvenile Justice Act 1992*, section 269, and the period for which the leave is granted.

Note—

A victim of a prescribed offence may also be able to obtain particular information about the offence, or the person who committed or allegedly committed the offence, under—

- (a) the *Corrective Services Act 2006*, chapter 6, part 13, division 1; or
- (b) the *Mental Health Act 2000*, chapter 7A, part 1, division 2 or part 2, division 2.

(3) In this section—

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

detention centre see the *Juvenile Justice Act 1992*, schedule 4.

relevant agency means—

- (a) the department in which the *Corrective Services Act 2006* is administered; or
- (b) for an offender who is a child—the department in which the *Juvenile Justice Act 1992* is administered.

Part 3 Implementing principles

17 Guidelines and processes for compliance with principles

- (1) A government entity must prepare and adopt appropriate guidelines and processes for implementing the principles.
- (2) Without limiting subsection (1), the guidelines and processes must be directed at helping officers, members and employees of the entity for whose conduct the government entity is responsible to conduct themselves in a way that is consistent with the principles.

18 Conduct to be consistent with principles

- (1) This section applies—
 - (a) if a prescribed person is dealing with a person who the prescribed person is aware, or ought reasonably to be aware, is a victim; and
 - (b) to the extent the principles apply to the prescribed person in dealing with the victim.
- (2) The prescribed person must not, in dealing with the victim, engage in conduct that is inconsistent with the principles.

19 Victim may make complaint

- (1) This section applies if a victim believes a prescribed person has, in relation to the victim, engaged in conduct that is inconsistent with the principles.
- (2) The victim may make a complaint about the conduct to—
 - (a) if the prescribed person is a government entity—the government entity; or
 - (b) if the prescribed person is an officer, member or employee of a government entity—either—
 - (i) the government entity; or

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- (ii) the victim services coordinator.
- (3) If a complaint is made to the victim services coordinator under subsection (2)(b)(ii), the coordinator must—
- (a) if, under the process for resolving the complaint adopted by the government entity concerned, the victim services coordinator is to facilitate the resolution of the complaint—inform the government entity about the complaint; or
 - (b) otherwise—refer the complaint to the government entity concerned.
- (4) If there is an arrangement between the victim services coordinator and the government entity for referring complaints under subsection (3)(b), the victim services coordinator must comply with the arrangement when referring a complaint under the subsection.

Note—

See section 139 for other functions of the victim services coordinator.

- (5) For this section, a government entity is concerned about a complaint if the complaint is about the conduct of an officer, member or employee of the entity.

20 Dealing with complaint

- (1) This section applies if—
- (a) a victim makes a complaint under section 19(2)(a) or (b)(i) to a government entity; or
 - (b) a victim makes a complaint under section 19(2)(b)(ii) to the victim services coordinator and the coordinator refers the complaint to a government entity under section 19(3)(b).
- (2) The government entity must—
- (a) give the victim information about the process that will apply for resolving the complaint; and

-
- (b) take all reasonable steps to resolve the complaint as soon as is reasonably practicable.
 - (3) If the complaint is about the government entity and, under the government entity's process for resolving the complaint, the government entity must refer the complaint to another entity, the government entity complies with subsection (2)(b) if—
 - (a) the government entity refers the complaint to the other entity as soon as is reasonably practicable; and
 - (b) gives the other entity timely and reasonable assistance to resolve the complaint.

Example of another entity—

the ombudsman

- (4) If the complaint is about an officer, member or employee of the government entity and, under the government entity's process for resolving the complaint, the victim services coordinator is to facilitate the resolution of the complaint, the entity must refer the complaint to the coordinator.
- (5) If the complaint was referred to the government entity by the victim services coordinator under section 19(3)(b), the entity must, as soon as practicable after the complaint is resolved, inform the coordinator about how the complaint was resolved.

Chapter 3 Victims financial assistance scheme

Part 1 General

21 Scheme for financial assistance

- (1) This chapter establishes a scheme for the payment of financial assistance—

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- (a) to a victim of an act of violence; or
 - (b) to a person who incurs, or is reasonably likely to incur, funeral expenses for the death of a primary victim of an act of violence.
- (2) This chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence if—
- (a) the person committed or conspired to commit the act; or
 - (b) for a person claiming assistance as a primary victim of the act—the person’s involvement in a criminal activity is the only reason, or the main reason, the act was committed against the person; or
 - (c) for a person claiming assistance for the death of a primary victim of the act—the primary victim’s involvement in a criminal activity is the only reason, or the main reason, the act was committed against the primary victim, and the person was or should have been aware of the involvement.
- (3) Also, this chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence if, in the absence of a reasonable excuse—
- (a) the act has not been reported to a person as mentioned in section 81(1)(a); or
 - (b) the person has not given reasonable assistance in the arrest or prosecution of the person who allegedly committed the act.
- (4) Further, this chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence to the extent the person has received, or will receive, payment of an amount in relation to the act of violence from another source.

22 Other rights etc. not affected

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

23 Assistance for victim available only in 1 capacity

- (1) This section applies if a person is a victim of an act of violence in 2 or more of the following capacities—
 - (a) primary victim;
 - (b) parent secondary victim;
 - (c) witness secondary victim;
 - (d) related victim.
- (2) The person is eligible for victim assistance in relation to the act of violence in only 1 of the capacities.
- (3) This section does not prevent a witness secondary victim or related victim of an act of violence also being granted assistance for funeral expenses for the death of a primary victim of the act.

24 Effect of death on eligibility for assistance

- (1) Despite any other Act or law, if a person entitled to assistance dies, the person's entitlement to assistance does not survive for the benefit of the person's estate.
- (2) If a person applies for assistance but dies before the application is decided, the application lapses.
- (3) If a person is granted assistance but dies before the assistance is paid to the person, the assistance is taken to never have been granted and the person's application lapses.

Part 2 Basic concepts

25 Meaning of *act of violence*

- (1) An *act of violence* is a crime or a series of related crimes, whether committed by 1 or more persons, that—

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- (a) are committed in Queensland; and
- (b) directly result in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened.

Note—

In general terms, it is intended by this section that assistance may be granted to a person in relation to an act of violence even though the person who committed the act has not been, or can not be, found guilty of the relevant prescribed offence because of a justification, excuse or defence.

On the other hand, it is not intended by this section that assistance be payable for an act done or omission made by a person, for example, a police officer, if the act or omission is lawfully done or made in the course of the person performing duties under an Act.

See, however, sections 26(6), 50(2), 79 and 80.

- (2) A ***crime*** is an act or omission constituting a prescribed offence—
 - (a) disregarding any justification, excuse or defence that a person may have for doing the act or making the omission; and
 - (b) whether or not the person who did the act or made the omission has been identified, arrested, prosecuted or convicted in relation to the act or omission.
- (3) However, a reference to a justification, excuse or defence in subsection (2)(a) does not include—
 - (a) a matter mentioned in the Criminal Code, section 31(1)(a) or (b); or
 - (b) an authorisation to do an act or make an omission that is provided for under an Act.
- (4) A ***series of related crimes*** is 2 or more crimes that are related because—
 - (a) they are committed against the same person and—
 - (i) are committed at about the same time; or

-
- (ii) are committed over a period by the same person or group of persons; or
 - (iii) share another common factor; or
 - (b) they all contribute to the death of or injury to a person; or
 - (c) they, having regard to the circumstances of the crimes, are related in some other way.
- (5) However, a crime (*later crime*) is not related to a previous crime (*earlier crime*) if the later crime is committed after assistance is granted in relation to the earlier crime.
- (6) To remove any doubt, it is declared that, for this chapter—
- (a) a series of related crimes is taken to be a single act of violence; and
 - (b) assistance may be granted only for the single act of violence.
- (7) In this chapter, a reference to an act of violence in relation to an application for assistance includes a reference to an alleged act of violence.
- (8) In this section—
- prescribed offence* means—
- (a) an offence committed against the person of someone; or
 - (b) an offence prescribed under a temporary regulation for this definition; or
 - (c) an offence of attempting to commit, or conspiring to commit, an offence mentioned in paragraph (a) or (b).

26 Who is a primary, secondary, parent secondary, witness secondary or related victim

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

[s 27]

- (2) A **secondary victim**, of an act of violence, is a person who is a parent secondary victim or witness secondary victim of the act.
- (3) A **parent secondary victim**, of an act of violence, is a person who—
 - (a) is a parent of a child who is injured as a direct result of the act being committed against the child; and
 - (b) is injured as a direct result of becoming aware of the act.
- (4) A **witness secondary victim**, of an act of violence, is a person who is injured as a direct result of witnessing the act.
- (5) A **related victim**, of an act of violence, is a person who is a close family member, or a dependant, of a primary victim of the act who has died as a direct result of the act.
- (6) However, a person is not a victim of an act of violence, of a kind mentioned in subsections (1) to (5), if the person committed the act.
- (7) In this section—

close family member, of a primary victim of an act of violence who has died as a direct result of the act, means a family member of the primary victim who had a genuine personal relationship with the primary victim when the primary victim died.

27 Meaning of *injury*

- (1) In this chapter, **injury** means—
 - (a) bodily injury; or
 - (b) mental illness or disorder; or
 - (c) intellectual impairment; or
 - (d) pregnancy; or
 - (e) disease; or

-
- (f) for a sexual offence, the totality of the following adverse impacts of the sexual offence suffered by a person—
- (i) sense of violation;
 - (ii) reduced self worth or perception;
 - (iii) lost or reduced physical immunity;
 - (iv) lost or reduced physical capacity (including the capacity to have children), whether temporary or permanent;
 - (v) increased fear or increased feelings of insecurity;
 - (vi) adverse effect of others reacting adversely to the person;
 - (vii) adverse impact on lawful sexual relations;
 - (viii) adverse impact on feelings; or
- (g) a combination of matters mentioned in paragraphs (a) to (f).
- (2) For this chapter, *injury* also includes an aggravation of an injury mentioned in subsection (1)(a) to (g), if the aggravation arises as a direct result of an act of violence.
- (3) To remove any doubt, it is declared that, for this chapter, an aggravation mentioned in subsection (2) is an injury only to the extent of the effects of the aggravation.

28 When *exceptional circumstances* exist

For this chapter, *exceptional circumstances* exist for a victim of an act of violence if, because of the victim's circumstances or the nature of the act, the act has had an unusual, special or out of the ordinary effect on the victim.

Examples of when exceptional circumstances may exist—

- 1 An elderly person who lives alone suffers injury as a direct result of an act of violence committed against the person in the person's home. Because of the act, the person becomes seriously concerned about the person's security.

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- 2 A person who lives in a remote area suffers injury as a direct result of an act of violence committed against the person by a person who lives in the same area. Because of the remoteness of the area, the person becomes seriously concerned about another act of violence being committed against the person by the same person.

29 When person *incurs* expenses

For this chapter, a person *incurs* expenses if—

- (a) the person pays the expenses; or
- (b) someone else pays the expenses on the person's behalf;
or
- (c) the person receives an invoice for the payment of the expenses.

Note—

Part 13, division 2 provides for the payment of assistance to a person who is granted assistance, including providing for payments to someone else who has paid expenses on the person's behalf or who has given the person an invoice for the payment of expenses.

30 References to government assessor

In this chapter, a reference to the government assessor in relation to an application for assistance is a reference to the government assessor who, for the time being, is dealing with the application.

Note—

See sections 62, 127(6) and (7) and 130(5).

Part 3 Relationship with workers' compensation

31 Application of pt 3

This part applies if, for an act of violence, a person is—

- (a) a primary victim, witness secondary victim or related victim; and
- (b) a person who is entitled to compensation under the Workers' Compensation Act.

32 Relationship generally

- (1) This section states the assistance for which the person is eligible if the person is paid compensation under the Workers' Compensation Act.
- (2) If the person is a primary victim, the person is eligible for the following assistance—
 - (a) assistance under section 38(1) for—
 - (i) the components mentioned in section 39(f) and (g); and
 - (ii) special assistance as mentioned in subsection (6);
 - (b) additional assistance under section 38(2).
- (3) If the person is a witness secondary victim of a more serious act of violence, the person is eligible for the following assistance—
 - (a) assistance under section 44(1)(a) for the component mentioned in section 45(1)(f);
 - (b) additional assistance under section 44(2);
 - (c) funeral expense assistance.

[s 32]

- (4) If the person is a witness secondary victim of a less serious act of violence, the person is eligible for funeral expense assistance.
- (5) If the person is a related victim of an act of violence, the person is eligible for the following assistance—
 - (a) assistance under section 48(2) for—
 - (i) the components mentioned in section 49(1)(a), (b), (c), (d) and (g); and
 - (ii) non-expense assistance as mentioned in subsection (7);
 - (b) additional assistance under section 48(3).
- (6) For subsection (2)(a)(ii), the person is eligible for the following special assistance—
 - (a) if the person has not been paid any lump sum compensation under the Workers' Compensation Act—special assistance of the amount that would ordinarily be payable to the person;
 - (b) if the person has been paid lump sum compensation under the Workers' Compensation Act of an amount that is less than the amount of special assistance that would ordinarily be payable to the person—special assistance of the difference between the special assistance that would ordinarily be payable and the lump sum compensation paid.
- (7) For subsection (5)(a)(ii), the person is eligible for non-expense assistance—
 - (a) only if the amount of the compensation paid under the Workers' Compensation Act is less than the amount of the non-expense assistance that would ordinarily be payable to the person; and
 - (b) only for the difference between the non-expense assistance that would ordinarily be payable to the person and the compensation paid under the Workers' Compensation Act.

(8) In this section—

non-expense assistance means the total amount of assistance for the components mentioned in section 49(1)(e) and (f).

33 When a person's workers' compensation application is finally dealt with

For this part, a person's workers' compensation application is finally dealt with when the person's total entitlement to compensation under the Workers' Compensation Act has been decided under that Act, including, for example, because—

- (a) the person's workers' compensation application has been rejected under that Act; or
- (b) the person accepts or rejects an offer of lump sum compensation under that Act; or
- (c) the person's entitlement to compensation under that Act stops under that Act.

Note—

See, for example, the Workers' Compensation Act, chapter 3 (Compensation), part 8A (When entitlement to compensation stops).

34 Generally workers' compensation application finally dealt with before victim assistance application

- (1) The person may apply for victim assistance in relation to the act of violence committed against the person only if—
 - (a) the person has made a workers' compensation application; and
 - (b) the workers' compensation application has been finally dealt with.
- (2) The person may apply for victim assistance—
 - (a) within 3 years after the person's workers' compensation application is finally dealt with; or

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- (b) if the person is a child when the person's workers' compensation application is finally dealt with—before the person turns 21.
- (3) Subsection (2) applies despite section 54(1).
- (4) However, the scheme manager may, on application by the person, give the person approval to make an application for assistance without first making a workers' compensation application if—
 - (a) the reason the person has not made the workers' compensation application is because the prescribed period has passed; and
 - (b) the person has, under the Workers' Compensation Act, section 131(4) or (5), applied to an insurer to waive the need to make the worker's compensation application within the prescribed period, and has been unsuccessful; and
 - (c) the scheme manager is reasonably satisfied the person has a reasonable excuse for not making the workers' compensation application within the prescribed period, having regard to any of the following—
 - (i) the person's age when the act of violence was committed;
 - (ii) whether the person has an impaired capacity;
 - (iii) whether the person who allegedly committed the act of violence was in a position of power, influence or trust in relation to the person;
Examples of persons who may be in a position of power, influence or trust in relation to a person—
a person's parent, spouse or carer
 - (iv) the physical or psychological effect of the act of violence on the person;
 - (v) any other matter the scheme manager considers relevant.

-
- (5) The scheme manager must give a person who applies for an approval under subsection (4) notice of the scheme manager's decision on the application.
- (6) If the scheme manager decides not to give the approval, the notice must state the following—
- (a) the decision;
 - (b) the reasons for the decision;
- Note—*
- See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).
- (c) the internal review details for the decision.
- (7) In this section—
- prescribed period*** means the period within which a workers' compensation application may be made under the Workers' Compensation Act, section 131(1).

35 Application for particular victim assistance can be made earlier

Despite section 34—

- (a) the person may, after making a workers' compensation application but before that application is finally dealt, apply for victim assistance for which the person is eligible under section 32(2)(a)(i) or (b), (3)(a) or (b) or (5)(a)(i) or (b); and
- (b) the government assessor may decide the application.

36 Amendment of assistance after workers' compensation application decided

- (1) This section applies if—
- (a) the person makes an application under section 35 (***original application***) and is granted victim assistance; and

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- (b) the person is eligible for special assistance under section 32(6) or non-expense assistance under section 32(7).
- (2) The person may, within the period mentioned in section 34(2), apply for an amendment of the victim assistance granted to the person to allow for the special assistance or non-expense assistance.
- (3) The application for amendment (*amendment application*) must—
 - (a) be in the approved form; and
 - (b) contain details of the outcome of the person's workers' compensation application; and
 - (c) contain anything else the government assessor needs to decide whether special assistance or non-expense assistance should be granted that—
 - (i) would be required if the person were applying for special assistance or non-expense assistance other than by way of an amendment; and
 - (ii) was not given when the person made the original application.
- (4) The amendment application must be decided by the government assessor who decided the original application or, if that government assessor is not available to decide the amendment application, another government assessor nominated by the scheme manager.
- (5) Sections 63, 64, 73, 74 and 77 and part 12, division 5 apply in relation to the amendment application in the same way as they apply in relation to the original application.

Editor's note—

sections 63 (General principles), 64 (Further information, document or consent), 73 (Examinations), 74 (Obtaining medical information from designated person) and 77 (Obtaining information about relevant payments) and part 12, division 5 (Working out amount of assistance)

- (6) The government assessor must give the person notice of the assessor's decision on the amendment application.

(7) If the decision is to refuse the application, to amend the assistance granted in a way other than sought by the person, or to amend the assistance granted subject to conditions, the notice must state the following—

- (a) the decision;
- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

(c) the internal review details for the decision.

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

(9) Part 13, division 2 applies to an increase in victim assistance granted under this section in the same way as it applies to the original grant of victim assistance.

Editor's note—

part 13, division 2 (Paying assistance)

(10) In this section—

non-expense assistance see section 32(8).

Part 4 Primary victims

37 Eligibility for assistance

A primary victim of an act of violence is eligible for assistance.

Note—

See, however, section 24.

[s 38]

38 Amount of assistance

- (1) A primary victim of an act of violence may be granted assistance of up to \$75000.
- (2) Also, in addition to the assistance mentioned in subsection (1), the primary victim may be granted assistance of up to \$500 for legal costs incurred by the victim in applying for assistance under this Act.

39 Composition of assistance

The assistance granted under section 38(1) to a primary victim of an act of violence may consist of 1 or more of the following components—

- (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- (c) reasonable incidental travel expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- (d) reasonable report expenses incurred by the victim for the victim's application for assistance (including expenses incurred for an examination under section 73);
- (e) loss of earnings of up to \$20000 suffered, or reasonably likely to be suffered, by the victim, as a direct result of the act of violence, during a period of up to 2 years after the act of violence;
- (f) expenses incurred by the victim for loss of or damage to clothing the victim was wearing when the act of violence happened;
- (g) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred,

by the victim to significantly help the victim recover from the act of violence;

Examples of other expenses—

- relocation expenses
 - costs of securing the victim's place of residence or business
- (h) special assistance in relation to the act of violence.

Part 5 Parent secondary victims

40 Eligibility for assistance

A parent secondary victim of an act of violence is eligible for assistance.

Note—

See, however, section 24.

41 Amount of assistance

- (1) A parent secondary victim of an act of violence may be granted assistance of up to \$50000.
- (2) However, if there is more than 1 parent of a child who was injured as a direct result of an act of violence, only a combined total of \$50000 may be granted to the parents under subsection (1).
- (3) In addition to the assistance mentioned in subsection (1), each parent secondary victim of an act of violence may be granted assistance of up to \$500 for legal costs incurred by the victim in applying for assistance under this Act.

42 Composition of assistance

- (1) The assistance granted under section 41(1) to a parent secondary victim of an act of violence may consist of 1 or more of the following components—
- (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the act of violence;
 - (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the act of violence;
 - (c) reasonable incidental travel expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the act of violence;
 - (d) reasonable report expenses incurred by the victim for the victim's application for assistance (including expenses incurred for an examination under section 73);
 - (e) if exceptional circumstances exist for the victim, loss of earnings of up to \$20000 suffered, or reasonably likely to be suffered, by the victim, as a direct result of becoming aware of the act of violence, during a period of up to 2 years after the act;
 - (f) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence.

Examples of other expenses—

- relocation expenses
 - costs of securing the victim's place of residence or business
- (2) However, if there is more than 1 parent of a child who was injured as a direct result of an act of violence and for whom exceptional circumstances exist, only a combined total of \$20000 may be granted to the parents under subsection (1)(e) for loss of earnings suffered, or reasonably likely to be suffered, by them.

Part 6 Witness secondary victims

43 **Eligibility for assistance**

A witness secondary victim of an act of violence is eligible for assistance.

Note—

See, however, section 24.

44 **Amount of assistance**

- (1) A witness secondary victim of an act of violence may be granted assistance of—
 - (a) if the act is a more serious act of violence—up to \$50000, less any funeral expense assistance granted to the victim for the act; or
 - (b) if the act is a less serious act of violence—up to \$10000, less any funeral expense assistance granted to the victim for the act.
- (2) In addition to the assistance mentioned in subsection (1)(a), each witness secondary victim of a more serious act of violence may be granted assistance of up to \$500 for legal costs incurred by the victim in applying for assistance under this Act.

45 **Composition of assistance—witness to more serious act of violence**

- (1) The assistance granted under section 44(1)(a) to a witness secondary victim of a more serious act of violence may consist of 1 or more of the following components—
 - (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of witnessing the act of violence;

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- (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of witnessing the act of violence;
- (c) reasonable incidental travel expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of witnessing the act of violence;
- (d) reasonable report expenses incurred by the victim for the victim's application for assistance (including expenses incurred for an examination under section 73);
- (e) if exceptional circumstances exist for the victim, loss of earnings of up to \$20000 suffered, or reasonably likely to be suffered, by the victim, as a direct result of witnessing the act of violence, during a period of up to 2 years after the act;
- (f) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence.

Examples of other expenses—

- relocation expenses
 - costs of securing the victim's place of residence or business
- (2) However, if there is more than 1 witness secondary victim of a serious act of violence for whom exceptional circumstances exist, only a combined total of \$20000 may be granted to the victims under subsection (1)(e) for loss of earnings suffered, or reasonably likely to be suffered, by them.

46 Composition of assistance—witness to less serious act of violence

The assistance granted under section 44(1)(b) to a witness secondary victim of a less serious act of violence may consist of 1 or more of the following components—

-
- (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of witnessing the act of violence;
 - (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of witnessing the act of violence;
 - (c) reasonable incidental travel expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of witnessing the act of violence;
 - (d) reasonable report expenses incurred by the victim for the victim's application for assistance (including expenses incurred for an examination under section 73).

Part 7 Related victims

47 Eligibility for assistance

A related victim of an act of violence is eligible for assistance.

Note—

See, however, section 24.

48 Amount of assistance

- (1) The related victims of an act of violence may be granted assistance of up to a combined total of \$100000 less the total of any funeral expense assistance granted in relation to the act to the related victims.
- (2) Within the limit set by subsection (1), an individual related victim may be granted assistance of up to \$50000 less any funeral expense assistance granted to the victim in relation to the act.
- (3) In addition to the assistance mentioned in subsection (2), each related victim may be granted assistance of up to \$500 for

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legal costs incurred by the victim in applying for assistance under this Act.

49 Composition of assistance

- (1) The assistance granted under section 48(2) to a related victim may consist of 1 or more of the following components—
- (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the primary victim's death;
 - (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the primary victim's death;
 - (c) reasonable incidental travel expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of becoming aware of the primary victim's death;
 - (d) reasonable report expenses incurred by the victim for the victim's application for assistance (including expenses incurred for an examination under section 73);
 - (e) an amount of up to \$20000 that, but for the death of the primary victim of the act of violence, the related victim would have been reasonably likely to receive from the primary victim, during a period of up to 2 years after the primary victim's death;
 - (f) an amount of up to \$10000 for distress suffered, or reasonably likely to be suffered, by the related victim as a direct result of the primary victim's death;
 - (g) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the primary victim's death.

Examples of other expenses—

- relocation expenses
- costs of securing the victim's place of residence or business

- (2) However, if there is more than 1 related victim of an act of violence, only a combined total of \$20000 may be granted to the related victims under subsection (1)(e).

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

50 Eligibility and assistance

- (1) A person who incurs funeral expenses for the funeral of a primary victim of an act of violence who has died as a direct result of the act is eligible for assistance.
- (2) However, a person who incurs funeral expenses for the funeral of a primary victim of an act of violence committed by the person is not eligible for assistance under subsection (1).
- (3) A person eligible for assistance under subsection (1) may be granted assistance of up to \$6000 for funeral expenses incurred, or reasonably likely to be incurred, by the person for the funeral of the primary victim.
- (4) However, if more than 1 person is eligible for assistance under subsection (1) in relation to an act of violence, only a combined total of \$6000 may be granted to the persons for the funeral expenses incurred, or reasonably likely to be incurred, by them for the funeral of the primary victim.
- (5) To remove any doubt, it is declared that a person may be eligible for assistance under subsection (1) in relation to an act of violence even though the person is also a witness secondary victim or related victim of the act.

Part 9 **Applying for victim assistance**

51 Who may apply for victim assistance

- (1) A victim of an act of violence may apply to the scheme manager for victim assistance.
- (2) If the victim is a child, the application may be made by—
 - (a) the child’s parent on behalf of the child; or
 - (b) if the child is at least 12 years old and is represented by a lawyer, the child; or
 - (c) someone else approved by the scheme manager.
- (3) For subsection (2)(a)—
 - (a) if a person is granted guardianship of a child under a child protection order under the *Child Protection Act 1999*—the reference to the child’s parent in the subsection is taken to be a reference to that person; and
 - (b) if a person has the right and responsibility to make decisions about a child’s daily care under a decision or order of a federal court or a court of a State, other than a temporary order—the reference to the child’s parent in the subsection is taken to be a reference to that person; and
 - (c) subject to paragraphs (a) and (b), the reference to the child’s parent in the subsection does not include an approved carer of the child.
- (4) If the victim is an adult with an impaired capacity, the application may be made by—
 - (a) if the victim has a guardian for a legal matter—the guardian; or
 - (b) if the victim does not have a guardian for a legal matter but has an administrator—the administrator; or

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- (c) if the victim does not have a guardian for a legal matter or an administrator—an attorney appointed by the victim under an enduring power of attorney; or
 - (d) if the victim does not have a guardian for legal matters or an administrator and has not appointed a person under an enduring power of attorney—
 - (i) a member of the victim’s support network; or
 - (ii) someone else approved by the scheme manager.
 - (5) If the victim is not a child or an adult with impaired capacity but requires assistance in making an application under this chapter, the application may be made by someone else approved by the scheme manager.

Example—

If a victim can not understand English, the scheme manager may approve a relative of the victim who can understand English to make the application on the victim’s behalf.

- (6) For this Act, the victim is still the applicant even though under subsection (2), (4) or (5) an application is made by someone else for the victim.
- (7) In this section—

lawyer means an Australian legal practitioner, or a government legal officer, within the meaning of the *Legal Profession Act 2007*.

legal matter see the *Guardianship and Administration Act 2000*, schedule 2, part 3.

support network see the *Guardianship and Administration Act 2000*, schedule 4.

52 Form of application

An application for victim assistance must—

- (a) be in the approved form; and
- (b) be accompanied by—

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- (i) if the applicant is a primary victim or secondary victim, or a related victim who is applying for assistance for an expense, loss of earnings or other component of assistance in relation to an injury—a medical certificate about the applicant’s injury that is in the approved form; and
- (ii) other documents supporting the application; and
- (c) contain the consent of the relevant person for the government assessor to obtain information mentioned in section 74 or 77(1) in relation to the applicant; and
- (d) be verified by the applicant, or the person making the application for the applicant, by a statutory declaration.

53 Details of other victims

- (1) If the applicant for victim assistance is a parent secondary victim of an act of violence, the application must state the name and address of each other person the applicant knows or reasonably suspects—
 - (a) is a parent secondary victim of the act; or
 - (b) is someone who may claim that he or she is a parent secondary victim of the act.
- (2) If the applicant for victim assistance is a related victim of an act of violence, the application must state the name and address of each other person the applicant knows or reasonably suspects—
 - (a) is a related victim of the act; or
 - (b) is someone who may claim that he or she is a related victim of the act.
- (3) For subsection (1) or (2), if the applicant does not know the name or address of another person, it is enough for the application to state what the applicant knows about the other person.

54 Time limit

- (1) An application for victim assistance for an act of violence must be made within 3 years after—
 - (a) the act of violence happens; or
 - (b) for an application by a related victim—the death of the primary victim of the act; or
 - (c) for a victim who is a child—the day the child turns 18.
- (2) The scheme manager may, on application by a person, extend the time for the person making an application for victim assistance if the scheme manager considers it would be appropriate and desirable to do so, having regard to the following—
 - (a) the person's age when the act of violence was committed;
 - (b) whether the person has an impaired capacity;
 - (c) whether the person who allegedly committed the act of violence was in a position of power, influence or trust in relation to the person;
Examples of persons who may be in a position of power, influence or trust in relation to a person—
a person's parent, spouse or carer
 - (d) the physical or psychological effect of the act of violence on the person;
 - (e) whether the delay in making the application undermines the possibility of a fair decision;
 - (f) any other matter the scheme manager considers relevant.
- (3) The scheme manager must give a person who applies for an extension of time under subsection (2) notice of the scheme manager's decision on the application.
- (4) If the scheme manager decides not to extend the time for making an application for victim assistance, the notice must state the following—

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- (a) the decision;
- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (c) the internal review details for the decision.

55 Applying for victim assistance and funeral expense assistance together

- (1) This section applies if, on the same approved form, a victim of an act of violence is applying for—
 - (a) victim assistance; and
 - (b) funeral expense assistance.
- (2) The government assessor may consider the applications together.
- (3) Subsection (2) does not apply if deciding the application for victim assistance has been delayed under section 71(3).

Part 10 Applying for funeral expense assistance

56 Who may apply for funeral expense assistance

A person who incurs, or is reasonably likely to incur, funeral expenses for the funeral of a primary victim of an act of violence may apply to the scheme manager for funeral expense assistance.

57 Form of application

An application for funeral expense assistance must—

- (a) be in the approved form; and
- (b) be verified by the applicant by a statutory declaration.

58 Time limit

An application for funeral expense assistance must be made within 3 years after the death of the primary victim.

Part 11 Withdrawal, amendment or lapse of applications

59 Withdrawal of application

An applicant for assistance may, by notice given to the scheme manager, withdraw the application at any time before the application is decided.

60 Amendment of application

- (1) An applicant for assistance may, by notice given to the scheme manager, amend the application at any time before the application is decided.
- (2) Without limiting subsection (1), an applicant may amend the application to change the capacity in which the applicant is applying for assistance.

61 Lapse of application if no contact

- (1) This section applies if an applicant for assistance has not made any contact with the government assessor dealing with the application for 6 months.
- (2) The government assessor may give the applicant a notice stating that if the applicant does not contact the government

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assessor within 6 months after the notice is given, the application will lapse under subsection (4).

- (3) The notice must be sent to the address stated in the application for assistance or, if the applicant has given the government assessor another address for service of notices, the other address.
- (4) If the applicant is given a notice under this section and the applicant does not contact the government assessor within 6 months after the notice is given, the applicant's application for assistance lapses.
- (5) The lapsing of an application under this section does not prevent the applicant making another application for assistance under this chapter.

Note—

See section 54 (for victim assistance) or 58 (for funeral expense assistance) for the time within which the application must be made.

- (6) For this section, *contact* with the government assessor dealing with the application includes—
 - (a) contact with the scheme manager; and
 - (b) contact with another government assessor acting for the government assessor dealing with the application.

Part 12 Considering applications for assistance

Division 1 Considering applications generally

62 Choosing government assessor

- (1) The scheme manager must, as soon as practicable after receiving an application for assistance, choose an

appropriately qualified government assessor to deal with the application.

Note—

See section 130 for the requirement that a government assessor disclose interests that may conflict with the performance of functions in relation to the application.

- (2) From time to time, the scheme manager may assign another appropriately qualified government assessor to deal with the application, whether in addition to or in place of the government assessor previously assigned under subsection (1) or section 130.

- (3) In this section—

appropriately qualified, for dealing with an application for assistance, means appropriately qualified having regard to—

- (a) the complexity of the issues involved; and
(b) any other matter the scheme manager considers relevant.

63 General principles

In deciding an application for assistance, the government assessor must—

- (a) observe the principles of natural justice; and
(b) act as quickly as the requirements under this Act and a proper consideration of the application permit.

64 Further information, document or consent

- (1) Before deciding an application for assistance, the government assessor may—
- (a) ask the applicant for further information or a document the assessor reasonably requires to decide the application; or
(b) ask the relevant person for consent for the assessor to obtain from someone else stated further information or a

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stated document about the applicant the assessor reasonably requires to decide the application.

- (2) The government assessor may stop considering the application until the further information or document or the consent is given to the assessor.
- (3) If the applicant does not give the further information or document, or the relevant person does not give the consent, within 42 days after the government assessor asks for it, or a longer period agreed to by the scheme manager, the application lapses.
- (4) The lapsing of an application under this section does not prevent the applicant making another application for assistance under this chapter.

Note—

See section 54 (for victim assistance) or 58 (for funeral expense assistance) for the time within which the application must be made.

65 Obtaining information about act of violence

- (1) The government assessor may ask the police commissioner for the following for a stated act of violence in relation to which assistance is sought—
 - (a) information about—
 - (i) the circumstances of the act of violence; or
 - (ii) the progress of investigations being conducted about the act of violence; or
 - (iii) the charge (if any) laid for the act of violence and details of the place and date of hearing of the proceeding for the charge; or
 - (iv) if a charge is not laid or not continued with—the reasons for not laying or continuing with a charge; or

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- (v) the outcome of a proceeding for the charge, including any sentence imposed and the outcome of any appeal;
 - (b) a copy of any statement about the act of violence made by the primary victim of the act;
 - (c) further details about any of the information mentioned in paragraph (a), including any changes to the information previously provided.
- (2) The police commissioner must comply with a request under subsection (1).
 - (3) The police commissioner's obligation to comply with a request under subsection (1) applies only to information or statements in the police commissioner's possession or to which the police commissioner has access.
 - (4) The police commissioner must not give information about an investigation relating to the act of violence if the police commissioner is reasonably satisfied giving the information—
 - (a) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (b) may lead to the identification of an informant or a person who is a notifier under the *Child Protection Act 1999*, section 186; or
 - (c) may affect the safety of a police officer, complainant or other person.
 - (5) The police commissioner may give information, a copy of a statement or further details requested under subsection (1) by allowing the government assessor to access an electronic database maintained by the police service.
 - (6) If the police commissioner gives the government assessor access to an electronic database as mentioned in subsection (5), the access to, and the use of, the database is limited to the extent it is connected with the requested information.
 - (7) The giving of information, a copy of a statement or further details under subsection (2) is authorised despite any other

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Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

66 Obtaining copies of witness statements, or information about particular conduct, in relation to act of violence

- (1) The government assessor may ask the following (each the *relevant police official*) for the documents and information mentioned in subsection (2) for a stated act of violence in relation to which assistance is sought—
 - (a) the police officer investigating the act of violence;
 - (b) if the government assessor does not know the name of the police officer investigating the act of violence, or the police officer is not available—the police commissioner.
- (2) For subsection (1), the documents and information the relevant police official considers may be relevant to deciding the application for the assistance, including—
 - (a) copies of statements made by witnesses to the act of violence;
 - (b) documents and information the relevant police official considers may be relevant to deciding—
 - (i) whether the applicant for the assistance committed the act of violence, or conspired with the person who allegedly committed the act of violence; or
 - (ii) whether the only or main reason the act of violence was committed against the primary victim of the act was the primary victim's involvement in a criminal activity; or
 - (iii) whether the applicant has not given reasonable assistance in the police investigation of the act of violence, or in the arrest or prosecution of the

person who allegedly committed the act of violence, and whether the failure has prevented the arrest or prosecution of the person who allegedly committed the act of violence.

- (3) The relevant police official must comply with a request under subsection (1) if, and to the extent, the relevant police official is reasonably satisfied the government assessor reasonably requires the documents and information to decide the application.
- (4) A copy of a statement mentioned in subsection (2)(a) may include particulars identifying the witness only if the relevant police official reasonably believes the identity of the witness is relevant to deciding the application.
- (5) The relevant police official's obligation to comply with a request under subsection (1) applies only to statements or information in the relevant police official's possession or to which the relevant police official has access.
- (6) The relevant police official must not give information about an investigation relating to the act of violence if the relevant police official is reasonably satisfied giving the information—
 - (a) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (b) may lead to the identification of an informant or a person who is a notifier under the *Child Protection Act 1999*, section 186; or
 - (c) may affect the safety of a police officer, complainant or other person.
- (7) The giving of a document or information under subsection (3) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

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67 Obtaining information about prosecution

- (1) The government assessor may ask the director of public prosecutions for the following information about a stated act of violence in relation to which assistance is sought—
 - (a) details of the charges laid for the act of violence, including any charge laid against a person for conspiring with the person who committed the act;
 - (b) details of the place and date of hearing of the proceeding for the charge;
 - (c) a decision to substantially change the charge, or not to continue with the charge, or to accept a plea of guilty to a lesser charge;
 - (d) the outcome of a proceeding for the charge, including any sentence imposed and the outcome of any appeal.
- (2) The director must comply with the request if the director is reasonably satisfied the government assessor reasonably requires the information to decide the application.
- (3) The giving of information by the director under subsection (2) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

68 Confirming release or discharge date

- (1) This section applies if an applicant for assistance is being detained in a correctional services facility under the *Corrective Services Act 2006*.
- (2) The government assessor may ask the chief executive (corrective services) to confirm the date the applicant will be released or discharged under the *Corrective Services Act 2006*.

- (3) The chief executive (corrective services) must comply with the request if the chief executive (corrective services) is reasonably satisfied the government assessor reasonably requires the information to decide the application.
- (4) The disclosure of information by the chief executive (corrective services) under subsection (3) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

69 Obtaining primary victim’s criminal history from police commissioner

- (1) If a primary victim of an act of violence is an applicant for victim assistance and the government assessor has the relevant person’s consent for obtaining the victim’s criminal history, the government assessor may ask the police commissioner for a written report about the victim’s criminal history.

Note—

See section 80 for when a primary victim’s criminal history may be relevant.

- (2) The government assessor may also ask the police commissioner for a written report about the criminal history of a primary victim of an act of violence who has died as a direct result of the act if it may be relevant for deciding an application for assistance by someone else.

Note—

See section 80(2) for when a primary victim’s criminal history may be relevant for deciding an application for assistance by someone else.

- (3) Also, the government assessor may ask the police commissioner for a brief description of the circumstances of a conviction for an offence mentioned in the primary victim’s criminal history.
- (4) A request under this section may include the following—

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- (a) the name of the person in relation to which the report is sought and any other name the government assessor believes the person may use or may have used;
 - (b) the date and place of birth, gender and address of the person in relation to which the report is sought.
- (5) The police commissioner must comply with a request under this section.
 - (6) The police commissioner's obligation to comply with a request under this section applies only to information in the police commissioner's possession or to which the commissioner has access.
 - (7) The disclosure of a person's criminal history under this section is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about particular information included in the criminal history.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (8) The government assessor may stop considering a primary victim's application for victim assistance if the relevant person does not give the government assessor consent for obtaining the victim's criminal history under this section.
- (9) The government assessor may use the contents of a report obtained under this section only to decide whether an application should be refused under section 80.
- (10) The government assessor must destroy a report obtained under this section when it is no longer required for deciding the application for which it was sought or a review or appeal, or potential review or appeal, relating to the application.

Division 2 Additional provisions about considering applications for victim assistance

70 Deciding applications for series of related crimes

- (1) This section applies if—
 - (a) a person has made 2 or more applications for victim assistance; and
 - (b) the scheme manager reasonably considers the applications relate to a series of related crimes.
- (2) The scheme manager may decide that the applications must be decided together as 1 application for a single act of violence involving the series of related crimes.

Note—

See section 25(6).

- (3) However, before acting under subsection (2), the scheme manager must—
 - (a) give the person a notice—
 - (i) stating the manager is proposing that the applications be decided together as 1 application for a single act of violence involving the series of related crimes; and
 - (ii) inviting the person to give the scheme manager, within a stated time of at least 7 days, a written submission about the proposal; and
 - (b) have regard to any submission received from the person within the stated time.
- (4) If the scheme manager decides that the applications must be decided together under subsection (2), the scheme manager must give the person a notice stating the following—
 - (a) the decision;

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- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (c) the internal review details for the decision.

71 Notifying other victims etc.

- (1) This section applies if the applicant for victim assistance is—
 - (a) a parent secondary victim of an act of violence; or
 - (b) a witness secondary victim of a serious act of violence who has applied for victim assistance for loss of earnings suffered, or reasonably likely to be suffered, by the victim; or
 - (c) a related victim of an act of violence.
- (2) The government assessor must—
 - (a) take reasonable steps to identify each other person who is a victim of the same kind as the applicant and who has not already applied for victim assistance in that capacity; and
 - (b) give each person identified under paragraph (a) a notice—
 - (i) stating that the application has been made; and
 - (ii) inviting the person to apply for victim assistance within 3 months after the notice is given.
- (3) The government assessor must not decide the applicant's application until after the end of the 3 month period mentioned in subsection (2)(b)(ii).
- (4) Subsection (3) does not prevent the government assessor from granting interim assistance under part 14 to a parent secondary victim or related victim for expenses incurred, or reasonably likely to be incurred, by the victim, if the government assessor is reasonably satisfied—

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- (a) the matters for which the expenses are incurred, or are reasonably likely to be incurred, will significantly help the victim to recover from the act of violence; and
 - (b) it is necessary for the person to incur the expenses before the application is decided.
- (5) Also, if a witness secondary victim of a serious act of violence has also applied for victim assistance other than for loss of earnings—
- (a) subsection (3) only applies to the extent the application is for loss of earnings; and
 - (b) the application for loss of earnings is taken to have been made as a separate application for this chapter.

72 Notified victims failing to make application

- (1) This section applies if—
 - (a) a person is given a notice under section 71(2)(b); and
 - (b) the person does not apply for victim assistance within the 3 month period mentioned in section 71(2)(b)(ii); and
 - (c) the applicant's application for victim assistance for which the notice was given is decided.
- (2) The person can not apply for victim assistance in relation to the act of violence without the scheme manager's approval.
- (3) The scheme manager may give the approval only if the scheme manager is reasonably satisfied the person had a reasonable excuse for not making the application within the 3 month period.
- (4) If the scheme manager decides not to give the approval, the scheme manager must give the person a notice stating the following—
 - (a) the decision;
 - (b) the reasons for the decision;

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Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (c) the internal review details for the decision.
- (5) Despite anything else in this chapter, the person is only eligible for victim assistance of up to the remaining pool amount (if any) for the act of violence.

73 Examinations

- (1) The government assessor may—
 - (a) ask an applicant for victim assistance to undergo an examination by a health practitioner nominated by the assessor so that a report of the examination can be given to the assessor under this section; and
 - (b) ask the relevant person to give the government assessor consent to obtain the report of the examination from the health practitioner who conducts the examination.
- (2) If the relevant person gives consent as mentioned in subsection (1)(b), the government assessor may ask the health practitioner who conducts the examination under subsection (1)(a) to give a report of the examination to the government assessor.
- (3) A health practitioner who is asked by the government assessor to give the assessor a report of an examination conducted under subsection (1)(a) may give the assessor a report of the examination.
- (4) A report given under subsection (3)—
 - (a) must be in the approved form; and
 - (b) may include another document the health practitioner considers should be read with the report.
- (5) The giving of a report under this section by a health practitioner is authorised despite any other Act or law,

including a law imposing an obligation to maintain confidentiality about the examination.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (6) The government assessor may stop considering the applicant's application for victim assistance until the government assessor receives a report of the examination requested under this section.

74 Obtaining medical information from designated person

- (1) If the government assessor has the necessary consent for obtaining medical information about an applicant for victim assistance, the government assessor may ask a designated person for medical information about the applicant.
- (2) A designated person who is asked by the government assessor to give the assessor medical information about a stated applicant for victim assistance may give the assessor the medical information.
- (3) The disclosure of medical information by a designated person under subsection (2) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (4) In this section—

designated person means a designated person as defined under the *Health Services Act 1991*, section 60.

medical information, about a person, means the person's medical history so far as it is relevant to deciding the application.

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necessary consent, in relation to an applicant for victim assistance, means consent of the relevant person for the applicant as mentioned in section 52(c).

75 Obtaining information about child's injuries or needs

- (1) This section applies if an applicant for victim assistance is a child who, under the *Child Protection Act 1999*, is in the custody, or under the guardianship, of the chief executive (child protection) or someone else.
- (2) The government assessor may ask the chief executive (child protection) for information about the following—
 - (a) the applicant's injuries;
 - (b) any special needs the applicant may have;
 - (c) confirmation that a stated person has been granted custody or guardianship of the applicant under a child protection order under the *Child Protection Act 1999*.
- (3) The chief executive (child protection) must comply with the request if the chief executive is reasonably satisfied the government assessor reasonably requires the information to decide the application.
- (4) The disclosure of information by the chief executive (child protection) under subsection (3) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

76 Obtaining information about person with impaired capacity

- (1) This section applies if the government assessor knows, or reasonably suspects, an applicant for victim assistance has an impaired capacity.

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- (2) The government assessor may ask the QCAT principal registrar to—
 - (a) advise whether a person has been appointed under the *Guardianship and Administration Act 2000* as the guardian or administrator of the applicant and, if so, the person's name and address; or
 - (b) confirm whether a stated person is the guardian or administrator of the applicant.
 - (3) The QCAT principal registrar must comply with the request if the principal registrar is reasonably satisfied the government assessor reasonably requires the information to decide the application.
 - (4) The disclosure of information by the QCAT principal registrar under subsection (3) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (5) In this section—

QCAT principal registrar means the principal registrar under the QCAT Act.

77 Obtaining information about relevant payments

- (1) If the government assessor has the necessary consent for obtaining information under this section about an applicant for victim assistance in relation to an act of violence, the government assessor may—
 - (a) ask the insurance commissioner under the *Motor Accident Insurance Act 1994* for information about—
 - (i) whether the applicant has, in relation to the act of violence, made a claim under that Act and, if so, the status of the claim; or

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- (ii) if the applicant's claim is successful under that Act—the amount paid or payable to the applicant in relation to the claim; or
 - (b) ask the police commissioner for information about—
 - (i) whether the applicant has, in relation to the act of violence, applied for compensation under the *Police Service Administration Act 1990*, section 10.8 and, if so, the status of the application; or
 - (ii) if the applicant's application for compensation is granted under that Act—the amount of compensation paid or payable to the applicant; or
 - (c) ask the Workers' Compensation chief executive officer for information about—
 - (i) whether the applicant has, in relation to the act of violence, applied for compensation under the Workers' Compensation Act and, if so, the status of the application; or
 - (ii) if the applicant's application for compensation is granted under the Workers' Compensation Act—the amount of compensation paid or payable to the applicant and the expenses, loss of earnings or other amount for which the compensation was paid or is payable.
- (2) Also, the government assessor may ask the chief executive (corrective services) for information about—
 - (a) whether an applicant for victim assistance has, in relation to the act of violence in relation to which assistance is sought, started a proceeding under chapter 6, part 12B of that Act and, if so, the status of the proceeding; or
 - (b) if an applicant for victim assistance is successful in a proceeding under chapter 6, part 12B of that Act—the amount paid or payable to the applicant in relation to the proceeding.

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- (3) Also, if a dispute relating to a relevant offence for an act of violence in relation to which assistance is sought has been referred for mediation under the *Dispute Resolution Centres Act 1990*, the government assessor may ask a director under that Act for information about—
- (a) whether an agreement has been reached for the dispute following mediation under that Act; or
 - (b) if an agreement has been reached for the dispute following mediation under that Act—whether the agreement provided for the payment of an amount from the person who allegedly committed the offence to a stated victim of the act of violence and, if so, the amount paid or to be or payable to the victim under the agreement.
- (4) An entity to whom a request is made under subsection (1), (2) or (3) must comply with the request.
- (5) For a request under subsection (2) or (3), subsection (4) applies only if the entity is reasonably satisfied the government assessor reasonably requires the requested information to decide the application.
- (6) The disclosure of information by an entity under subsection (4) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (7) In this section—
- necessary consent***, in relation to an applicant for victim assistance, means consent of the relevant person for the applicant as mentioned in section 52(c).

Workers' Compensation chief executive officer means the chief executive officer of the Authority, or WorkCover, within the meaning of the Workers' Compensation Act.

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Division 3 Restrictions on granting assistance

78 Grant only if applicant is eligible

The government assessor may grant assistance to a person only if the government assessor is satisfied, on the balance of probabilities, the person is eligible for the assistance under this chapter.

79 No grant if applicant conspired to commit act of violence

The government assessor can not grant assistance to a person if the government assessor is satisfied, on the balance of probabilities, the person conspired with the person who committed the act of violence in relation to which assistance is sought.

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

- (1) The government assessor can not grant assistance to a primary victim of an act of violence if the government assessor is satisfied, on the balance of probabilities, the only reason, or the main reason, the act of violence was committed against the primary victim was—
 - (a) because the victim was involved in a criminal activity when the act of violence happened; or
 - (b) because of the victim's previous involvement in a criminal activity, whether or not the victim is currently involved in the criminal activity.
- (2) The government assessor can not grant assistance in relation to an act of violence to a person who is not the primary victim of the act if the government assessor is satisfied, on the balance of probabilities—

- (a) the only reason, or the main reason, the act of violence was committed against the primary victim of the act was a reason mentioned in subsection (1)(a) or (b); and
 - (b) the person was, or ought reasonably to have been, aware of the primary victim's involvement in the criminal activity.
- (3) Subsection (2) does not apply if the person was aware of the primary victim's involvement in the criminal activity only because the person witnessed the act of violence.
- (4) In deciding whether a primary victim of an act of violence was involved in a criminal activity, the government assessor may have regard to the following—
- (a) any information, or the contents of any document, about the act of violence obtained under section 65 or 66; and
 - (b) the circumstances of the offences to which the convictions mentioned in the victim's criminal history relate, including—
 - (i) when the offences happened; and
 - (ii) the seriousness of the offences; and
 - (iii) the primary victim's age when the offences happened; and
 - (iv) the regularity of the offences; and
 - (c) any other matters the assessor considers relevant for assessing the primary victim's involvement in a criminal activity.

81 No grant if act of violence not reported

- (1) The government assessor can not grant assistance in relation to an act of violence if—
- (a) the act of violence has not been reported to—
 - (i) a police officer; or

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- (ii) for an act of violence against a special primary victim—a police officer or the victim’s counsellor, psychologist or doctor; and
- (b) the government assessor is reasonably satisfied there is no reasonable excuse for the report not being made.

(2) In this section—

psychologist means a person registered under the *Psychologists Registration Act 2001*, part 3.

special primary victim means—

- (a) a primary victim of an act of violence—
 - (i) involving a sexual offence; or
 - (ii) committed by a person who was in a position of power, influence or trust in relation to the primary victim when the act was committed; or

Examples of persons who may be in a position of power, influence or trust in relation to a person—

 - a person’s parent, spouse or carer
- (b) a primary victim of an act of violence who—
 - (i) was a child when the act was committed; or
 - (ii) has an impaired capacity, whether or not it existed when the act was committed; or
- (c) a primary victim of an act of violence who is being threatened or intimidated by the person who committed the act, or by someone else.

82 No grant if reasonable assistance not given

- (1) The government assessor can not grant assistance to a person if the government assessor is satisfied, on the balance of probabilities—
 - (a) the person has not given reasonable assistance in—

- (i) the police investigation of the act of violence in relation to which assistance is sought; or
 - (ii) the arrest or prosecution of the person who committed, or allegedly committed, the act of violence in relation to which assistance is sought; and
- (b) the failure has prevented the arrest or prosecution of the person who committed, or allegedly committed, the act of violence.
- (2) Subsection (1) does not apply if the government assessor is reasonably satisfied the person had a reasonable excuse for not providing the assistance.
- (3) For subsection (2), in considering whether the person had a reasonable excuse for not providing the assistance, the government assessor must have regard to the following—
- (a) the person's age when the act was committed;
 - (b) whether the person has an impaired capacity, whether or not it existed when the act was committed;
 - (c) if the person is the primary victim of the act of violence—whether the act of violence involves a sexual offence;
 - (d) whether the person who allegedly committed the act of violence is in a position of power, influence or trust in relation to the person;

Examples of persons who may be in a position of power, influence or trust in relation to a person—

- the person's parent, spouse or carer
- (e) whether the person was threatened or intimidated by the person who committed, or allegedly committed, the act or violence or by someone else;
 - (f) the nature of the person's injury or alleged injury;

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- (g) whether any other special circumstances prevented the person from providing the assistance;
- (h) any other matter the assessor considers relevant.

Division 4 Other general provisions about considering applications

83 Dealing with application if applicant has earlier application

- (1) This section applies if an applicant for assistance has made an earlier application for assistance for the same act of violence.
- (2) The government assessor must refuse the later application.
- (3) However, if the earlier application has not been decided, the government assessor may act under subsection (2) only if—
 - (a) the applicant has been invited to withdraw the earlier application under section 59 within a stated period of at least 7 days; and
 - (b) the applicant has not withdrawn the earlier application within the stated time.

Note—

See also section 60 for amendments of applications.

- (4) Also, if the earlier application has not been decided and the government assessor considers the applications relate to a series of related crimes, the government assessor—
 - (a) must not refuse the later application under subsection (2); and
 - (b) must refer the earlier and later applications to the scheme manager to be dealt with under section 70.

Note—

Section 70 provides for deciding 2 or more applications for a series of related crimes as 1 application for a single act of violence involving the series.

- (5) Subsection (2) does not apply—
- (a) if 1 of the applications is an application for victim assistance and the other application is for funeral expense assistance; or
 - (b) to an application by a witness secondary victim of a more serious act of violence that is only for assistance for loss of earnings, if—
 - (i) under section 71(5), the application has been separated from the application for other assistance relating to the act; and
 - (ii) the earlier application is for assistance other than for loss of earnings.

84 Deferring decision if applicant is detained

- (1) This section applies if the applicant for assistance is being detained in a correctional services facility under the *Corrective Services Act 2006*.
- (2) The government assessor can not decide the application until the applicant is released or discharged under the *Corrective Services Act 2006*.
- (3) However, if under subsection (2) the application is not decided within 5 years after it was made, the government assessor must, despite that subsection, decide the application as soon as reasonably practicable.

Division 5 Working out amount of assistance

85 Deciding amount of assistance generally

- (1) This section applies for deciding the amount of assistance (if any) to be granted to an applicant.

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- (2) In deciding the amount, the government assessor may have regard to, and may reduce the amount that would otherwise be payable to the applicant on the basis of, the following—
 - (a) the extent to which the applicant's conduct directly or indirectly contributed to the injury suffered by the applicant as a direct result of the act of violence in relation to which assistance is sought;
 - (b) if the applicant is a related victim—
 - (i) the amount the applicant, or other related victims of the act of violence, expected to receive from the primary victim but for the primary victim's death; and
 - (ii) the financial resources (including earning capacity) and financial needs of the applicant and other related victims of the act of violence; and
 - (iii) if the applicant is seeking assistance on the basis of being a family member of the primary victim, the nature of the relationship between the applicant and the primary victim, including, for example, whether the applicant was a dependant of the primary victim;
 - (c) any other matter prescribed under a regulation for this section.
- (3) If there are 2 or more secondary victims of an act of violence to whom an assistance limit applies, the government assessor must decide the proportion of the assistance limit that is granted to each victim having regard to the following principles—
 - (a) an equal distribution of the assistance limit is to be achieved to the greatest practicable extent;
 - (b) appropriate regard must be given to a victim for whom exceptional circumstances exist.
- (4) If there are 2 or more related victims of an act of violence, the government assessor must decide the proportions of the

assistance limits that are granted to each victim on the basis of their relative needs.

- (5) A question of fact for deciding the matter mentioned in subsection (2)(a), or for deciding the category of the act of violence in relation to which special assistance is sought, must be decided on the balance of probabilities.
- (6) The government assessor may be satisfied on the balance of probabilities that an act of violence of a particular category has caused a person's injury even though—
 - (a) no person has been charged with, or convicted of, an act of violence of that category in relation to the injury; or
 - (b) a person has been charged with, or convicted of, an act of violence of a different category in relation to the injury.
- (7) If a regulation prescribes a matter for subsection (1)(c), the government assessor may reduce the amount of assistance that would otherwise be payable to a person on the basis of the matter only if the person's application for assistance is made after the matter is prescribed.

86 Reduction if relevant payment received

- (1) This section applies if the government assessor is reasonably satisfied an applicant for assistance in relation to an act of violence has received, or will receive, a relevant payment for the act.
- (2) The government assessor must reduce the amount of assistance that would otherwise be payable to the applicant by an amount equivalent to the relevant payment.
- (3) If the assistance payable to an applicant is reduced under subsection (2) and an amount of assistance remains payable to the applicant after the reduction, the government assessor must—
 - (a) decide the component of assistance for which the amount is payable, having regard to—

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- (i) the applicant's needs; and
 - (ii) whether the applicant has incurred any expenses; and
 - (iii) anything else the government assessor considers relevant; and
- (b) give the applicant a notice stating—
- (i) the decision; and
 - (ii) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (iii) the internal review details for the decision.

87 Deferring decision if victim's conduct may be relevant

- (1) This section applies if—
- (a) a person (*applicant*) has applied for assistance in relation to an act of violence; and
 - (b) a person (*charged person*) has been charged with an offence that the government assessor reasonably considers is a relevant offence for the act; and
 - (c) the government assessor reasonably believes that, in relation to the charge, a justification, excuse or defence involving the applicant's conduct may be raised.
- (2) The government assessor may defer deciding the amount of assistance to be granted to the applicant until 1 of the following happens—
- (a) the prosecuting agency decides not to continue with the charge;
 - (b) there is a mistrial for the charge;
 - (c) the charged person is acquitted or convicted of the charge;

- (d) the prosecution process for the charge ends in another way.
 - (3) If a trial is started in relation to the charge and evidence given at the trial raises a justification, excuse or defence involving the applicant's conduct, the government assessor must, in deciding the matter mentioned in section 85(2)(a), have regard to the evidence.
 - (4) Subsection (3) applies only to the extent the government assessor has lawful access to the evidence.
 - (5) If the government assessor decides to defer deciding the amount of assistance under this section, the government assessor must give the applicant a notice stating the following—
 - (a) the decision;
 - (b) the reasons for the decision;
- Note—*
- See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).
- (c) the internal review details for the decision.

Part 13 Granting or refusing assistance

Division 1 Deciding application

88 Inviting submissions from applicant

- (1) This section applies if—
 - (a) under part 12, division 3, the government assessor proposes to refuse an application for assistance; or

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- (b) under part 12, division 5, the government assessor proposes to reduce the assistance that would otherwise be payable to an applicant.
- (2) The government assessor must give the applicant a notice—
- (a) stating—
 - (i) the basis on which the government assessor is proposing to refuse the application or reduce the assistance that would otherwise be payable to the applicant; and
 - (ii) if the government assessor is proposing to reduce the assistance that would otherwise be payable to the applicant under section 86(2)—the component of assistance for which the government assessor is proposing to pay any remaining amount of assistance payable to the applicant; and
 - (b) inviting the applicant to make, within a stated time, an oral or written submission about the matter mentioned in paragraph (a).
- (3) The stated time must be reasonable and, in any case, at least 28 days after the government assessor gives the notice to the applicant.
- (4) Before deciding the application, the government assessor must consider any submission made by the applicant within the stated time.

89 Deciding application

After considering an application for assistance, and any information or documents obtained under this chapter for the application, the government assessor must decide—

- (a) to grant the applicant assistance as worked out under this chapter, with or without conditions; or
- (b) to refuse the application.

90 Notice of decision to grant assistance

If the government assessor decides to grant assistance, the government assessor must give the applicant a notice stating the following—

- (a) any amount payable to the applicant, including—
 - (i) the total amount payable to the applicant; and
 - (ii) the amount payable for each component of assistance;
- (b) if the assessor has imposed conditions on the grant of assistance—the conditions;
- (c) the reasons for the decision, including the imposition of any conditions;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (d) the internal review details for the decision;
- (e) for a victim of an act of violence who has been granted a proportion of an assistance limit—
 - (i) the proportion of the assistance limit that has been granted to other victims of the act (without including identifying particulars of the other victims); and
 - (ii) that, under section 136, the applicant may be able to obtain—
 - (A) the identifying particulars of each other victim to whom a proportion of the assistance limit has been granted; and
 - (B) reasons for the decision about the proportion of the assistance limit granted to each other victim.

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91 Notice of decision to refuse assistance

If the government assessor's decision is to refuse an application for assistance, the government assessor must give the applicant a notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (c) the internal review details for the decision.

Division 2 Paying assistance

92 Application of div 2

This division applies if an applicant is granted assistance.

93 Paying assistance generally

- (1) The assistance may be paid—
 - (a) entirely to the applicant; or
 - (b) partly to the applicant and partly to someone else for the benefit of the applicant; or
 - (c) entirely to someone else for the benefit of the applicant.

Example of person to whom assistance may be paid for the benefit of the applicant—

a counsellor as payment for a stated number of counselling sessions

- (2) If the applicant is granted assistance for expenses, the assistance does not become payable until the government assessor receives a copy of an invoice or receipt for the expenses.
- (3) This section is subject to sections 94 and 95.

94 Paying assistance to someone else

- (1) Assistance may be paid, entirely or partly, to someone else for the benefit of the applicant if—
- (a) the assistance is for unpaid expenses and the assistance is paid to the person who gave the invoice for the expenses; or
 - (b) the assistance is for expenses paid by a person other than the applicant and the assistance is paid to the person who paid the expenses; or
 - (c) the applicant is a child, and the assistance is lump sum assistance and is paid to the public trustee to be held on trust under the *Public Trustee Act 1978*; or
 - (d) the applicant is an adult with an impaired capacity for a prescribed financial matter who has an administrator for the matter, and the assistance is lump sum assistance and is paid to the administrator; or
 - (e) the applicant is an adult with an impaired capacity for a prescribed financial matter who does not have an administrator for the matter but has appointed an attorney for the matter under an enduring power of attorney, and the assistance is lump sum assistance and is paid to the attorney.

- (2) In this section—

lump sum assistance means—

- (a) special assistance; or
- (b) assistance for loss of earnings; or
- (c) assistance as mentioned in section 49(1)(e) or (f).

prescribed financial matter means the financial matter of receiving lump sum assistance.

unpaid expenses means expenses for which an invoice has been given but have not been paid.

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95 Paying assistance if applicant liable to pay amount to State

- (1) If the applicant is liable to pay an amount (*payable amount*) to the State under a recovery provision because of an offence committed by the applicant—
 - (a) the assistance granted to the applicant or, if the assistance is greater than the payable amount, the part of the assistance equivalent to the payable amount, is to be retained by the State; and
 - (b) the amount retained under paragraph (a) must be applied towards satisfying the applicant's liability to the State under the recovery provision and, for that purpose, is taken to have been paid to the State by the applicant.
- (2) If, after assistance is granted to the applicant, the applicant becomes liable to pay an amount to the State under a recovery provision because of an offence committed by the applicant, subsection (1)(a) and (b) apply in relation to any part of the assistance not already paid to the applicant.
- (3) If the assistance payable to an applicant is reduced under subsection (1) or (2) and an amount of assistance remains payable to the applicant after the reduction, the government assessor must—
 - (a) decide the component of assistance for which the amount is payable, having regard to—
 - (i) the applicant's needs; and
 - (ii) whether the applicant has incurred any expenses; and
 - (iii) anything else the government assessor considers relevant; and
 - (b) give the applicant a notice stating—
 - (i) the decision; and
 - (ii) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (iii) the internal review details for the decision.
- (4) The scheme manager must give notice to the SPER registrar of any amount taken to have been paid by the applicant to the State under subsection (1)(b) or (2).
- (5) In this section—
recovery provision means section 117(4) or 191(4).

96 Unpaid assistance

If, because of the acts or omissions of the applicant, all or a part of the assistance granted to the applicant is not paid to, or for the benefit of the applicant, within 6 years after the assistance is granted, the assistance or part stops being payable to the applicant.

Example—

If the assistance granted to the applicant included amounts for 10 counselling sessions and the applicant only attends 8 counselling sessions within 6 years after the assistance is granted, the part of the assistance payable for the 2 remaining counselling sessions stops being payable.

Part 14 Interim assistance

97 Application of pt 14

This part applies if—

- (a) under part 9 or 10, a person applies for assistance in relation to an act of violence (*general application*); and
- (b) the government assessor has not decided the general application; and

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- (c) the person incurs, or is reasonably likely to incur, expenses of a kind for which the person may be eligible for assistance; and
- (d) in the general application, the person also applies for interim assistance under this part in relation to the act of violence.

98 Deciding application for interim assistance

- (1) The government assessor may grant the person assistance of up to \$6000 (*interim assistance*) for the expenses incurred, or reasonably likely to be incurred, by the person if the assessor is reasonably satisfied it is necessary for the person to incur the expenses before the general application is decided.
- (2) The government assessor may impose conditions on the grant of interim assistance.
- (3) Section 88 does not apply to deciding an application for interim assistance.

99 Steps after application for interim assistance decided

- (1) The government assessor must give the person a notice for the decision on the application for interim assistance stating—
 - (a) if the decision is to grant interim assistance—
 - (i) the amount payable to the applicant, and the conditions (if any) imposed; and
 - (ii) the reasons for the decision; and
- Note—*
See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).
- (iii) the internal review details for the decision; or
 - (b) if the decision is to refuse to grant interim assistance—
 - (i) the decision; and

- (ii) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (iii) the internal review details for the decision.

- (2) Part 13, division 2 applies to interim assistance in the same way it applies to other assistance.

Editor's note—

part 13, division 2 (Paying assistance)

100 Effect of decision on general application

- (1) If the government assessor decides to grant the person assistance under the general application—
 - (a) the amount paid in interim assistance must be deducted from the assistance otherwise payable to the person; and
 - (b) if the amount paid in interim assistance is more than the assistance payable in relation to the general application—the person must refund the excess amount paid to the State.
- (2) If the government assessor refuses the person's general application for assistance, the person must refund the amount paid in interim assistance to the State.
- (3) An amount that is refundable under this section is a debt owed to the State by the person.

Part 15 Amendment of grants

101 Application for amendment

- (1) This section applies if—

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- (a) a person has been granted assistance; and
 - (b) the person's circumstances have changed or are likely to change.
- (2) The person may apply to the scheme manager for an amendment of the grant to—
 - (a) change the amount of assistance granted; or
 - (b) change the conditions imposed on the grant.
- (3) An application for amendment of the grant of assistance must be made—
 - (a) if the assistance was granted to an adult—within 6 years after the assistance was granted; or
 - (b) if the assistance was granted to a child—before the child turns 24.
- (4) The application must state the person's circumstances that have changed or are likely to change.
- (5) Only 1 application for amendment of the grant of assistance may be made under this section in a calendar year.
- (6) Subsection (5) does not apply if the scheme manager is reasonably satisfied that exceptional circumstances exist to allow more than 1 application to be made in a calendar year.

102 Person who is to decide application

If an application for amendment of the grant of assistance is made to the scheme manager under section 101, the scheme manager may—

- (a) decide the application; or
- (b) ask the government assessor who granted the assistance, or another government assessor, to decide the application.

103 Considering application

- (1) The person deciding an application for amendment of the grant of assistance under this part may have regard to—
 - (a) the change or likely change in the applicant's circumstances for which the application is made; and
 - (b) any other changes in the applicant's circumstances that may be relevant; and
 - (c) any fresh evidence that has become available since the assistance was granted or since the grant was last amended under this part or section 36; and
 - (d) any relevant payments for the act of violence in relation to which the assistance was granted that have been received by, or that have become payable to, the applicant since the assistance was granted or since the grant was last amended under this part or section 36; and
 - (e) any other matter the person considers relevant.
- (2) Sections 63, 64, 73, 74 and 77 and part 12, division 5 apply in relation to the amendment application in the same way as they apply in relation to the original application for assistance.

Editor's note—

sections 63 (General principles), 64 (Further information, document or consent), 73 (Examinations), 74 (Obtaining medical information from designated person) and 77 (Obtaining information about relevant payments) and part 12, division 5 (Working out amount of assistance)

104 Decision on application

- (1) The person deciding an application for amendment of the grant of assistance under this part may—
 - (a) change the amount of assistance granted, by increasing or decreasing the amount; or
 - (b) change the conditions imposed on the grant, including, by imposing new conditions on the grant.

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- (2) However, the person may decrease the amount of assistance granted only if—
- (a) the applicant has asked for the decrease; or
 - (b) the decrease relates to unpaid assistance for expenses reasonably likely to be incurred, and the expenses have not been incurred and are not reasonably likely to be incurred; or
 - (c) the decrease relates to unpaid assistance for loss of earnings and, as a result of a change in the applicant's circumstances, the applicant's loss of earnings is lower than the loss of earnings that formed the basis on which the unpaid assistance was granted.

Example of a change in circumstances for paragraph (c)—

The applicant returns to work earlier than expected.

- (3) The person may increase the amount of assistance granted only up to the remaining pool amount (if any) for the act of violence.
- (4) In this section—
- unpaid assistance*** means assistance that has been granted but not paid.

105 Steps after application decided

- (1) The person who decides an application for amendment of a grant of assistance under this part must give the applicant notice of the person's decision on the application.
- (2) If the decision is to refuse the application, or to amend the grant of assistance in a way other than sought by the applicant, the notice must state the following—
- (a) the decision;
 - (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (c) the internal review details for the decision.
- (3) Part 13, division 2 applies to an increase in assistance granted under section 104 in the same way as it applies to the original grant of assistance.

Editor's note—

part 13, division 2 (Paying assistance)

106 Amendment of assistance if uncounted relevant payment received

- (1) This section applies if—
- (a) a person is granted assistance; and
 - (b) the person receives, for the act of violence in relation to which assistance is granted, a relevant payment (***uncounted relevant payment***) that—
 - (i) was not taken into account by the government assessor when the assistance was granted; and
 - (ii) would have resulted in a reduction of assistance granted to the person under section 86 if it had been taken into account by the government assessor when the assistance was granted.
- (2) The government assessor must, by notice to the person, 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.
- (3) If the assistance payable to a person is reduced under subsection (2) and an amount of assistance remains payable to the person after the reduction, the government assessor must decide the component of assistance for which the amount is payable, having regard to—

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- (a) the person's needs; and
 - (b) whether the person has incurred any expenses; and
 - (c) anything else the government assessor considers relevant.
- (4) The notice given under subsection (2) must state the following—
- (a) the government assessor's decisions under subsection (2) and (3);
 - (b) the reasons for the decisions;
- Note—*
- See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).
- (c) the internal review details for the decisions.
- (5) 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.
- (6) An amount refundable under this section is a debt owed to the State by the person.

Part 16 Recovering assistance from offender

107 Purpose of pt 16

This part helps the State to recover assistance granted for an act of violence from a person who is convicted of a relevant offence for the act.

108 References to assistance granted for an act of violence

In this part, a reference to assistance granted for an act of violence is a reference to assistance granted as victim assistance, or funeral expense assistance, in relation to the act.

109 Recovery available only for assistance that is paid

The State may, under this part, recover assistance, or a part of assistance, granted for an act of violence from a person who is convicted of a relevant offence for the act only if the assistance or part has been paid to a person under part 13, division 2.

Note—

See section 118 for the reduction in a person's liability to pay an amount to the State if the amount of assistance in relation to which the liability accrued is reduced after it is granted. See also section 117(5).

110 Recovery available only after appeal rights exhausted

The State may, under this part, recover assistance granted for an act of violence from a person who is convicted of a relevant offence for the act only if—

- (a) if the convicted person has appealed the conviction—the appeal is decided and the conviction is upheld; or
- (b) otherwise—the period within which the person may appeal the conviction has passed.

111 Recovery limited to category of act of violence for which assistance granted

- (1) This section applies if—
 - (a) a person was granted special assistance for an act of violence; and
 - (b) a person is convicted of a relevant offence for the act of violence; and

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- (c) the conviction is for an offence involving an act of violence of a category that is lower than the category for which special assistance was granted.

Note—

See schedule 2, section 4 for the order of categories of acts of violence.

- (2) For the special assistance granted to the person mentioned in subsection (1)(a), the State may, under this part, recover from the convicted person only an amount up to the maximum amount stated in schedule 2, section 2 for the category of the act of violence involved in the offence.

Example—

A person is granted \$5000 as special assistance for an act of violence on the basis the act is attempted murder, which is a category A act of violence. A person is convicted of the offence of causing grievous bodily harm arising out of substantially the same facts and circumstances as those constituting the act, which is a category B act of violence. The State may recover from the convicted person up to \$3500, which is the maximum amount stated in schedule 2, section 2 for a category B act of violence.

- (3) To remove any doubt, it is declared that subsection (2) does not affect the amount of assistance other than special assistance granted to the person mentioned in paragraph (a) that the State may, under this part, recover from the convicted person.

112 Recovery from multiple offenders

- (1) This section applies if 2 or more persons are convicted of a relevant offence for the act of violence for which assistance is granted.
- (2) The total amount the State may, under this part, recover from the convicted persons must be divided equally between them, and each convicted person is liable to pay no more than that person's share of the total amount.

Example—

A person is granted assistance of \$60000 for an act of violence. Three persons are convicted of a relevant offence for the act. The State may recover only up to \$20000 from each convicted person.

113 Using information obtained for application

The scheme manager may use information obtained under section 65, 66 or 67 for the following purposes—

- (a) the State recovering an amount from a person under this part;
- (b) obtaining information from a court under section 114.

114 Obtaining information from court

- (1) The scheme manager may, for the purpose of the State recovering an amount from a person under this part, ask the registrar of a court—
 - (a) to confirm whether a stated person has been convicted of a relevant offence for a stated act of violence for which assistance has been granted; or
 - (b) for a stated person who has been convicted of a relevant offence for an act of violence for which assistance has been granted—for information about—
 - (i) the offence; and
 - (ii) the sentence imposed on the person, including, whether the sentencing court made, under the *Penalties and Sentences Act 1992*, section 35(1), an order requiring the person to pay someone else an amount by way of restitution or compensation; or
 - (c) the identifying particulars for a stated person, including—
 - (i) the person's full name, date of birth and gender; and

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- (ii) the person's address or, if the person has been sentenced to a period of imprisonment, the place at which the person is being detained for the period.
- (2) The registrar must give the requested information to the scheme manager if the registrar is satisfied the information will help the State to recover an amount under this part.
- (3) The registrar may give the requested information by allowing the scheme manager to access an electronic database maintained for the court.
- (4) If the registrar gives the scheme manager access to an electronic database as mentioned in subsection (3), the access to, and the use of, the database is limited to the extent it is connected with the requested information.
- (5) The scheme manager may use information lawfully obtained under this section for recovering an amount under this part.

Note—

See section 140 for restrictions on disclosing or giving access to information or documents obtained under this Act.

- (6) In this section—
registrar, in relation to a Magistrates Court, means the clerk of that court.

115 Notice of intended recovery

Before the State may, under this part, recover from a person all or a part of the assistance granted to someone else, the scheme manager must give the person a notice stating—

- (a) the date on which the assistance was granted; and
- (b) the amount of the assistance granted and the conditions (if any) imposed on the grant; and
- (c) the act of violence for which the assistance was granted; and

- (d) whether the assistance was granted to a primary victim, secondary victim or related victim of the act of violence; and
- (e) the offence of which the person has been convicted that the scheme manager claims is a relevant offence for the act of violence for which the assistance was granted; and
- (f) the amount of the assistance, or the part of the assistance, the State seeks to recover from the person under this part; and
- (g) that the person may—
 - (i) within 14 days after being given the notice, dispute a claim mentioned in paragraph (e) by giving the scheme manager notice of the dispute; and
 - (ii) if the person does not agree with the scheme manager's decision given after considering the notice of the dispute—apply to QCAT for a review of the scheme manager's decision; and
- (h) that when the question of whether the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted is no longer in dispute, the person is liable to pay the amount mentioned in paragraph (f) to the State under section 117(4); and
- (i) anything else prescribed under a regulation.

116 Disputing claim that conviction relates to act of violence

- (1) This section applies if a person who is given a notice under section 115 disputes the claim mentioned in the notice that the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted.
- (2) The person may, within 14 days of being given the notice, give notice of the dispute (the *dispute notice*) to the scheme manager.

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- (3) The dispute notice must state the facts relied on by the person to dispute the claim.
- (4) After considering the dispute notice, the scheme manager must decide whether the offence is a relevant offence for the act of violence for which the assistance was granted.
- (5) The scheme manager must give the person notice of the scheme manager's decision.
- (6) If the scheme manager's decision is that the offence is a relevant offence for the act of violence for which the assistance was granted, the notice given under subsection (5) must be a QCAT information notice.
- (7) The person may apply, as provided under the QCAT Act, to QCAT for a review of the scheme manager's decision.

117 Offender's liability to pay generally

- (1) This section applies if—
 - (a) the scheme manager has given a person a notice under section 115 (the *recovery notice*); and
 - (b) the question of whether the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted is no longer in dispute.
- (2) For subsection (1)(b), the question is no longer in dispute if—
 - (a) the person has not, for the offence, given the scheme manager a dispute notice under section 116(2) within 14 days after the scheme manager gave the person the recovery notice; or
 - (b) the person has, for the offence, given the scheme manager a dispute notice under section 116(2) within 14 days after the scheme manager gave the person the recovery notice and—
 - (i) the consideration of the dispute mentioned in the dispute notice has been finally decided by the

scheme manager under section 116(4), by QCAT on any review of the scheme manager's decision or by another entity on any appeal against QCAT's decision; and

- (ii) the result of the consideration is that the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted.
- (3) The scheme manager must give the person a notice stating—
- (a) the amount (*payable amount*) the State seeks to recover from the person under this part; and
 - (b) that under subsection (4), the person is liable to pay the stated amount to the State within a stated period of at least 28 days (the *payment period*); and
 - (c) that if the person does not pay the stated amount within the stated period, the scheme manager may give particulars of the amount to the SPER registrar for registration under that Act.
- (4) The person is liable to pay the State the payable amount within the payment period.

Note—

See section 95 for the application of assistance granted to a person towards satisfying the person's liability to pay under subsection (4).

- (5) For subsection (3)(a), the amount must be—
- (a) the amount mentioned in the recovery notice as the amount the State seeks to recover from the person under this part; or
 - (b) if, after the recovery notice was given to the person, the amount of assistance granted to a person for the act of violence is, under this chapter, reduced to an amount that is lower than the amount mentioned in paragraph (b)—the lower amount.

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118 Reduction in offender's liability to pay if assistance refunded

- (1) This section applies if—
 - (a) in relation to assistance granted to a person (the *victim*) for an act of violence, a person (*offender*) convicted of a relevant offence for the act becomes liable to pay an amount (*payable amount*) to the State under section 117(4); and
 - (b) the amount of assistance granted to the victim is, under this chapter, reduced to an amount (the *new amount*) that is less than the payable amount.
- (2) The offender's liability under section 117(4) is reduced to the new amount.
- (3) The scheme manager must give the offender a notice stating the new amount and the effect of subsection (2).
- (4) If the offender has already paid the State an amount more than the new amount, the difference (*excess amount*) between the amount already paid and the new amount must be refunded to the offender.
- (5) However, if under section 95 an amount of assistance granted to the offender (*offset amount*) was taken to be paid to the State for satisfying the offender's liability under section 117(4), the following applies—
 - (a) if paragraph (b) does not apply—the excess amount must be paid to the offender as assistance;
 - (b) if the excess amount is more than the offset amount—the part of the excess amount equivalent to the offset amount.

Example—

The victim is paid assistance of \$10000. The offender becomes liable to pay \$10000 to the State under section 117(4). The offender is granted assistance of \$5000 but it is taken, under section 95, to be paid to the State for satisfying the offender's liability under section 117(4) (which is the offset amount). The offender also pays a further \$4000 towards

satisfying the offender's liability under section 117(4), bringing the total payment to \$9000.

The assistance granted to the victim is reduced to \$3000. The offender's liability to the State is also reduced to \$3000 under subsection (2). The excess amount is \$6000, which is the difference between what the offender has paid and the offender's new liability to the State. Because the offender was taken, under section 95, to have paid \$5000 to the State for satisfying the offender's liability, \$5000 must be paid to the offender as assistance and the remaining \$1000 of the excess amount is refunded to the offender.

- (6) If, under subsection (5), an amount is paid to the offender as assistance, the government assessor must—
- (a) decide the component of assistance for which the amount is payable, having regard to—
- (i) the components (if any) for which assistance granted to the person was paid or payable under section 95; and
 - (ii) the offender's needs; and
 - (iii) whether the offender has incurred any expenses for which assistance has not already been paid or become payable under section 95; and
 - (iv) anything else the government assessor considers relevant; and
- (b) give the offender a notice stating—
- (i) the decision; and
 - (ii) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (iii) the internal review details for the decision.

119 Reduction in offender's liability to pay if amount received under Corrective Services Act 2006

- (1) This section applies if—

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- (a) a person (*offender*) becomes liable to pay an amount (*payable amount*) to the State under section 117(4); and
- (b) the chief executive is, under the *Corrective Services Act 2006*, paid an amount (the *corrective services amount*) from the offender's prisoner's account, or victim trust fund, under that Act.

Note—

See the *Corrective Services Act 2006*, section 314 and the *Corrective Services Regulation 2006*, section 44 (for payments from prisoner's accounts) and the *Corrective Services Act 2006*, chapter 6, part 12B, division 4 (for payments from victim trust funds).

- (2) The offender's liability under section 117(4) is reduced by the corrective services amount.
- (3) The scheme manager must give the offender a notice stating—
 - (a) the effect of subsection (2); and
 - (b) the amount the offender is liable to pay after the reduction under subsection (2).
- (4) This section does not limit the *Corrective Services Act 2006*, section 319ZD(4).

120 Registration of unpaid amount under State Penalties Enforcement Act 1999

- (1) If a person who is liable to pay an amount under section 117(4) fails to pay the amount, or pays only a part of the amount, the scheme manager may give particulars of the unpaid amount to the SPER registrar for registration under the *State Penalties Enforcement Act 1999*, section 34 as if—
 - (a) the notice given under section 117(3) were an order of a court fining a person the amount stated in the notice; and
 - (b) the scheme manager were the registrar of that court; and
 - (c) the particulars were the prescribed particulars of the unpaid amount of a fine imposed by that court.

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- (2) The SPER registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34 and for that purpose that Act applies with all necessary and convenient changes.
 - (3) The fine option order provisions and imprisonment provisions do not apply in relation to an amount payable under section 117(4).
 - (4) For this section, the person who is liable to pay an amount under section 117(4) fails to pay the amount if—
 - (a) the scheme manager gives the person a notice under section 117(3) about the amount; and
 - (b) the person fails to pay the amount within the period stated in the notice, or a longer period agreed to by the scheme manager.
 - (5) If the person's liability to pay an amount under section 117(4) is reduced under section 118 or 119—
 - (a) the scheme manager must give the SPER registrar notice of the reduction; and
 - (b) the SPER registrar must amend the particulars registered under the *State Penalties Enforcement Act 1999*, section 34 to reflect the reduction.
 - (6) In this section—

fine option order provisions means the *State Penalties Enforcement Act 1999*, section 41(c) and the other provisions of that Act relating to fine option orders.

imprisonment provisions means the following—

 - (a) the *State Penalties Enforcement Act 1999*, section 52 to the extent it applies to an arrest and imprisonment warrant, and the other provisions of that Act relating to arrest and imprisonment warrants;
 - (b) the *State Penalties Enforcement Act 1999*, part 6.

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Part 17 **Effect of conviction for fraud offence relating to application**

121 Application of pt 17

This part applies if a person is, in relation to the person's application for assistance, convicted of an offence against—

- (a) section 141(1) or (2); or
- (b) the Criminal Code, section 408C(1)(d) or 488.

Editor's notes—

- section 141 (False or misleading information)
- Criminal Code, section 408C (Fraud) or 488 (Forgery and uttering)

122 Lapse of application if not decided

If the person's application has not been decided, the application lapses.

123 Refund of paid assistance and unpaid assistance stops being payable

- (1) This section applies if—
 - (a) the person has been granted assistance in relation to the application; and
 - (b) in the prosecution of the person, the prosecuting agency proves the assistance was granted on the basis of the person's acts or omissions constituting the offence.
- (2) The assistance is taken never to have been granted and the person must refund to the State any amount of the assistance paid to the person.
- (3) An amount that is refundable under this section is a debt owed to the State by the person.
- (4) Any part of the amount of assistance not paid to the person stops being payable to the person.

Part 18 **Internal and external review of decision**

124 Internal review of decision

- (1) A person aggrieved by a decision identified in schedule 1 may apply to the scheme manager for a review of the decision.
- (2) An application for a review of the decision must—
 - (a) be made within 28 days after the person is given notice of the decision; and
 - (b) state in detail the basis on which the person is aggrieved by the decision.
- (3) The making of an application for a review of a decision under this section does not affect the operation of the decision or prevent the decision being implemented.
- (4) The review must be conducted by—
 - (a) for a decision of a government assessor—
 - (i) the scheme manager; or
 - (ii) another government assessor nominated by the scheme manager; or
 - (b) for a decision of the scheme manager—a departmental employee, of a classification level in the public service that is the same as or higher than the scheme manager's classification level, nominated by the chief executive.
- (5) If a review is conducted by a departmental employee under subsection (4)(b), any decision on the review is taken to be a decision of the scheme manager.
- (6) The person conducting the review—
 - (a) has, in reviewing the decision, the same powers as the original decision-maker; and
 - (b) may—
 - (i) confirm or amend the decision being reviewed; or

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- (ii) substitute the person's own decision for the decision being reviewed; and
 - (c) must give the applicant a QCAT information notice about the person's decision.
- (7) Without limiting subsection (6), the person conducting the review may decide that assistance must be granted to a victim of an act of violence, or the amount of assistance granted to a victim of an act of violence must be increased, even if the grant or increase will cause an assistance limit to be exceeded.
- (8) An application for a review of a decision under this section must be decided within 42 days after it is made.

125 External review of reviewed decision

- (1) This section applies if a decision is confirmed, amended or substituted on review under section 124 (the *internal review decision*).
- (2) The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the internal review decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the internal review decision, either on application by a person or on its own initiative.

- (3) Without limiting the decisions QCAT may make under the QCAT Act, QCAT may decide that assistance must be granted to a victim of an act of violence, or the amount of assistance granted to a victim of an act of violence must be increased, even if the grant or increase will cause an assistance limit to be exceeded.

126 Effect of reducing amount of assistance

- (1) This section applies if, following a review of a decision under section 124 or 125, the amount of assistance granted to a person is reduced.

- (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 review.
- (3) An amount that is refundable under this section is a debt owed to the State by the person.

Part 19 Administration

127 Scheme manager

- (1) The chief executive must appoint, in writing, a manager of victims assistance.
- (2) A person is eligible for appointment as the manager of victims assistance if the person is—
 - (a) a public service employee; and
 - (b) appropriately qualified for the functions and powers of the manager of victims assistance under this Act.
- (3) The appointment of the scheme manager is subject to the conditions stated in the document of appointment.
- (4) The scheme manager stops being the scheme manager—
 - (a) at the end of the term of appointment stated in the document of appointment; or
 - (b) if the scheme manager stops being a public service employee.
- (5) The scheme manager may do all things necessary or convenient to be done for the performance of the scheme manager's functions under this Act.
- (6) The scheme manager may perform all the functions and exercise all the powers of a government assessor under this Act.

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- (7) A reference to a government assessor in this Act includes a reference to the scheme manager performing a function or exercising a power of a government assessor under subsection (6).

128 Government assessors

- (1) As many government assessors as are required for the proper administration of the scheme must be appointed.
- (2) Government assessors are to be appointed by the chief executive in writing.
- (3) A person is eligible for appointment as a government assessor if the person is—
- (a) a public service employee; and
 - (b) appropriately qualified for the functions and powers of government assessors under this Act.
- (4) The appointment of a government assessor is subject to the conditions stated in the document of appointment.
- (5) A government assessor stops being a government assessor—
- (a) at the end of the term of appointment stated in the document of appointment; or
 - (b) if the assessor stops being a public service employee.
- (6) A government assessor may do all things necessary or convenient to be done for the performance of the government assessor's functions under this Act.

129 Delegation by scheme manager

The scheme manager may delegate the scheme manager's functions under this chapter to an appropriately qualified—

- (a) government assessor; or
- (b) departmental employee.

130 Disclosure of interests

- (1) This section applies if the scheme manager, a government assessor or a departmental employee who is to perform a function, or exercise a power, under this chapter in relation to a particular application has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the function or exercise of the power.
- (2) The scheme manager must disclose the nature of the interest to the chief executive.
- (3) The government assessor must disclose the nature of the interest to the scheme manager.
- (4) The departmental employee must disclose the nature of the interest to the chief executive.
- (5) If—
 - (a) a disclosure is made under subsection (2), the chief executive must choose a departmental employee, of a classification level in the public service that is the same as or higher than the scheme manager's classification level, to deal with the application; or
 - (b) a disclosure is made under subsection (3), the scheme manager must choose another government assessor to deal with the application; or
 - (c) a disclosure is made under subsection (4), the chief executive must choose another departmental employee to deal with the application.
- (6) In this section—

application means—

 - (a) an application for assistance; or
 - (b) an application for amendment of assistance under section 36 or 101; or
 - (c) an application for interim assistance under part 14; or

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- (d) an application for the review of a decision under section 124.

Part 20 Miscellaneous

131 Guidelines

- (1) The chief executive may make guidelines about—
 - (a) the performance of a function or exercise of a power by the scheme manager under this chapter; or
 - (b) the performance of a function or exercise of a power by a government assessor under this chapter.
- (2) The chief executive must—
 - (a) publish the guidelines on the department’s website; and
Editor’s note—

At the commencement of this section, the department’s website was at <www.justice.qld.gov.au>.
 - (b) keep a copy of the guidelines available for inspection by the public at the main office of the victims assistance unit during ordinary office hours on business days.
- (3) A person may, without payment of a fee, obtain a copy of the guidelines from the scheme manager.
- (4) A person performing a function or exercising a power under this chapter must have regard to the guidelines when performing the function or exercising the power.

132 Table of costs

- (1) The chief executive may approve a table (*table of costs*) stating the costs the chief executive considers to be an appropriate guide, for the time being, for deciding whether costs are reasonable for the scheme.

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- (2) The chief executive must—
- (a) publish the table of costs on the department’s website;
and
- Editor’s note—*
- At the commencement of this section, the department’s website was at <www.justice.qld.gov.au>.
- (b) keep a copy of the table of costs available for inspection by the public at the main office of the victims assistance unit during ordinary office hours on business days.
- (3) A person may, without payment of a fee, obtain a copy of the table of costs from the scheme manager.
- (4) In having regard to the table of costs, a person must give proper weight to, but is not bound by, the table.
- (5) In this section—
- costs** means costs for counselling services, incidental travel, medical treatment, ambulance services or obtaining a report from a counsellor or health practitioner.

133 Giving information to corresponding scheme managers

- (1) The scheme manager may give the following information to a corresponding scheme manager if the corresponding scheme manager asks for it—
- (a) whether a stated person has applied for financial assistance under the scheme in relation to an act of violence and, if so, details of—
- (i) the act of violence in relation to which the application is made; and
- (ii) the injury (if any) in relation to which the application is made;
- (b) the status of an application for financial assistance under the scheme for a stated act of violence by a stated person, including, if assistance is granted in relation to the act—

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- (i) the amount of assistance granted; and
 - (ii) the expenses, loss of earnings or other component for which assistance is granted.
- (2) The scheme manager may give the information only if the scheme manager is reasonably satisfied the corresponding scheme manager needs the information for deciding the person's application for assistance under a corresponding scheme.
- (3) A person who acquires information, or accesses a document containing information, given under subsection (2) must not do either of the following—
 - (a) disclose to anyone else—
 - (i) the information; or
 - (ii) the contents of or information contained in the document;
 - (b) give access to the document to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (4) Subsection (3) does not apply to the disclosure of information, or the giving of access to a document, about a person—
 - (a) with the person's consent; or
 - (b) in connection with the performance of a function under the law that provides for the corresponding scheme; or
 - (c) as required or authorised under an Act or law.
- (5) In this section—

corresponding scheme means a scheme (however called) under a law of the Commonwealth or another State that provides for the payment of financial assistance (however called) to victims of violence.

corresponding scheme manager means a person who has similar functions to the scheme manager in relation to a corresponding scheme.

134 Arrangement with corresponding scheme managers about giving and receiving information

- (1) This section applies to the scheme manager and a corresponding scheme manager—
 - (a) only to the extent this Act or another law allows the scheme manager to give information to the corresponding scheme manager; and
 - (b) only to the extent another law allows the corresponding scheme manager to give information to the scheme manager.
- (2) The scheme manager and corresponding scheme manager may enter into a written arrangement by which the information is given and received.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information.
- (4) However, if information is to be electronically transferred and, under this Act or another law, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.
- (5) In this section—

corresponding scheme means a scheme (however called) under a law of the Commonwealth or another State that provides for the payment of financial assistance (however called) to victims of violence.

corresponding scheme manager means a person who has similar functions to the scheme manager in relation to a corresponding scheme.

135 Other information-sharing arrangements

- (1) This section applies to the extent another provision of this Act allows another entity to give information to a government assessor.

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- (2) The chief executive and the entity may enter into a written arrangement for giving the information.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information.
- (4) However, if the information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

136 Obtaining information about other victims

- (1) A person may ask the scheme manager for prescribed information about someone else who has been granted assistance if the person and the other person are—
 - (a) victims of the same act of violence; and
 - (b) eligible for assistance, or a component of assistance, that is subject to an assistance limit.
- (2) The scheme manager may give the person the prescribed information if the scheme manager is reasonably satisfied that the person needs the information for—
 - (a) deciding whether or not to apply for a review of a government assessor's decision on the person's application for assistance; or
 - (b) making submissions for a review under section 124 or 125.
- (3) In deciding whether or not a person needs prescribed information as mentioned in subsection (2), the scheme manager must consider whether the needs can be met without giving the name or other identifying particulars of the other person.
- (4) A person who obtains prescribed information about someone else under this section must not disclose the information to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (5) Subsection (4) does not apply to the disclosure of information about a person—
- (a) with the other person's consent; or
 - (b) for a purpose mentioned in subsection (2); or
 - (c) as required or authorised under an Act or law.
- (6) In this section—

prescribed information, about a person, means—

- (a) the person's name or other identifying particulars; or
- (b) the proportion of an assistance limit granted to the person; or
- (c) the reasons for the decision about the proportion of an assistance limit granted to the person.

137 Inadmissibility of particular matters

- (1) The following is inadmissible in any proceeding for the prosecution of a relevant offence for an act of violence—
- (a) that a person has applied for, or has or has not been granted, assistance in relation to the act of violence;
 - (b) a decision of the scheme manager, a government assessor or a departmental employee about an application for assistance in relation to an act of violence, including—
 - (i) a decision on a question of fact relating to the act of violence; and
 - (ii) a decision to grant or not grant assistance.
- (2) In this section—

application for assistance means—

- (a) an application for assistance; or

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- (b) an application for amendment of assistance under section 36 or 101; or
- (c) an application for interim assistance under part 14; or
- (d) an application for the review of a decision under section 124.

Chapter 4 Victim services coordinator

138 Appointment of victim services coordinator

- (1) The chief executive must appoint a victim services coordinator in writing.
- (2) A person is eligible for appointment as the victim services coordinator if the person is—
 - (a) a public service employee; and
 - (b) appropriately qualified for the functions and powers of the victim services coordinator under this Act.
- (3) The appointment of the victim services coordinator is subject to the conditions stated in the document of appointment.
- (4) The victim services coordinator stops being the victim services coordinator—
 - (a) at the end of the term of appointment stated in the document of appointment; or
 - (b) if the victim services coordinator stops being a public service employee.
- (5) The victim services coordinator may do all things necessary or convenient to be done for the performance of the coordinator's functions under this Act.

139 Functions of victim services coordinator

- (1) The functions of the victim services coordinator are—

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- (a) to undertake or commission research about the needs of victims;
 - (b) to develop educational and other programs to promote awareness of the needs of victims and of the principles; and
 - (c) to distribute information about the operation of this Act, and the coordinator's functions, to—
 - (i) victim service providers; and
 - (ii) the public generally; and
 - (d) to help victim service providers to coordinate the services provided by them so that the services are provided in a way that is effective and efficient; and
 - (e) to help government entities to develop and comply with—
 - (i) processes for implementing the principles; and
 - (ii) processes for resolving complaints made by victims under chapter 2, part 3; and
 - (f) to refer complaints made to the victim services coordinator under chapter 2, part 3, as required and in the way provided under section 19(3) or (4); and
 - (g) to facilitate the resolution of complaints made under chapter 2, part 3, as provided for under the complaint resolution processes of the relevant government entity; and
 - (h) to assist victims in obtaining the information or assistance they need as a victim.
- (2) In this section—

victim includes a person who has suffered harm as a direct result of witnessing a crime committed against someone else.

victim service providers means entities who provide services to help victims.

Chapter 5 Miscellaneous

140 Confidentiality

- (1) This section applies to a prescribed person who has, in the course of administering this Act or because of an opportunity provided by involvement in administering this Act—
 - (a) acquired information about someone else; or
 - (b) gained access to a document about someone else.
- (2) The prescribed person must not do either of the following—
 - (a) disclose to anyone else—
 - (i) the information; or
 - (ii) the contents of or information contained in the document;
 - (b) give access to the document to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document, about a person—
 - (a) with the person's consent; or
 - (b) in connection with the performance of a function under this Act; or
 - (c) as required or authorised under an Act or law, including under section 133 or 136.
- (4) In this section—

prescribed person means a person who is or has been involved in the administration of this Act, including a person who is or has been an official.

141 False or misleading information

- (1) A person must not state to an official anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to a person if the person, when giving the document—
 - (a) tells the official, to the best of the person’s ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

142 Proceedings for offences

An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886*.

143 Protection from civil liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.

144 Review of Act

- (1) The Minister must review this Act within 5 years after the commencement of this section to decide whether the Act’s provisions remain appropriate.
- (2) The Minister must, as soon as practicable after finishing the review, table a report about its outcome in the Legislative Assembly.

145 Approved forms

The chief executive may approve forms for use under this Act.

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146 Regulation-making power

The Governor in Council may make regulations under this Act.

147 Temporary regulation-making power

- (1) A regulation (a *temporary regulation*) may prescribe a matter that a temporary regulation may prescribe under a provision of this Act.
- (2) A temporary regulation must declare it is a temporary regulation.
- (3) A provision of a temporary regulation prescribing a matter mentioned in subsection (1) expires 1 year after its commencement.
- (4) A temporary regulation may be used to prescribe a particular matter only once.

148 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about the preservation of a right or benefit a person has under a repealed provision by—
 - (a) providing for the right or benefit to continue under this Act, with or without addition; or
 - (b) continuing the operation of a repealed provision.
- (2) A transitional regulation must declare it is a transitional regulation.
- (3) This section, and any provision of a transitional regulation made under this section, expire at the end of 2 years after the commencement of this section.
- (4) In this section—

repealed provision means—

 - (a) a provision of the repealed *Criminal Offence Victims Act 1995*, as in force from time to time before its repeal; or

- (b) the Criminal Code, chapter 65A, as in force from time to time before its repeal, and includes that chapter as it continued to apply under the repealed *Criminal Offence Victims Act 1995*, section 46(2).

Chapter 6 Repeal and transitional provisions

Part 1 Repeal provision

149 Repeal

The Criminal Offence Victims Act 1995, No. 54 is repealed.

Part 2 Transitional provisions

Division 1 Preliminary

150 Definitions for pt 2

In this part—

commencement means the commencement of this section.

compensation includes an amount by way of compensation.

injury means—

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- (a) for compensation or another amount payable under the repealed Act—injury as defined under section 20 of that Act; or
- (b) for compensation or another amount payable under the repealed Criminal Code chapter—injury as defined under section 663A of that chapter; or
- (c) for division 5—
 - (i) injury within the meaning of paragraph (a) or (b) for a personal offence committed before the commencement; or
 - (ii) injury within the meaning of section 27 for a personal offence committed after the commencement.

personal offence means—

- (a) for compensation or another amount payable under the repealed Act—personal offence as defined under section 21 of that Act; or
- (b) for compensation or another amount payable under the repealed Criminal Code chapter—an indictable offence relating to the person of any person; or
- (c) for division 5—
 - (i) a personal offence within the meaning of paragraph (a) or (b) committed before the commencement; or
 - (ii) a prescribed offence within the meaning of section 25(8) committed after the commencement.

previous prescribed offence means—

- (a) in relation to the payment of an amount under section 33 of the repealed Act or section 663D(1)(b) or (c) of the repealed Criminal Code chapter—a personal offence; or
- (b) in relation to the payment of an amount under section 34 of the repealed Act or section 663D(1)(a) of the repealed Criminal Code chapter—

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- (i) for a person helping a police officer to make or attempt to make an arrest—the offence in relation to which the police officer was attempting to make, or making, the arrest, or another offence arising out of substantially the same facts and circumstances as those in relation to which the police officer was attempting to make, or making, the arrest; or
 - (ii) for a person helping a police officer to prevent, or attempt to prevent, an offence or suspected offence—the offence or suspected offence; or
- (c) in relation to the payment of an amount under section 35 of the repealed Act—a murder or manslaughter.

relevant event means—

- (a) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 33(1)(a) of the repealed Act—the end of the trial for the personal offence in relation to which the person’s entitlement to make the application arose; or
- (b) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 33(1)(b)(i) of the repealed Act—the finding that the person who committed the act or omission constituting the personal offence in relation to which the person’s entitlement to make the application arose was suffering from unsoundness of mind when doing the act or making the omission, or was not fit for trial, under the *Mental Health Act 2000*, chapter 7, part 6; or
- (c) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 33(1)(b)(ii) of the repealed Act, or section 663D(1)(b) or (c)(ii) of the repealed Criminal Code chapter—the doing of the act or the making of the omission constituting the personal offence in relation to which the person’s entitlement to make the application arose; or

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- (d) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 33(1)(c) of the repealed Act, or section 663D(1)(c)(i) of the repealed Criminal Code chapter—the notification of the person by the investigating police officer that the person who committed the personal offence in relation to which the person’s entitlement to make the application arose can not be identified or found after appropriate inquiry and search; or
- (e) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 34 of the repealed Act, or section 663D(1)(a) of the repealed Criminal Code chapter—the giving of the help to the police officer; or
- (f) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 35 of the repealed Act—the death in relation to which the person’s entitlement to make the application arose; or
- (g) for a person who could have, if this chapter had not commenced, applied for the payment of an amount under section 663D(1)(c)(iii) of the repealed Criminal Code chapter—when the prosecution process for the indictment presented for the personal offence in relation to which the person’s entitlement to make the application arose ends, including, for example, because—
 - (i) the prosecuting agency decides not to continue with the indictment or any other indictment for the personal offence; or
 - (ii) the trial for the personal offence ends and the person is not convicted of the offence; or
 - (iii) the prosecution process for the indictment ends in another way.

repealed Act means the repealed *Criminal Offence Victims Act 1995*, as in force from time to time before its repeal.

repealed Criminal Code chapter means the Criminal Code, chapter 65A, as it continued to apply from time to time under section 46(2) of the repealed Act.

Note—

The Criminal Code, chapter 65A was repealed on 18 December 1995 by section 45 and schedule 2 of the repealed Act as originally enacted.

repealed legislation means the repealed Act or the repealed Criminal Code chapter.

151 References to person making an application

In this part, if at a particular time a person has made an application but has withdrawn it before it is decided, the person is taken at that time to not have made the application.

Example—

At the commencement, a person has made an application under the repealed Act but has withdrawn it before it was decided. The person is taken, at the commencement, to not have made the application.

152 Acts Interpretation Act 1954, s 20 not limited

Subject to sections 155(6), 160(5) and 164(5), this part does not limit the *Acts Interpretation Act 1954*, section 20.

153 Application of Act to acts done before commencement

Other than as provided under division 2, 3 or 5, chapter 3 does not apply in relation to an act of violence committed before the commencement.

[s 154]

Division 2 Applications that could have been made to a court

154 Application of div 2

- (1) This division applies if—
- (a) a person could have, if this chapter had not commenced, applied to a court for an order requiring the payment of compensation for injury suffered because of a personal offence committed before the commencement, under—
 - (i) section 24 of the repealed Act; or
 - (ii) section 663B of the repealed Criminal Code chapter; and
 - (b) at the commencement, the person has not made an application under a provision mentioned in paragraph (a)(i) or (ii) for the injury.

Note—

See division 7 if, at the commencement, the period within which a person could have applied for an order mentioned in subsection (1)(a) has already expired.

- (2) For subsection (1), it is immaterial—
- (a) whether the person's injury is suffered before or after the commencement, or over a period starting before the commencement and ending after the commencement; and
 - (b) whether the conviction in relation to which the person's entitlement to apply for the order arose happens before or after the commencement; and
 - (c) for a person to whom subsection (1)(a)(i) applies—whether the person's entitlement to apply for the order is the result of an order made under section 41 of the repealed Act before the commencement.

Note—

See division 8 in relation to applying, under section 32 of the repealed Act or section 663C of the repealed Criminal Code chapter, to the State for the payment of an amount that must be paid under an order mentioned in subsection (1)(a).

155 Person may apply for order under repealed legislation in particular circumstances

- (1) If the conviction mentioned in section 154(2)(b) happens before the commencement, the person may apply for the order mentioned in section 154(1)(a) under the following provision (the *relevant provision*)—
 - (a) if section 154(1)(a)(i) applies to the person—section 24 of the repealed Act; or
 - (b) if section 154(1)(a)(ii) applies to the person—section 663B of the repealed Criminal Code chapter.

Note—

If the person does not make an application under this section, the person may be able to apply for assistance under section 156.

- (2) The application must be made before the earlier of the following—
 - (a) the expiry of the period within which the person could have, if this chapter had not commenced, applied for the order mentioned in section 154(1)(a);
 - (b) the end of 2 months after the commencement.
- (3) The court to which the application is made must hear and decide the application under the relevant provision.
- (4) For subsection (3), the repealed provision, and any other provisions of the repealed legislation that are necessary or convenient to be used in relation to the application, continue to apply as if this chapter had not commenced.
- (5) Without limiting subsection (3), section 28(1) of the repealed Act continues to apply in relation to the making of an order under section 24 of the repealed Act.

[s 156]

Note—

Division 8 provides for the application of the repealed legislation in relation to an order made under the repealed provision, including an order made after the commencement.

- (6) This section applies despite the *Acts Interpretation Act 1954*, section 20.

156 Person may apply for assistance

- (1) This section applies if—
- (a) the conviction mentioned in section 154(2)(b) happens on or after the commencement; or
 - (b) the person has not made an application under section 155 whether or not the 2 month period mentioned in section 155(2)(b) has passed.
- (2) The person may apply for victim assistance.
- (3) The application for victim assistance must be made—
- (a) if the person is a Criminal Code applicant and the conviction mentioned in section 154(2)(b) happened 2 years or more before the commencement—
 - (i) if the person was an adult when the conviction happened—before the earlier of the following—
 - (A) the end of 6 years after the conviction;
 - (B) the end of 1 year after the commencement;or
 - (ii) if the person was a child when the conviction happened—before the later of the following—
 - (A) the applicant turns 21;
 - (B) the end of 1 year after the commencement;or
 - (b) in any other case—

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- (i) for a person who was an adult when the conviction mentioned in section 154(2)(b) happened—within 3 years after the conviction; or
 - (ii) for a person who was a child when the conviction mentioned in section 154(2)(b) happened—before the person turns 21.
- (4) However, the scheme manager may, under section 54(2), extend the time for making an application for victim assistance under this section.
- (5) In this section—
- Criminal Code applicant*** means a person to whom section 154(1)(a)(ii) applies.

157 Deciding application for assistance etc.

- (1) For applying section 156 and chapter 3 to the application for victim assistance—
- (a) the personal offence is taken to be an act of violence; and
 - (b) the person is taken to be a primary victim of the act of violence.
- (2) Deciding an application for assistance under this division is subject to division 5.

Note—

Division 5 provides for how a series of related offences must be treated.

158 Recovery of assistance granted

If assistance is granted under this division in relation to an act of violence, chapter 3, part 16 applies in relation to a person convicted of a relevant offence for the act, whether the conviction happens before or after the commencement.

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Division 3 Applications that could have been made to the State

Subdivision 1 Applications by persons other than dependants or family members

159 Application of sdiv 1

- (1) This subdivision applies if—
- (a) a person could have, if this chapter had not commenced, applied for the payment of an amount for injury suffered because of a previous prescribed offence committed before the commencement, under—
 - (i) section 33 or 34 of the repealed Act; or
 - (ii) section 663D of the repealed Criminal Code chapter; and
 - (b) at the commencement, the person has not made an application under a provision mentioned in paragraph (a)(i) or (ii) for the injury.

Note—

See division 7 if, at the commencement, the period within which a person could have applied for the payment of an amount mentioned in subsection (1)(a) has already expired.

- (2) For subsection (1), it is immaterial—
- (a) whether the person's injury is suffered before or after the commencement, or over a period starting before the commencement and ending after the commencement; and
 - (b) for a person whose entitlement to make the application arose because of an event mentioned in section 150, definition *relevant event*, paragraph (a), (b), (d) or (g)—whether the relevant event happens before or after the commencement; and

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- (c) for a person to whom subsection (1)(a)(i) applies—whether the person’s entitlement to apply for the payment mentioned in subsection (1)(a) is the result of an order made under section 41 of the repealed Act before the commencement.

160 Person may apply for assistance

- (1) The person can not apply, under the repealed legislation, for the payment of an amount mentioned in section 159(1)(a) after the commencement.
- (2) However, the person may apply for assistance.
- (3) The application for assistance must be made—
 - (a) if the person is a Criminal Code applicant and the relevant event happened 2 years or more before the commencement—
 - (i) if the person was an adult when the relevant event happened—within 1 year after the commencement;
or
 - (ii) if the person was a child when the relevant event happened—before the later of the following—
 - (A) the applicant turns 21;
 - (B) the end of 1 year after the commencement;
or
 - (b) in any other case—
 - (i) for a person who was an adult when the relevant event happened—within 3 years after the relevant event; or
 - (ii) for a person who was a child when the relevant event happened—before the person turns 21.
- (4) However, the scheme manager may, under section 54(2), extend the time for making an application for assistance under this section.

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- (5) This section applies despite the *Acts Interpretation Act 1954*, section 20.
- (6) In this section—
Criminal Code applicant means a person to whom section 159(1)(a)(ii) applies.

161 Deciding application for assistance etc.

- (1) For applying section 160 and chapter 3 to the application for assistance—
 - (a) the previous prescribed offence is taken to be an act of violence committed after the commencement; and
 - (b) the person is taken to be the primary victim of the act of violence.
- (2) Deciding an application for assistance under this subdivision is subject to division 5.

Note—

Division 5 provides for how a series of related offences must be treated.

162 Recovery of assistance granted

If assistance is granted under this subdivision in relation to an act of violence, chapter 3, part 16 applies in relation to a person convicted of a relevant offence for the act—

- (a) whether the conviction happens before or after the commencement; and
- (b) whether the conviction happens before or after the assistance is granted.

Subdivision 2 Applications by dependants or family members

163 Application of sdiv 2

- (1) This subdivision applies if—
 - (a) a person could have, if this chapter had not commenced, applied for the payment of an amount because of a previous prescribed offence committed before the commencement, under section 35 of the repealed Act; and
 - (b) at the commencement, the person has not made an application under section 35 of the repealed Act for the previous prescribed offence.

Note—

See division 7 if, at the commencement, the period within which a person could have applied for the payment of an amount mentioned in subsection (1)(a) has already expired.

- (2) For subsection (1), it is immaterial—
 - (a) whether the relevant event happens before or after the commencement; and
 - (b) whether the person's entitlement to apply for the payment mentioned in subsection (1)(a) is the result of an order made under section 41 of the repealed Act before the commencement.

164 Person may apply for assistance

- (1) The person can not apply, under the repealed legislation, for the payment of an amount mentioned in section 163(1)(a) after the commencement.
- (2) However, the person may apply for assistance.
- (3) The application for assistance must be made—

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- (a) if the person was an adult when the relevant event happened—within 3 years after the relevant event; or
 - (b) if the person was a child when the relevant event happened—before the person turns 21.
- (4) However, the scheme manager may, under section 54(2), extend the time for making an application for assistance under this section.
- (5) This section applies despite the *Acts Interpretation Act 1954*, section 20.

165 Deciding application for assistance etc.

- (1) For applying section 164 and chapter 3 to the application for assistance—
- (a) the previous prescribed offence is taken to be an act of violence committed after the commencement; and
 - (b) the person is taken to be a related victim of the act of violence; and
 - (c) the person whose death in relation to which the person's entitlement to make the application arose is taken to be the primary victim of the act of violence.
- (2) Deciding an application for assistance under this subdivision is subject to division 6.

Note—

Division 6 provides for how applications by dependants or family members must be treated if some are made under the repealed Act and some are made under this subdivision.

166 Recovery of assistance granted

If assistance is granted under this subdivision in relation to an act of violence, chapter 3, part 16 applies in relation to a person convicted of a relevant offence for the act—

- (a) whether the conviction happens before or after the commencement; and

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- (b) whether the conviction happens before or after the assistance is granted.

Division 4 Existing applications

167 Existing application for compensation order of court

- (1) This section applies if—
- (a) a person has applied to a court for an order requiring the payment of compensation under either of the following (each the *repealed provision*)—
 - (i) section 24 of the repealed Act (including an application made under section 42 of that Act);
 - (ii) section 663B of the repealed Criminal Code chapter; and
 - (b) the application has not been finally decided before the commencement.
- (2) The court must hear, or continue to hear, and decide the application under the repealed provision.
- (3) For subsection (2), the repealed provision, and any other provisions of the repealed legislation that are necessary or convenient to be used in relation to the application, continue to apply as if this chapter had not commenced.
- (4) Without limiting subsection (3), section 28(1) of the repealed Act continues to apply in relation to the making of an order under section 24 of the repealed Act.

Note—

Division 8 provides for the application of the repealed legislation in relation to an order made under the repealed provision, including an order made after the commencement.

168 Existing application for payment of court ordered compensation by the State

- (1) This section applies if—
 - (a) either—
 - (i) a court has made an order under section 24 of the repealed Act and a person has applied for the payment of an amount the subject of the order under section 32 of that Act (the *repealed provision*); or
 - (ii) a court has made an order under section 663B of the repealed Criminal Code chapter and a person has applied for the payment of an amount the subject of the order under section 663C of that chapter (also the *repealed provision*); and
 - (b) at the commencement, the application has not been finally dealt with.
- (2) The entity to whom the application was made must deal with the application under the repealed provision.
- (3) For subsection (2), the repealed provision, and any other provisions of the repealed legislation that are necessary or convenient to be used in relation to the application, continue to apply as if this chapter had not commenced.
- (4) Without limiting subsection (3), the relevant appropriation provision continues to apply to any payment to be made in relation to the application as if this chapter had not commenced.
- (5) If at the end of 3 years after the commencement the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Note—

See—

- (a) for an application under section 32 of the repealed Act—section 36(4) to (6) of that Act; or

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- (b) for an application under section 663C of the repealed Criminal Code chapter—section 663C(2) and (3) of that chapter.
 - (6) If an application lapses under subsection (5), the applicant can not make a further application under this part.
 - (7) The scheme manager must—
 - (a) give the applicant notice of the effect of subsection (5) and (6); and
 - (b) ensure all reasonable steps are taken to give the applicant an opportunity to give the necessary information, documents or other assistance to enable the application to be decided within the 3 year period mentioned in subsection (5).
 - (8) In this section—

relevant appropriation provision means—

 - (a) for an application under section 32 of the repealed Act—section 37 of the repealed Act; or
 - (b) for an application under section 663C of the repealed Criminal Code chapter—section 663E(1) of the repealed Criminal Code chapter.

169 Existing application for payment of another amount by the State

- (1) This section applies if—
 - (a) a person has applied for the payment of an amount under any of the following (each the *repealed provision*)—
 - (i) section 33, 34 or 35 of the repealed Act;
 - (ii) section 663D of the repealed Criminal Code chapter; and
 - (b) the application has not been finally dealt with before the commencement.

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- (2) The entity to whom the application is made must deal with the application under the repealed provision.
- (3) For subsection (2), the repealed provision, and any other provisions of the repealed legislation that are necessary or convenient to be used in relation to the application, continue to apply as if this chapter had not commenced.
- (4) Without limiting subsection (3), the relevant appropriation provision continues to apply to any payment to be made in relation to the application as if this chapter had not commenced.
- (5) If at the end of 3 years after the commencement the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Note—

See—

- (a) for an application under section 33, 34 or 35 of the repealed Act—section 36(4) to (6) of that Act; or
 - (b) for an application under section 663D of the repealed Criminal Code chapter—sections 663D(2) and (3) of that chapter.
- (6) If an application lapses under subsection (5), the applicant can not make a further application under the repealed provision.
 - (7) However, if at the end of the 3 year period mentioned in subsection (5) the applicant could have, if this chapter had not commenced, applied to the State for the payment of an amount under the repealed provision—
 - (a) if the repealed provision is section 33 or 34 of the repealed Act or section 663D of the repealed Criminal Code chapter—
 - (i) the applicant may apply for victim assistance; and
 - (ii) division 3, subdivision 1 applies in relation to the application as if the application were made under that subdivision; or

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- (b) if the repealed provision is section 35 of the repealed Act—
 - (i) the applicant may apply for victim assistance; and
 - (ii) division 3, subdivision 2 applies in relation to the application as if the application were made under that subdivision.
 - (8) The scheme manager must—
 - (a) give the applicant notice of the effect of subsections (5) to (7); and
 - (b) ensure all reasonable steps are taken to give the applicant an opportunity to give the necessary information, documents or other assistance to enable the application to be decided within the 3 year period mentioned in subsection (5).
 - (9) In this section—

relevant appropriation provision means—

 - (a) for an application under section 33, 34 or 35 of the repealed Act—section 37 of the repealed Act; or
 - (b) for an application under section 663D of the repealed Criminal Code chapter—section 663E(1) of the repealed Criminal Code chapter.

Division 5 Special provisions if series of related offences

170 Application of div 5

- (1) This division applies if—
 - (a) a person suffers injury because of 2 or more personal offences against the person that are a series of related offences; and

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- (b) at least 1 of the personal offences in the series happened before the commencement; and
 - (c) the person makes—
 - (i) an application for victim assistance under this part for injury suffered because of 1 or more personal offences in the series that are committed before the commencement; or
 - (ii) an application for victim assistance under chapter 3 for 1 or more personal offences in the series that are committed after the commencement; or
 - (iii) a combination of applications as mentioned in subparagraph (i) or (ii).
- (2) For subsection (1), 2 or more personal offences are a *series of related offences* if the acts constituting the personal offences are related because—
- (a) they are committed against the same person and—
 - (i) are committed at about the same time; or
 - (ii) are committed over a period by the same person or group of persons; or
 - (iii) share another common factor; or
 - (b) they all contribute to the death of or injury to a person; or
 - (c) they, having regard to the circumstances of the acts, are related in some other way.
- (3) However, a personal offence (*later offence*) is not related to a previous personal offence (*earlier offence*) if the later offence is committed after assistance is granted in relation to the earlier offence.

171 Personal offences in the series constitute single act of violence

- (1) For applying chapter 3 to an application mentioned in section 170(1)(c)—
 - (a) the personal offences in the series of related offences are taken to be a single act of violence; and
 - (b) assistance may be granted to the person only for the single act of violence.
- (2) Without limiting subsection (1), if a person makes 2 or more applications as mentioned in section 170(1)(c), sections 70 and 83(4) apply in relation to the applications—
 - (a) as if a reference in the sections to a series of related crimes included a reference to a series of related offences within the meaning of section 170(2); and
 - (b) even if 1 or more of the applications were made under this part and 1 or more of the applications were made under chapter 3.

172 Effect of decision under repealed legislation for personal offences in the series

- (1) This section applies if a compensation order has been made in relation to 1 or more personal offences in the series of related offences.
- (2) The government assessor must reduce the amount of victim assistance that would otherwise be payable to the person in relation to the single act of violence by an amount of up to the amount the person will receive, or is likely to receive, as a result of the compensation order.
- (3) In this section—

compensation order means either of the following, whether made before the commencement or after the commencement under section 155, division 4 or section 177—

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- (a) an order under section 24 of the repealed Act, or section 663B of the repealed Criminal Code chapter, requiring the payment of compensation for injury suffered because of a personal offence;
- (b) a decision under section 33 of the repealed Act, or section 663D(1)(b) or (c) of the repealed Criminal Code chapter, to pay an amount to a person for injury suffered because of a personal offence.

173 Effect of application under repealed legislation for personal offences in the series

- (1) This section applies if the person also has a repealed legislation application for injury suffered because of 1 or more personal offences in the series of related offences.
- (2) The government assessor must—
 - (a) defer deciding an application mentioned in section 170(1)(c) until the repealed legislation application is decided; and
 - (b) if the repealed legislation application is granted—reduce the amount of victim assistance that would otherwise be payable to the person in relation to the single act of violence by an amount of up to the amount the person will receive, or is likely to receive, as a result of the repealed legislation application being granted.
- (3) In this section—

repealed legislation application, for an injury suffered because of a personal offence, means an application for the payment of compensation, or the payment of an amount, for the injury—

 - (a) that—
 - (i) was made under the repealed legislation before the commencement; and
 - (ii) to which section 167 or 169 applies; or

- (b) that was made under the repealed legislation after the commencement under section 155 or 177.

174 Deciding component of assistance after reduction under s 172 or 173

- (1) This section applies if, in relation to a single act of violence—
 - (a) the victim assistance payable to the person is reduced under section 172(2) or 173(2)(b), or both of those provisions; and
 - (b) an amount of victim assistance remains payable to the person after the reduction.
- (2) The government assessor must—
 - (a) decide the component of victim assistance for which the amount is payable, having regard to—
 - (i) the person's needs; and
 - (ii) whether the person has incurred any expenses; and
 - (iii) anything else the government assessor considers relevant; and
 - (b) give the person a notice stating—
 - (i) the decision; and
 - (ii) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (iii) the internal review details for the decision.

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Division 6 Special provisions if mixed applications

175 Mixed applications by dependants

- (1) This section applies if—
 - (a) someone died before the commencement in circumstances constituting murder or manslaughter; and
 - (b) there are 2 or more dependants of the deceased person; and
 - (c) 1 or more of the dependants makes an application for assistance under division 3, subdivision 2; and
 - (d) 1 or more of the other dependants—
 - (i) makes an application under section 35 of the repealed Act under section 177(4); or
 - (ii) had previously made an application under section 35 of the repealed Act—
 - (A) that was decided before the commencement; or
 - (B) to which section 169 applies.
- (2) The dependants who apply for assistance under division 3, subdivision 2 are only eligible for assistance of up to the remaining COVA pool (if any) for the deceased person's death.
- (3) For applying sections 71 and 72 to an application for assistance under division 3, subdivision 2, a reference in section 71(2)(a) to a victim of the same kind does not include the dependants mentioned in subsection (1)(d).
- (4) If the government assessor decides to grant assistance under division 3, subdivision 2, the notice given to the applicant under section 90 must also state the amount of the remaining COVA pool.

(5) To remove any doubt, it is declared that for this Act, the remaining COVA pool is an assistance limit for the dependants who apply for assistance under division 3, subdivision 2.

(6) In this section—

dependant means dependant as defined under schedule 3 of the repealed Act.

prescribed amount means the amount prescribed under the repealed Act for section 35(2) of that Act.

remaining COVA pool, for a deceased person's death, means the part of the prescribed amount that has not been paid under section 35 of the repealed Act to the deceased person's dependants for the deceased person's death.

176 Mixed applications by family members

(1) This section applies if—

- (a) someone died before the commencement in circumstances constituting murder or manslaughter; and
- (b) there are 2 or more members of the deceased person's family who are not dependants of the deceased person; and
- (c) 1 or more of the members makes an application for assistance under division 3, subdivision 2; and
- (d) 1 or more of the other members—
 - (i) makes an application under section 35 of the repealed Act under section 177(4); or
 - (ii) had previously made an application under section 35 of the repealed Act—
 - (A) that was decided before the commencement; or
 - (B) to which section 169 applies.

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- (2) The members of the deceased person's family who apply for assistance under division 3, subdivision 2 are only eligible for assistance of up to the remaining COVA pool (if any) for the deceased person's death.
- (3) For applying sections 71 and 72 to an application for assistance under division 3, subdivision 2, a reference in section 71(2)(a) to a victim of the same kind does not include the members mentioned in subsection (1)(d).
- (4) If the government assessor decides to grant assistance under division 3, subdivision 2, the notice given to the applicant under section 90 must also state the amount of the remaining COVA pool.
- (5) To remove any doubt, it is declared that for this Act, the remaining COVA pool is an assistance limit for the members who apply for assistance under division 3, subdivision 2.
- (6) In this section—

dependant means dependant as defined under schedule 3 of the repealed Act.

prescribed amount means the amount prescribed under the repealed Act for section 35(3) of that Act.

remaining COVA pool, for a deceased person's death, means the part of the prescribed amount that has not been paid under section 35 of the repealed Act to members of the deceased person's family, who are not dependants, for the deceased person's death.

Division 7 Extensions of time

Subdivision 1 Persons for whom period for applying under repealed Act has expired

177 Existing applications for extension under repealed Act

- (1) This section applies if—
 - (a) at the commencement, a person has—
 - (i) applied to a court for an order under section 41(1)(a) of the repealed Act; or
 - (ii) applied to the Minister for an order under section 41(1)(b) of the repealed Act; and
 - (b) the application has not been finally decided before the commencement.
- (2) The entity to whom the application was made must decide the application under section 41 of the repealed Act.
- (3) For subsection (2), section 41 of the repealed Act continues to apply as if this chapter had not commenced.
- (4) If the order is made in favour of the person, despite division 2 or 3—
 - (a) the person may, within the period allowed by the order, make the application in relation to which the order was sought under the repealed Act; and
 - (b) the application must be dealt with under the repealed Act as if this chapter had not commenced.
- (5) For subsection (4), the repealed Act continues to apply in relation to the application, and any decision made in relation to the application, as if this chapter had not commenced.

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Note—

Division 8 provides for the application of the repealed legislation in relation to an order made under section 24 of the repealed Act, including an order made after the commencement.

- (6) If the person makes an application to the State under subsection (4) and at the end of 3 years after the commencement the applicant has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Note—

See section 36(4) to (6) of the repealed Act.

- (7) If an application lapses under subsection (6), the applicant can not make a further application under this part.
- (8) The scheme manager must—
- (a) give the applicant notice of the effect of subsection (6) and (7); and
 - (b) ensure all reasonable steps are taken to give the applicant an opportunity to give the necessary information, documents or other assistance to enable the application to be decided within the 3 year period mentioned in subsection (6).

178 Particular persons may apply for assistance

- (1) This section applies if, at the commencement—
- (a) an adult who could have made an application under section 33(1)(a), (b)(i) or (c) of the repealed Act in relation to a personal offence is out of time; but
 - (b) 3 years after the relevant event has not passed.
- (2) For subsection (1)(a), an adult is *out of time* for making an application under section 33(1)(a), (b)(i) or (c) of the repealed Act if—

-
- (a) the period within which the adult could have made the application, if this chapter had not commenced, has expired; and
 - (b) the adult has not made the application within that period.
- (3) The adult can not apply for an order under section 41 of the repealed Act.
- (4) However, the adult may apply for assistance under section 160 as if the adult were a person mentioned in section 159.
- (5) In this section—
- relevant event***, in relation to an adult mentioned in subsection (1)(a), means—
- (a) if the adult could have made the application under section 33(1)(a) of the repealed Act—the end of the trial for the personal offence; or
 - (b) if the adult could have made the application under section 33(1)(b)(i) of the repealed Act—the finding that the person who committed the act or omission constituting the personal offence was suffering from unsoundness of mind when doing the act or making the omission, or was not fit for trial, under the *Mental Health Act 2000*, chapter 7, part 6; or
 - (c) if the adult could have made the application under section 33(1)(c) of the repealed Act—the notification of the adult by the investigating police officer that the person who committed the personal offence can not be identified or found after appropriate inquiry and search.

179 Particular persons may apply for approval to apply for assistance

- (1) This section applies if, at the commencement, a person who could have made a relevant COVA application in relation to a personal offence is out of time.

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- (2) For subsection (1), a person is *out of time* for making a relevant COVA application if—
 - (a) the period within which the person could have made the application, if this chapter had not commenced, has expired; and
 - (b) the person has not made the application within that period.
- (3) The person can not apply for an order under section 41 of the repealed Act.
- (4) However, if the person has not previously applied for an order under section 41 of the repealed Act in relation to the personal offence, the person may apply to the scheme manager for approval to apply for assistance under division 2 or 3.
- (5) If the scheme manager gives the approval, the person may—
 - (a) for a person who is out of time in relation to section 24 of the repealed Act—apply for assistance under section 156 as if the person were a person mentioned in section 154; or
 - (b) for a person who is out of time in relation to section 33 or 34 of the repealed Act—apply for assistance under section 160 as if the person were a person mentioned in section 159; or
 - (c) for a person who is out of time in relation to section 35 of the repealed Act—apply for assistance under section 164 as if the person were a person mentioned in section 163.
- (6) The scheme manager may give the approval if the scheme manager considers it would be appropriate and desirable to do so, having regard to the following—
 - (a) the person's age when the personal offence was committed;
 - (b) whether the person has an impaired capacity;

-
- (c) whether the person who allegedly committed the personal offence was in a position of power, influence or trust in relation to the person;

Examples of persons who may be in a position of power, influence or trust in relation to a person—

a person's parent, spouse or carer

- (d) the physical or psychological effect of the personal offence on the person;
- (e) whether the delay in the person making the relevant COVA application undermines the possibility of a fair decision;
- (f) any other matter the scheme manager considers relevant.
- (7) The scheme manager must give the person notice of the scheme manager's decision on the application for approval.
- (8) If the scheme manager decides not to give the approval, the notice must state the following—
- (a) the decision;
- (b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (c) the internal review details for the decision.
- (9) This section does not limit section 178.
- (10) In this section—
- relevant COVA application*** means—
- (a) an application for an order under section 24 of the repealed Act; or
- (b) an application for the payment of an amount under section 33, 34 or 35 of the repealed Act.

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Subdivision 2 Persons for whom period for applying under repealed Criminal Code chapter has expired

180 Particular persons may apply for approval to apply for assistance

- (1) This section applies if, at the commencement—
 - (a) a person who could have made a relevant Code application in relation to a personal offence is out of time; and
 - (b) the person has not previously made or purported to make the application.
- (2) For subsection (1), a person is *out of time* for making a relevant Code application if, because of the application of the *Limitations of Actions Act 1974*—
 - (a) the period within which the person could have made the application, if this chapter had not commenced, has expired; and
 - (b) the person has not made the application within that period.
- (3) The person may apply to the scheme manager for approval to apply for assistance under division 2.
- (4) If the scheme manager gives the approval, the person may apply for assistance under section 156 as if the person were a person mentioned in section 154.
- (5) The scheme manager may give the approval if the scheme manager considers it would be appropriate and desirable to do so, having regard to the following—
 - (a) the person's age when the personal offence was committed;
 - (b) whether the person has an impaired capacity;

-
- (c) whether the person who allegedly committed the personal offence was in a position of power, influence or trust in relation to the person;
- Examples of persons who may be in a position of power, influence or trust in relation to a person—*
- a person's parent, spouse or carer
- (d) the physical or psychological effect of the personal offence on the person;
- (e) whether the person's delay in making the relevant Code application undermines the possibility of a fair decision;
- (f) any other matter the scheme manager considers relevant.
- (6) The scheme manager must give the person notice of the scheme manager's decision on the application for approval.
- (7) If the scheme manager decides not to grant the approval, the notice must state the following—
- (a) the decision;
- (b) the reasons for the decision;
- Note—*
- See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).
- (c) the internal review details for the decision.
- (8) In this section—
- relevant Code application*** means an application for an order under section 663B of the repealed Criminal Code chapter.

Division 8 Compensation orders

181 Application of div 8

This division applies to an order (***compensation order***) for the payment of compensation made by a court, whether before or

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after the commencement, under either of the following (each a *repealed provision*)—

- (a) section 24 of the repealed Act;
- (b) section 663B of the repealed Criminal Code chapter.

182 Compensation order continues

- (1) Subject to section 183, the compensation order continues in effect, and the repealed provision and any other provisions of the repealed legislation that are necessary or convenient to be applied in relation to the order continue to apply, as if this chapter had not commenced.
- (2) Without limiting subsection (2) and subject to section 183—
 - (a) the following provisions of the repealed Act continue to apply in relation to an order made under section 24 of that Act—
 - (i) section 28(2);
 - (ii) section 28(3);
 - (iii) sections 32 and 37; and
 - (b) the following provisions of the repealed Criminal Code chapter continue to apply in relation to an order made under section 663B of that chapter—
 - (i) section 663B(3);
 - (ii) section 663B(4);
 - (iii) sections 663C and 663E(1).

Notes—

Section 28(2) of the repealed Act and section 663B(3) of the repealed Criminal Code chapter are about applying particular funds of a convicted person towards the payment of compensation under a compensation order.

Section 28(3) of the repealed Act and section 663B(4) of the repealed Criminal Code chapter are about enforcing a compensation order.

Section 32 of the repealed Act and section 663C of the repealed Criminal Code chapter are about obtaining an amount that must be paid under a compensation order from the State.

Section 37 of the repealed Act provides for the payment of an amount under section 32 of the repealed Act from the consolidated fund.

Section 663E(1) of the repealed Criminal Code chapter provides for the payment of an amount under section 663C of that chapter from the consolidated fund.

183 Limitations about applications to State for payment of amount payable under compensation order

- (1) A person may apply to the State for the payment of an amount in relation to the compensation order under section 32 of the repealed Act, or section 663C of the repealed Criminal Code chapter, only within—
 - (a) if the compensation order was made before the commencement—6 months after the commencement; or
 - (b) if the compensation order is made on or after the commencement—6 months after the order is made.
- (2) If at the end of 3 years after the commencement a person who makes an application under subsection (1) has not given all the necessary information, documents or other assistance to enable the application to be decided, the application lapses.

Note—

See—

- (a) for an application under section 32 of the repealed Act—section 36(4) to (6) of that Act; or
 - (b) for an application under section 663C of the repealed Criminal Code chapter—section 663C(2) and (3) of that chapter.
- (3) If an application lapses under subsection (2), the applicant can not make a further application under this part.
- (4) The scheme manager must—
 - (a) give the applicant notice of the effect of subsection (2) and (3); and

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- (b) ensure all reasonable steps are taken to give the applicant an opportunity to give the necessary information, documents or other assistance to enable the application to be decided within the 3 year period mentioned in subsection (2).

Division 9 Provisions about amounts paid by State under repealed legislation

Subdivision 1 Continuing State's rights

184 State's rights in relation to amounts paid continue

- (1) Sections 27 and 38 of the repealed Act continue to apply, as if this chapter had not commenced, in relation to an amount paid by the State under part 3 of the repealed Act, whether before or after the commencement.
- (2) For subsection (1), any other provisions of the repealed Act that are necessary or convenient to be used in relation to section 27 or 38 also continue to apply as if this chapter had not commenced.
- (3) Section 663E(2) and (3) of the repealed Criminal Code chapter continues to apply, as if this chapter had not commenced, in relation to an amount paid to a person under section 663C(4) or 663D(4) of the repealed Criminal Code chapter, whether before or after the commencement.
- (4) For subsection (3), any other provisions of the repealed Criminal Code chapter that are necessary or convenient to be used in relation to section 663E(2) or (3) also continue to apply as if this chapter had not commenced.

Subdivision 2 Recovering amount from offender

185 Purpose and application of sdiv 2

- (1) This subdivision helps the State to recover from a person—
 - (a) an amount paid by the State under section 32 of the repealed Act in relation to a compensation order made under section 24 of that Act against the person; or
Note—
See section 38 of the repealed Act and section 184 for the State's subrogation rights in relation to the compensation order.
 - (b) an amount paid by the State under section 663C of the repealed Criminal Code chapter in relation to an order made under section 663B(1) of that chapter against the person; or
Note—
See section 663E(2) and (3) of the repealed Criminal Code chapter and section 184 for the State's subrogation rights in relation to the order.
 - (c) an amount payable to the State under—
 - (i) a repayment order made under section 27 of the repealed Act against the person; or
 - (ii) an order made under section 38(5) of the repealed Act against the person.
- (2) This subdivision provides a way for the State to recover an amount payable under an order mentioned in subsection (1) as an alternative to enforcing the order.
- (3) This subdivision applies in relation to an amount mentioned in subsection (1)—
 - (a) whether the amount was paid or became payable before or after the commencement; and
 - (b) whether or not the order in relation to which the amount is payable has been filed in a court for the purpose of enforcing the order.

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186 Definition for sdiv 2

In this subdivision—

relevant subrogation provision means—

- (a) for an amount paid by the State under the repealed Act—section 38(1) or (3) of that Act; or
- (b) for an amount paid by the State under the repealed Criminal Code chapter—section 663E(2) or (3) of that chapter.

187 No recovery if relevant agreement in force

- (1) The State can not, under this subdivision, recover an amount from a person if the State has entered into an agreement with the person for the payment of the amount to the State, and the agreement is still in force.
- (2) The State can not, under this subdivision, recover from a person an amount paid by the State in relation to an order mentioned in section 185(1)(a) or (b) if—
 - (a) the person against whom the order was made (*offender*) and the person in whose favour the order was made (*victim*) have entered into an agreement for the payment of the amount to the victim by the offender; and
 - (b) the agreement is still in force.

Note—

See the relevant subrogation provision for the State's subrogation rights in relation to the agreement.

- (3) Subsection (1) or (2) applies whether the agreement was entered into before or after the commencement.

188 Recovery limited if amount received as subrogated victim

- (1) This section applies if the State—
 - (a) pays an amount in relation to an order mentioned in section 185(1)(a) or (b); and

-
- (b) receives an amount under a relevant subrogation provision in relation to the injury for which the order was made.
- (2) In deciding the amount that the State may seek to recover under this subdivision from the person against whom the order was made, the amount that would otherwise be recoverable under this subdivision must be reduced by the amount received under the relevant subrogation provision.
- (3) If the State receives the amount under the relevant subrogation provision after the person against whom the order was made becomes liable to pay an amount under section 191(4)—
- (a) the person's liability under section 191(4) is reduced by the amount received under the subrogation provision; and
 - (b) the scheme manager must give the person a notice stating the amount the person is now liable to pay to the State (the *new payable amount*); and
 - (c) if the person has already paid more than the new payable amount, the State must refund to the person the excess amount paid.

189 Notice of intended recovery

Before the State may, under this subdivision, recover an amount from a person in relation to an order mentioned in section 185(1), the scheme manager must give the person a notice stating—

- (a) the date on which the order was made; and
- (b) the amount the person was ordered to pay under the order; and
- (c) if the State is intending to recover an amount in relation to an order mentioned in section 185(1)(a) or (b)—
 - (i) the person in whose favour the order was made (the *victim*); and

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- (ii) the amount the State paid the victim in relation to the order; and
 - (iii) the part of the amount ordered to be paid under the order that the State claims the person has not paid to the victim, or to the State as subrogated to the victim's rights and remedies under the order; and
 - (iv) the amount, if any, the State has received under a relevant subrogation provision in relation to the injury for which the order was made; and
- (d) if the State is intending to recover an amount in relation to an order mentioned in section 185(1)(c)—the part of the amount ordered to be paid under the order that the State claims the person has not paid to the State; and
- (e) the amount the State will seek to recover from the person under this subdivision; and
- (f) that the person may—
 - (i) by notice to the scheme manager within 28 days after being given the notice, dispute the amount the State will seek to recover from the person under this subdivision, including, for example, by disputing a claim mentioned in paragraph (c)(iii) or (d); and
 - (ii) if the person does not agree with the scheme manager's decision given after considering the notice of the dispute—apply to QCAT for a review of the scheme manager's decision; and
- (g) that when the amount the State will seek to recover from the person under this subdivision is decided as mentioned in section 191(2), the person is liable to pay the amount to the State under section 191(4); and
- (h) anything else prescribed under a regulation.

190 Disputing amount State may recover

- (1) This section applies if a person who is given a notice under section 189 disputes the amount the State will seek to recover from the person under this subdivision.
- (2) The person may, within 28 days after being given the notice, give notice of the dispute (the *dispute notice*) to the scheme manager.
- (3) The dispute notice must state—
 - (a) the amount the person claims that the State is entitled to recover from the person under this subdivision; and
 - (b) the facts relied on by the person to support the person's claim.
- (4) After considering the dispute notice, the scheme manager must decide the amount the State will seek to recover from the person which may be—
 - (a) the amount stated in the notice given under section 189; or
 - (b) a lower amount.
- (5) The scheme manager must give the person notice of the scheme manager's decision.
- (6) If the amount decided by the scheme manager under subsection (4) is higher than the amount the person claims that the State is entitled to recover from the person under this subdivision, the notice given under subsection (5) must be a QCAT information notice.
- (7) The person may apply, as provided under the QCAT Act, to QCAT for a review of the scheme manager's decision under subsection (4).

191 Offender's liability to pay

- (1) This section applies if—

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- (a) the scheme manager has given a person a notice under section 189 (*recovery notice*); and
 - (b) the amount the State will seek to recover from the person under this subdivision is decided as mentioned in subsection (2).
- (2) The amount the State will seek to recover is—
- (a) if the person has not, for the recovery notice, given the scheme manager a dispute notice under section 190(2) within 28 days after the scheme manager gave the person the recovery notice—the amount stated in the recovery notice; or
 - (b) if the person has, for the recovery notice, given the scheme manager a dispute notice under section 190(2) within 28 days after the scheme manager gave the person the recovery notice—
 - (i) the amount decided by the scheme manager under section 190; or
 - (ii) if the person applies, as provided under the QCAT Act, to QCAT for a review of the scheme manager’s decision under section 190—the amount decided by QCAT under the QCAT Act, or by another entity following an appeal against QCAT’s decision.
- (3) The scheme manager must give the person a notice stating—
- (a) the amount (*payable amount*) the State seeks to recover from the person under this subdivision, decided as mentioned in subsection (2); and
 - (b) that, under subsection (4), the person is liable to pay the stated amount to the State within a stated period of at least 28 days (the *payment period*); and
 - (c) that, if the person does not pay the stated amount within the stated period, the scheme manager may give particulars of the amount to the SPER registrar for

registration under the *State Penalties Enforcement Act 1999*.

- (4) The person is liable to pay the State the payable amount within the payment period.
- (5) If the order mentioned in section 185(1) to which the liability mentioned in subsection (4) relates is amended to reduce the amount the person is ordered to pay under the order, and the reduced amount is less than the payable amount—
 - (a) the person's liability under subsection (4) is reduced to the reduced amount; and
 - (b) the scheme manager must give the person a notice stating the reduced amount and the effect of paragraph (a); and
 - (c) if the person has already paid more than the reduced amount, the State must refund to the person the excess amount paid.
- (6) If the chief executive is, under the *Corrective Services Act 2006*, paid an amount (the ***corrective services amount***) from the offender's prisoner's account, or victim trust fund, under that Act—
 - (a) the person's liability under subsection (4) is reduced by the corrective services amount; and
 - (b) the scheme manager must give the person a notice stating—
 - (i) the effect of paragraph (a); and
 - (ii) the amount the person is liable to pay the State after the reduction.

Note—

See also section 188(3).

192 Dealing with refundable amount if assistance granted to offender

- (1) This section applies if—

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- (a) a person (*offender*) is liable to pay an amount to the State under section 191(4); and
 - (b) the offender's liability under section 191(4) is reduced under section 188(3) or 191(5); and
 - (c) because of the reduction the State must refund an amount (*refundable amount*) to the offender; and
 - (d) under section 95, an amount of assistance granted to the offender (*offset amount*) was taken to be paid to the State for satisfying the offender's liability under section 191(4).
- (2) The State must—
- (a) if paragraph (b) does not apply—pay the refundable amount to the offender as assistance; or
 - (b) if the refundable amount is more than the offset amount—pay the part of the refundable amount equivalent to the offset amount to the offender as assistance, and refund the remaining part of the refundable amount to the offender.

Example—

The offender becomes liable to pay \$10000 to the State under section 191(4). The offender is granted assistance of \$8000 but it is taken, under section 95, to be paid to the State for satisfying the offender's liability under section 191(4) (which is the offset amount).

The State receives \$5000 under a relevant subrogation provision. The person's liability to the State is reduced to \$5000 under section 188(3). The refundable amount is \$3000, which is the difference between what the offender has paid and the offender's new liability to the State. Because the offender was taken, under section 95, to have paid \$8000 to the State for satisfying the offender's liability, the \$3000 must be paid to the offender as assistance.

- (3) If, under subsection (2), an amount is paid to the offender as assistance, the government assessor must—
- (a) decide the component of assistance for which the amount is payable, having regard to—

-
- (i) the components (if any) for which assistance granted to the person was paid or payable under section 95; and
 - (ii) the offender's needs; and
 - (iii) whether the offender has incurred any expenses for which assistance has not already been paid or become payable under section 95; and
 - (iv) anything else the government assessor considers relevant; and
- (b) give the offender a notice stating—
- (i) the decision; and
 - (ii) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (iii) the internal review details for the decision.

193 Registration of unpaid amount under State Penalties Enforcement Act 1999

- (1) If a person who is liable to pay an amount under section 191(4) fails to pay the amount, or pays only a part of the amount, the scheme manager may give particulars of the unpaid amount to the SPER registrar for registration under the *State Penalties Enforcement Act 1999*, section 34 as if—
 - (a) the notice given under section 191(3) were an order of a court fining a person the amount stated in the notice; and
 - (b) the scheme manager were the registrar of that court; and
 - (c) the particulars were the prescribed particulars of the unpaid amount of a fine imposed by that court.
- (2) The SPER registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34 and for that

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purpose that Act applies with all necessary and convenient changes.

- (3) The fine option order provisions and imprisonment provisions do not apply in relation to an amount payable under section 191(4).
- (4) For this section, the person who is liable to pay an amount under section 191(4) fails to pay the amount if—
 - (a) the scheme manager gives the person a notice under section 191(3) about the amount; and
 - (b) the person fails to pay the amount within the period stated in the notice, or a longer period agreed to by the scheme manager.
- (5) If the person's liability to pay an amount under section 191(4) is reduced under section 188(3), or section 191(5) or (6)—
 - (a) the scheme manager must give the SPER registrar notice of the reduction; and
 - (b) the SPER registrar must amend the particulars registered under the *State Penalties Enforcement Act 1999*, section 34 to reflect the reduction.
- (6) In this section—

fine option order provisions means the *State Penalties Enforcement Act 1999*, section 41(c) and the other provisions of that Act relating to fine option orders.

imprisonment provisions means the following—

- (a) the *State Penalties Enforcement Act 1999*, section 52 to the extent it applies to an arrest and imprisonment warrant, and the other provisions of that Act relating to arrest and imprisonment warrants;
- (b) the *State Penalties Enforcement Act 1999*, part 6.

194 Obtaining information from court

- (1) The scheme manager may, for the purpose of the State recovering an amount from a person under this subdivision, ask the registrar of a court for the identifying particulars for the person, including—
 - (a) the person's full name, date of birth and gender; and
 - (b) the person's address or, if the person has been sentenced to a period of imprisonment, the place at which the person is being detained for the period.
- (2) The registrar must give the requested information to the scheme manager if the registrar is satisfied the information will enable the State to recover an amount under this subdivision.
- (3) The registrar may give the requested information by allowing the scheme manager to access an electronic database maintained for the court.
- (4) If the registrar gives the scheme manager access to an electronic database as mentioned in subsection (3), the access to, and the use of, the database is limited to the extent it is connected with the requested information.
- (5) The scheme manager may use information lawfully obtained under this section for recovering an amount under this subdivision.
- (6) In this section—

registrar, in relation to a Magistrates Court, means the clerk of that court.

Division 10 Other transitional provision

195 References to repealed Act

If the context permits, a reference in another Act or document to the *Criminal Offence Victims Act 1995* may be taken to be a reference to—

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- (a) the *Criminal Offence Victims Act 1995* as it continues to apply under this part; or
- (b) this Act.

Chapter 7 Amendment of Acts

Part 1 Amendment of Corrective Services Act 2006

196 Act amended

This part amends the *Corrective Services Act 2006*.

197 Amendment of s 319J (Definitions)

Section 319J, definition *collection entity*, paragraph (a),
'Criminal Offence Victims Act'—

omit, insert—

'Victims of Crime Assistance Act'.

198 Amendment of s 319U (Identification of potential claimants)

Section 319U(1)(c) and (4), 'Criminal Offence Victims
Act'—

omit, insert—

'Victims of Crime Assistance Act'.

199 Amendment of s 319Z (What is an *entity claim*)

- (1) Section 319Z(1), ‘Criminal Offence Victims Act is administered’—
omit, insert—
‘Victims of Crime Assistance Act is administered’.
- (2) Section 319Z(1)(a)(i) to (iv), before ‘Criminal Offence Victims Act’—
insert—
‘repealed’.
- (3) Section 319Z(1)(a)(i), after ‘order made’—
insert—
‘, under section 24 of that Act,’.
- (4) Section 319Z(1)(a)(v), from ‘chapter 65A’ to ‘section 46(2)’—
omit, insert—
‘repealed chapter 65A, section 663C,’.
- (5) Section 319Z(1)(a)(vi), from ‘chapter 65A’ to ‘section 46(2)’—
omit, insert—
‘repealed chapter 65A, section 663D,’.
- (6) Section 319Z—
insert—
(1A) In subsection (1)—
 - (a) a reference to the repealed Criminal Offence Victims Act is a reference to the *Criminal Offence Victims Act 1995*, as in force from time to time before its repeal, and includes that Act as it continues to apply under the Victims of Crime Assistance Act, chapter 6, part 2; and
 - (b) a reference to the Criminal Code, repealed chapter 65A is a reference to the Criminal Code, chapter 65A, as in

[s 200]

force from time to time before its repeal, and includes that chapter as it continued to apply under the repealed *Criminal Offence Victims Act 1995*, section 46(2) or continues to apply under the Victims of Crime Assistance Act, chapter 6, part 2.

- ‘(1B) The chief executive of the department in which the Victims of Crime Assistance Act is administered has, for the State, a claim (*entity claim*) against a person in relation to whom relevant money is awarded (the *relevant person*) if—
- (a) an amount is payable by the relevant person to the State under the Victims of Crime Assistance Act, section 117(4); and
 - (b) the State has not recovered the amount in full from any person.’.
- (7) Section 319Z(4), definition *child support debt*, note, ‘Criminal Offence Victims Act’—
omit, insert—
‘Victims of Crime Assistance Act’.
- (8) Section 319Z(4), definition *compensation order—*
omit.

200 Amendment of s 319ZD (Payment of eligible entity claims from victim trust fund)

Section 319ZD(3)(a), ‘Criminal Offence Victims Act’—
omit, insert—
‘Victims of Crime Assistance Act’.

201 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *Criminal Offence Victims Act—*
omit.
- (2) Schedule 4—

insert—

‘Victims of Crime Assistance Act means the Victims of Crime Assistance Act 2009.’.

Part 2 Amendment of Criminal Code

202 Act amended

This part amends the Criminal Code.

203 Amendment of s 695A (Power to protect victim of violence by prohibiting publication of information about proceedings)

- (1) Section 695A(1)(a)(ii), ‘; and’—

omit, insert—

‘; or’.

- (2) Section 695A(1)(a)—

insert—

‘(iii) hearing and deciding a proceeding for a COVA application relating to an offence involving personal violence; and’.

- (3) Section 695A(7), definition *proceeding for an offence involving personal violence*—

omit.

- (4) Section 695A(7)—

insert—

‘COVA application means an application under the repealed Criminal Offence Victims Act 1995, part 3, as applying under the Victims of Crime Assistance Act 2009, chapter 6, part 2.’.

‘, including harm mentioned in information relating to the victim given to the court under the *Victims of Crime Assistance Act 2009*, section 15’.

209 Replacement of pt 7, div 15

Part 7, division 15—

omit, insert—

‘Division 15 Application of Acts applying to victims

‘256 Victims of Crime Assistance Act 2009 etc.

‘To remove any doubt, it is declared that the *Victims of Crime Assistance Act 2009*, and the repealed *Criminal Offence Victims Act 1995* as it continues to apply under that Act, apply to an offence committed by a child.’.

Part 5 Amendment of Penalties and Sentences Act 1992

210 Act amended

This part amends the *Penalties and Sentences Act 1992*.

211 Amendment of s 9 (Sentencing guidelines)

Section 9(2)(c)(i)—

omit, insert—

- ‘(i) any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under the

[s 212]

Victims of Crime Assistance Act 2009, section 15;
and’.

212 Amendment of s 172A (Distribution of reports)

Section 172A(1)(d), from ‘*Criminal*’ to ‘section 5’—
omit, insert—
‘*Victims of Crime Assistance Act 2009*, section 5’.

213 Amendment of s 172C (Review hearing)

Section 172C(d), from ‘*Criminal*’—
omit, insert—
‘*Victims of Crime Assistance Act 2009*, chapter 2.’.

Part 6 Amendment of Personal Injuries Proceedings Act 2002

214 Act amended

This part amends the *Personal Injuries Proceedings Act 2002*.

215 Amendment of s 6 (Application of Act)

- (1) Section 6(5), after ‘damages’—
insert—
‘or financial assistance’.
- (2) Section 6(5)(c) and (d)—
omit, insert—
‘(c) the *Victims of Crime Assistance Act 2009*;

Schedule 1 Reviewable decisions

section 124

Section	Description of decision
section 34(4)	refusing to give approval to make application for assistance
section 36	refusing an application for the amendment of a grant of assistance
section 36	amending a grant of assistance in a way other than sought by the applicant
section 36	imposing a condition on an amendment of a grant of assistance
section 54(2)	deciding not to extend time for making an application for assistance
section 70	deciding to deal with 2 or more applications together as 1 application
section 72	refusing to approve the making of an application
section 86(2)	decision about component for which assistance is payable
section 87	deferring decision about amount of assistance
section 89(a)	decision about the amount of assistance granted, including the proportion of an assistance limit the amount represents
section 89(a)	imposing a condition on the grant of assistance
section 89(b)	refusing an application for assistance
section 95	decision about component for which unpaid assistance is payable
section 98	decision about the amount of interim assistance granted

Section	Description of decision
section 98	imposing condition on a grant of interim assistance
section 98	refusing an application for interim assistance
section 104	amending a grant of assistance in a way other than sought by the applicant
section 104	imposing a condition on an amendment of a grant of assistance
section 104	refusing an application for the amendment of a grant of assistance
section 106(2)	amendment of assistance if uncounted relevant payment received
section 106(3)	decision about component for which reduced assistance is payable
section 118	decision about component for which assistance is payable
section 179	refusing to grant approval to apply for assistance
section 180	refusing to grant approval to apply for assistance
section 192	decision about component for which assistance is payable

Schedule 2 Amounts and categories for special assistance

schedule 3, definitions *category* and *special assistance*

1 Amount of special assistance payable

- (1) The amount of special assistance payable in relation to an act of violence is as follows—
 - (a) generally—an amount between the minimum amount and maximum amount stated for the act in section 2 having regard to its category;
 - (b) if the act is a category B, C or D act of violence and category A circumstances apply to the primary victim of the act—an amount between the minimum amount and maximum amount stated in section 2 for a category A act of violence;
 - (c) if the act is a category C or D act of violence and category B circumstances apply to the primary victim of the act—an amount between the minimum amount and maximum amount stated in section 2 for a category B act of violence;
 - (d) if the act is a category D act of violence and category C circumstances apply to the primary victim of the act—an amount between the minimum amount and maximum amount stated in section 2 for a category C act of violence.
- (2) If an act of violence involves a series of related crimes, the special assistance payable in relation to the act of violence must be worked out, and is payable only, in relation to the crime in the series that is of the highest category.

Note—

Section 4 states the order of the categories of acts of violence.

- (3) In this section—

category A circumstances, for a primary victim of a category B, C or D act of violence, means the victim has, as a direct result of the act—

- (a) suffered a very serious injury; or
- (b) been infected with a very serious disease.

category B circumstances, for a primary victim of a category C or D act of violence, means—

- (a) the victim has, as a direct result of the act—
 - (i) suffered a serious injury; or
 - (ii) been a victim of a series of related crimes; or
 - (iii) suffered a deprivation of liberty; and
- (b) when the act of violence was committed or, if the act of violence involved a series of related crimes, when 1 or more of the acts were committed, the victim was—
 - (i) a child under 16 years; or
 - (ii) a person over 60 years; or
 - (iii) a person with impaired capacity.

category C circumstances, for a primary victim of a category D act of violence, means—

- (a) the victim has, as a direct result of the act, been a victim of a series of related crimes; or
- (b) the act of violence does not involve a series of related crimes and when the act of violence was committed, the victim was—
 - (i) a child under 16 years; or
 - (ii) a person over 60 years; or
 - (iii) a person with impaired capacity.

serious injury means an injury involving 2 or more of the kinds of injury mentioned in section 27(1)(a) to (f).

very serious disease means a disease that is life threatening, and includes human immunodeficiency virus (HIV).

very serious injury—

- 1 A ***very serious injury*** is—
 - (a) a bodily injury that—
 - (i) has resulted in a loss of a bodily function (including a loss of capacity to have children), impairment of a bodily function (including a reduction of capacity to have children), or disfigurement; and
 - (ii) has resulted in a permanent and significant reduction in quality of life or is otherwise very serious; or
 - (b) a bodily injury that has resulted in the loss of a foetus; or
 - (c) a mental illness or disorder, or intellectual impairment, that has resulted in a permanent and significant reduction in quality of life or is otherwise very serious.
- 2 However, a bodily injury mentioned in paragraph 1(a), or a mental illness or disorder or intellectual impairment mentioned in paragraph 1(c), is not a very serious injury if the injury, or illness or disorder or impairment, would stop being very serious if it were subjected to medical or other treatment, including, for example, because the reduction in quality of life is alleviated.

2 Minimum and maximum amounts

The minimum and maximum amounts of special assistance payable in relation to an act of violence are as follows—

Act of violence	Minimum amount	Maximum amount
category A act of violence	\$5000	\$10000
category B act of violence	\$1301	\$3500

Act of violence	Minimum amount	Maximum amount
category C act of violence	\$651	\$1300
category D act of violence	\$130	\$650

3 Categories of acts of violence

- (1) A *category A act of violence* is an act of violence—
- (a) involving—
 - (i) attempted murder; or
 - (ii) rape; or
 - (iii) incest with a person under the age of 16 or with an impaired capacity; or
 - (iv) maintaining a sexual relationship with a person under the age of 16; or
 - (b) prescribed under a temporary regulation as a category A act of violence.
- (2) A *category B act of violence* is an act of violence—
- (a) that is not a category A act of violence and involves—
 - (i) an attempt to commit a category A act of violence; or
 - (ii) a sexual offence; or
 - (iii) grievous bodily harm; or
 - (iv) an offence described in the Criminal Code, section 317; or

Editor's note—

Criminal Code, section 317 (Acts intended to cause grievous bodily harm and other malicious acts)

 - (v) robbery whilst armed or with personal violence or in company; or
 - (vi) burglary with violence; or

(vii) torture; or

(viii) kidnapping; or

(ix) an offence described in the Criminal Code, section 316; or

Editor's note—

Criminal Code, section 316 (Stupefying in order to commit indictable offence)

(b) prescribed as a category B act of violence under a temporary regulation.

(3) A **category C act of violence** is an act of violence—

(a) that is not a category A or B act of violence and involves—

(i) an attempt to commit a category B act of violence; or

(ii) serious assault as described in the Criminal Code, section 340; or

(iii) robbery; or

(iv) unlawful wounding; or

(v) assault occasioning bodily harm, including whilst armed or in company; or

(b) prescribed as a category C act of violence under a temporary regulation.

(4) A **category D act of violence** is an act of violence that is not a category A, B or C act of violence, including—

(a) an attempt to commit a category C act of violence; and

(b) an act of violence involving any of the following if the act is not a category A, B or C act of violence—

(i) assault;

(ii) unlawful stalking;

(iii) deprivation of liberty.

4 Order of categories of act of violence

For this Act, the descending order of categories of acts of violence is as follows—

- (a) category A act of violence;
- (b) category B act of violence;
- (c) category C act of violence;
- (d) category D act of violence.

Schedule 3 Dictionary

section 4

act of violence see section 25.

administrator, for a person with impaired capacity, means an administrator appointed for the person under the *Guardianship and Administration Act 2000*.

appeal includes an application for leave to appeal.

applicant, for chapter 3, means a person who has applied for financial assistance under the scheme.

appropriately qualified, for functions and powers, includes having the qualifications, experience or standing appropriate to perform the functions and exercise the powers.

Example of standing—

a person's classification level in the public service

approved carer, of a child, means—

- (a) an approved foster carer under the *Child Protection Act 1999*, schedule 3, in whose care the child is placed under section 82 of that Act; or
- (b) an approved kinship carer of the child under the *Child Protection Act 1999*, schedule 3.

assistance, for chapter 3, means financial assistance under the scheme.

assistance limit means a limit under this Act on—

- (a) the total combined amount of financial assistance under the scheme that may be granted to a particular kind of victim of an act of violence and that, if there are 2 or more victims of that kind, must be shared between them; or
- (b) the total combined amount of a component of financial assistance under the scheme that may be granted to a particular kind of victim of an act of violence and that, if

there are 2 or more victims of that kind, must be shared between them.

category, of an act of violence, means the category of the act of violence under schedule 2, section 3.

category A act of violence see schedule 2, section 3(1).

category B act of violence see schedule 2, section 3(2).

category C act of violence see schedule 2, section 3(3).

category D act of violence see schedule 2, section 3(4).

chief executive (child protection) means the chief executive of the department in which the *Child Protection Act 1999* is administered.

chief executive (corrective services) means the chief executive of the department in which the *Corrective Services Act 2006* is administered.

child, other than in the definition *family member*, means a person under the age of 18.

commencement, for chapter 6, part 2, see section 150.

compensation, for chapter 6, part 2, see section 150.

component, in relation to financial assistance granted or payable under the scheme, means the expenses, loss of earnings or other component for which the assistance is granted or payable.

convicting a person includes a court finding the person guilty, or the person pleading guilty, whether or not a conviction is recorded.

crime see section 25.

criminal activity means an activity of a criminal nature.

criminal history, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

departmental employee means a public service employee of the department.

dependant, of a person, means—

- (a) a person who is entirely or substantially dependant on the person's income; or
- (b) if the person has died as a result of an act of violence or crime—
 - (i) a person who was entirely or substantially dependant on the person's income when the person died; or
 - (ii) a person who would have been entirely or substantially dependant on the person's income if the person had not died, including a child of the person who is born after the person's death.

diversionary program means—

- (a) mediation under the *Dispute Resolution Centres Act 1990*, part 4; or
- (b) the youth justice conference process under the *Juvenile Justice Act 1992*, part 3.

enduring power of attorney means an enduring power of attorney under the *Powers of Attorney Act 1998*.

exceptional circumstances, for chapter 3, see section 28.

family member, of a person, means—

- (a) the person's spouse; or
- (b) the person's child; or
- (c) the person's parent or step-parent; or
- (d) the person's brother, sister, stepbrother or stepsister; or
- (e) a person who, under Aboriginal tradition or Island custom is regarded as a person mentioned in paragraph (a), (b), (c) or (d).

funeral expense assistance, for an act of violence, means financial assistance under the scheme for funeral expenses incurred, or reasonably likely to be incurred, for the funeral of a primary victim of the act of violence.

government assessor—

- (a) generally, means a government assessor appointed under section 128; and
- (b) for chapter 3, in relation to an application for financial assistance under the scheme—see section 30.

Note—

See also section 127(7).

government entity means—

- (a) a government entity within the meaning given by the *Public Service Act 2008*, section 24; or
- (b) an investigatory agency or prosecuting agency.

guardian, for a person with impaired capacity, means a guardian appointed for the person under the *Guardianship and Administration Act 2000*.

harm means physical, mental or emotional harm.

health practitioner means a person registered under any of the following—

- *Chiropractors Registration Act 2001*, part 3
- *Dental Practitioners Registration Act 2001*, part 3
- *Medical Practitioners Registration Act 2001*, part 3
- *Occupational Therapists Registration Act 2001*, part 3
- *Optometrists Registration Act 2001*, part 3
- *Osteopaths Registration Act 2001*, part 3
- *Physiotherapists Registration Act 2001*, part 3
- *Podiatrists Registration Act 2001*, part 3
- *Psychologists Registration Act 2001*, part 3
- *Speech Pathologists Registration Act 2001*, part 3.

impaired capacity see the *Guardianship and Administration Act 2000*, schedule 4.

incidental travel, for an injury, means travel from a person's place of residence or place of work to another place, or vice versa—

- (a) if the travel is for obtaining counselling services or medical treatment for the injury and—
 - (i) the distance reasonably travelled from the person's place of residence or place of work to the other place, or vice versa, is at least 20km, and the counselling services or medical treatment is not reasonably available nearer than the other place; or
 - (ii) the total distance reasonably travelled between the person's place of residence or place of work and the other place (in either direction) during a period of 7 consecutive days is 150km, and the counselling services or medical treatment is not reasonably available nearer than the other place; or
- (b) if the travel is for undergoing an examination under section 73 and the distance reasonably travelled from the person's place of residence or place of work to the other place, or vice versa, is at least 20km.

incurs, in relation to expenses, for chapter 3, see section 29.

injury—

- (a) for chapter 3—see section 27; or
- (b) for chapter 6, part 2—see section 150.

internal review details, for a decision about a person, means the following—

- (a) that the person has a right to have the decision reviewed by the scheme manager under section 124;
- (b) how, and the period within which, the person may apply for the review.

investigatory agency means—

- (a) the police service; or

- (b) another department, office or agency of the State, or a statutory body (other than a court or judicial tribunal), that has a function to investigate crimes.

law practice means law practice within the meaning of the *Legal Profession Act 2007*, schedule 2, definition *law practice*, paragraph (b).

legal costs means amounts a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including—

- (a) interest on the amounts; and
- (b) disbursements other than for obtaining a report from a counsellor or health practitioner; and
- (c) interest on disbursements other than disbursements for obtaining a report from a counsellor or health practitioner.

less serious act of violence means an act of violence that is not a more serious act of violence.

medical treatment includes—

- (a) treatment by a health practitioner; and
- (b) treatment received in a hospital.

mental illness or disorder means an illness or disorder that is of a cognitive, neurological or psychiatric nature.

more serious act of violence means—

- (a) an act of violence involving murder, manslaughter or dangerous driving causing death; or
- (b) another act of violence prescribed as a more serious act of violence under a temporary regulation.

notice, other than in chapter 2, means written notice.

official means—

- (a) the chief executive; or
- (b) the scheme manager; or
- (c) a government assessor; or

- (d) a departmental employee performing a function or exercising a power under chapter 3; or
- (e) the victim services coordinator; or
- (f) a person acting under the authority or direction of the chief executive.

parent—

- 1 ***Parent***, of a child, includes—
 - (a) a step-parent of the child; or
 - (b) an approved carer of the child; or
 - (c) a person in whose favour a parenting order is in force under the *Family Law Act 1975* (Cwlth); or
 - (d) a person who otherwise has the right and responsibility to make decisions about the child's daily care.
- 2 However, a person standing in the place of a parent of a child on a temporary basis, or a person granted a temporary order in relation to a child, is not a parent of the child.
- 3 Also, parent of a child does not include the chief executive (child protection).

Note—

However, see section 51(3) for who is the parent of a child for making an application for financial assistance under the scheme for the child.

parent secondary victim see section 26.

personal offence, for chapter 6, part 2, see section 150.

police commissioner means the commissioner of the police service.

prescribed offence see section 25(8).

prescribed person—

- 1 ***Prescribed person*** means—
 - (a) a government entity; or

(b) an officer, member or employee of a government entity.

2 However, a person is not a prescribed person if, or to the extent, the person is dealing with a victim in the person's capacity as a legal representative of a person accused of committing a crime against the victim.

previous prescribed offence, for chapter 6, part 2, see section 150.

primary victim see section 26.

prosecuting agency means—

- (a) the office of the director of public prosecutions; or
- (b) the police service; or
- (c) an entity authorised to bring proceedings for an offence against an Act.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

reasonable counselling expenses means expenses for counselling services that are reasonable, having regard to the table of costs.

reasonable incidental travel expenses means expenses for incidental travel for an injury that are reasonable, having regard to the table of costs.

reasonable medical expenses means expenses for medical treatment or ambulance services that are reasonable, having regard to the table of costs.

reasonable report expenses means expenses for obtaining a report from a counsellor or health practitioner that are reasonable, having regard to the table of costs.

reasonably means on grounds that are reasonable in the circumstances.

related victim see section 26.

relevant event, for chapter 6, part 2, see section 150.

relevant offence, for an act of violence, means an offence arising out of substantially the same facts and circumstances as those constituting the act of violence.

relevant payment, for an act of violence—

- (a) means any payment made or to be made to a person in relation to the act of violence whether as damages, compensation, restitution, financial assistance, rebate, superannuation benefit, payment of an insurance claim, or otherwise; and
- (b) includes an amount paid or payable in relation to the act of violence under—
 - (i) the *Motor Accident Insurance Act 1994*; or
 - (ii) the *Police Service Administration Act 1990*, section 10.8; or
 - (iii) the *Workers' Compensation Act*; or
 - (iv) a scheme or arrangement under another Act or law, including an Act that has been repealed and a law of the Commonwealth, another State or a foreign country; or
 - (v) the *Corrective Services Act 2006*, chapter 6, part 12B; or
 - (vi) the *Health Insurance Act 1973* (Cwlth), part 2; or
 - (vii) a superannuation scheme; or
 - (viii) an insurance policy, including, for example, life insurance and private health insurance; or
 - (ix) an agreement reached following mediation under the *Dispute Resolution Centres Act 1990* between a person who allegedly committed a relevant offence for an act of violence and a victim of the act.

relevant person—

- 1 The **relevant person** for giving consent in relation to an applicant for financial assistance under the scheme is—
 - (a) generally—the applicant; or

- (b) for a child, if the application was made under section 51(2)(a) or (c)—the child’s parent; or
- (c) for an adult with impaired capacity for giving the consent—
 - (i) if the adult has a guardian for a legal matter—the guardian; or
 - (ii) if the adult does not have a guardian for a legal matter but has an administrator—the administrator; or
 - (iii) if the adult does not have a guardian for a legal matter or an administrator—an attorney appointed by the adult under an enduring power of attorney; or
 - (iv) if the adult does not have a guardian for legal matters or an administrator and has not appointed a person under an enduring power of attorney—a member of the adult’s support network.

2 For paragraph 1(b)—

- (a) if a person is granted guardianship of a child under a child protection order under the *Child Protection Act 1999*—the reference to the child’s parent in the paragraph is taken to be a reference to that person; and
- (b) if a person has the right and responsibility to make decisions about a child’s daily care under a decision or order of a federal court or a court of a State, other than a temporary order—the reference to the child’s parent in the paragraph is taken to be a reference to that person.

relevant subrogation provision, for chapter 6, part 2, division 9, subdivision 2, see section 186.

remaining pool amount, for an act of violence, means—

- (a) for financial assistance under the scheme payable to a victim of the act—the assistance limit for victims of the

same kind less any amount of assistance already paid to victims of the same kind in relation to the act; and

- (b) for a component of financial assistance under the scheme payable to a victim of the act—the assistance limit for the component for victims of the same kind less any amounts already paid for the component to victims of the same kind in relation to the act.

repealed Act, for chapter 6, part 2, see section 150.

repealed Criminal Code chapter, for chapter 6, part 2, see section 150.

repealed legislation, for chapter 6, part 2, see section 150.

scheme manager means the manager of victims assistance appointed under section 127.

secondary victim see section 26.

sentencing court means a court before which an offender is sentenced.

series of related crimes see section 25.

sexual offence means an offence of a sexual nature, and includes the following—

- (a) rape;
- (b) assault with intent to commit rape;
- (c) an offence against the Criminal Code, section 352.

special assistance, in relation to an act of violence, means special assistance of the amount stated in schedule 2, section 1 for the act.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

SPER registrar means the registrar under the *State Penalties Enforcement Act 1999*.

table of costs see section 132.

temporary order means—

- (a) a temporary assessment order or a court assessment order under the *Child Protection Act 1999*; or
- (b) an order of a court of another State that is of similar nature to an order mentioned in paragraph (a).

temporary regulation means a regulation made under section 147.

the principles means the principles of justice for victims stated in chapter 2, part 2.

the scheme means the scheme for the grant of financial assistance under chapter 3.

trial includes a proceeding in which a person is sentenced.

victim—

- (a) generally—see section 5; or
- (b) for chapter 3—means a primary victim, secondary victim or related victim of an act of violence.

victim assistance, for an act of violence, means financial assistance under the scheme for a person in the person's capacity as a primary victim, secondary victim or related victim of the act of violence.

victims assistance unit means the unit of the department in which the scheme is administered.

victim services coordinator means the victim services coordinator appointed under section 138.

witness, an act of violence or crime, includes hearing the act or crime being committed.

witness secondary victim see section 26.

Workers' Compensation Act means the *Workers' Compensation and Rehabilitation Act 2003*.

workers' compensation application means an application for compensation under the Workers' Compensation Act.

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