



Queensland

Victims of Crime Assistance and Other Legislation Amendment Act 2017

Act No. 8 of 2017

An Act to amend the Criminal Code, the Evidence Act 1977, the Penalties and Sentences Act 1992, the Victims of Crime Assistance Act 2009 and the Youth Justice Act 1992, and to amend the legislation mentioned in schedule 1, for particular purposes

[Assented to 30 March 2017]



Queensland

Victims of Crime Assistance and Other Legislation Amendment Act 2017

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Victims of Crime Assistance and Other Legislation Amendment Act 2017*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Criminal Code

3 Code amended

This part amends the Criminal Code.

Note—

See also the amendments in schedule 1.

4 Insertion of new s 590APA

After section 590AP—

insert—

590APA Protected counselling communications

- (1) The prosecution is not, for a relevant proceeding, required under this chapter division to give the accused person a copy of a document if the prosecution reasonably considers the document is a protected counselling communication.
- (2) Subsection (1) does not apply if—

[s 4]

- (a) for a relevant proceeding to which the *Evidence Act 1977*, part 2, division 2A, subdivision 3 applies—the document is produced by leave of the court under that subdivision; or
 - (b) the counselled person to whom the protected counselling communication relates has consented to the production of the document in the proceeding under the *Evidence Act 1977*, section 14I; or
 - (c) the document may be produced under the *Evidence Act 1977*, section 14J.
- (3) If the prosecution reasonably considers subsection (1) applies to a document and, apart from this section, the prosecution would have to give the accused person a copy of the document, the prosecution must give the accused person a written notice stating—
- (a) that the prosecution is in possession of a document that it considers is a protected counselling communication the disclosure of which is prevented by the *Evidence Act 1977*, part 2, division 2A; and
 - (b) a description of the nature and particulars of the document (other than particulars disclosing the content of the protected counselling communication); and
- Example of particulars—*
- the fact the document contains a counsellor's notes, the identity of the counsellor and the date the notes were made
- (c) that the counselled person to whom the document relates has not consented to the production of the document; and
 - (d) if the relevant proceeding is a proceeding to which the *Evidence Act 1977*, part 2,

division 2A, subdivision 3 applies—that the accused person may apply to the court for leave under that subdivision enabling the document to be produced.

(4) In this section—

counselled person see the *Evidence Act 1977*, section 14B.

protected counselling communication see the *Evidence Act 1977*, section 14A.

5 Insertion of new pt 9, ch 98

Part 9—

insert—

Chapter 98 Transitional provision for Victims of Crime Assistance and Other Legislation Amendment Act 2017

740 Protected counselling communications

(1) Section 590APA applies to a proceeding for an offence only if an originating step for the proceeding is taken on or after the commencement, whether the act or omission constituting the offence happened before or after the commencement.

(2) In this section—

originating step, for a proceeding, means—

[s 6]

- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382.

Part 3

Amendment of Evidence Act 1977

6 Act amended

This part amends the *Evidence Act 1977*.

Note—

See also the amendments in schedule 1.

7 Insertion of new pt 2, div 2A

Part 2—

insert—

Division 2A Sexual assault counselling privilege

Subdivision 1 Preliminary

14A Meaning of *protected counselling communication*

- (1) A *protected counselling communication* is an oral or written communication made in confidence—

-
- (a) by a counselled person to a counsellor; or
 - (b) by a counsellor to or about a counselled person to further the counselling process; or
 - (c) about a counselled person by a parent, carer or other support person who is present to facilitate communication between the counselled person and a counsellor or to otherwise further the counselling process.
- (2) However, a communication made to or by a health practitioner about a physical examination of the counselled person conducted in the course of an investigation into an alleged sexual assault offence is not a ***protected counselling communication***.
 - (3) For subsection (1) it does not matter whether the communication was made—
 - (a) before or after the act or omission constituting the sexual assault offence committed or allegedly committed against the counselled person occurred; or
 - (b) in connection with the sexual assault offence, or a condition arising from the sexual assault offence, committed or allegedly committed against the counselled person.
 - (4) A reference in this division to a protected counselling communication includes a reference to—
 - (a) a document to the extent it contains a protected counselling communication; or
 - (b) evidence to the extent it discloses a protected counselling communication.
 - (5) In this section—

health practitioner means a person registered under the Health Practitioner Regulation National

[s 7]

Law to practise a health profession.

14B Other definitions for division

In this division—

counsel a person means—

- (a) to listen to and give verbal or other support, help or encouragement to the person, whether one-on-one or in a group; or
- (b) to advise, give therapy to or treat the person, whether one-on-one or in a group.

counselled person means a person who—

- (a) is being, or has at any time been, counselled by a counsellor; and
- (b) is, or has at any time been, a victim or alleged victim of a sexual assault offence.

counsellor means a person who—

- (a) has undertaken training or study, or has experience, that is relevant to the process of counselling other persons; and
- (b) in the course of the person's paid or voluntary employment, other than as a religious representative, counsels another person.

essential person, for a proceeding, means any of the following persons—

- (a) a Crown law officer or a person authorised by a Crown law officer;
- (b) the prosecutor;
- (c) a witness giving evidence;
- (d) a person who a witness is entitled to have present in court under section 21A(2)(d) or

21AV or the *Criminal Law (Sexual Offences) Act 1978*, section 5(1)(f);

- (e) a person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the proceeding;
- (f) a person who applies to the court to be present and whose presence, in the court's opinion—
 - (i) would serve a proper interest of the person; and
 - (ii) would not be prejudicial to a counselled person's interests.

religious representative means a person who—

- (a) is a member of—
 - (i) an organised religion; or
 - (ii) a religious group, even if the group is not part of, or does not consider itself to be part of, an organised religion; and
- (b) holds a position in the religion or group that allows the person to hold himself or herself out as a representative of the religion or group.

sexual assault offence means—

- (a) an offence of a sexual nature, including, for example—
 - (i) an offence against a provision of the Criminal Code, chapter 32; and
 - (ii) an offence against a provision of the Criminal Code, chapter 22, other than section 224, 225 or 226; or
- (b) an act or omission that would constitute an offence mentioned in paragraph (a) if the act or omission had occurred—

[s 7]

- (i) in Queensland; or
- (ii) after the offence provision commenced; or
- (c) an alleged offence mentioned in paragraph (a).

Subdivision 2 Committal and bail proceedings

14C Application of subdivision

This subdivision applies to—

- (a) a committal proceeding; or
- (b) a proceeding under the *Bail Act 1980* relating to bail for an offence, including a proceeding relating to the remand of a person in custody.

14D Sexual assault counselling privilege

A person can not do any of the following things in connection with the proceeding—

- (a) compel, whether by subpoena or otherwise, another person to produce a protected counselling communication to a court;
- (b) produce to a court, adduce evidence of or otherwise use, a protected counselling communication;
- (c) otherwise disclose, inspect or copy a protected counselling communication.

Subdivision 3 Other proceedings

14E Application of subdivision

This subdivision applies to a proceeding—

- (a) for the trial or sentencing of a person for an offence, other than a proceeding to which subdivision 2 applies; or
- (b) relating to a domestic violence order under the *Domestic and Family Violence Protection Act 2012*.

14F Sexual assault counselling privilege

A person can not do any of the following things in connection with the proceeding, other than with the leave of the court hearing the proceeding—

- (a) compel, whether by subpoena or otherwise, another person to produce a protected counselling communication to a court;
- (b) produce to a court, adduce evidence of or otherwise use, a protected counselling communication;
- (c) otherwise disclose, inspect or copy a protected counselling communication.

14G Application for leave

- (1) A party to the proceeding may apply for leave of the court under this subdivision.
- (2) As soon as reasonably practicable after the application is made, the applicant must give the following persons a notice complying with subsection (3)—
 - (a) each other party to the proceeding;
 - (b) if the counsellor to whom the protected counselling communication relates is not a party to the proceeding—the counsellor.

[s 7]

- (3) For subsection (2), the notice is a written notice stating—
 - (a) an application for leave under this subdivision has been made in relation to a protected counselling communication; and
 - (b) a description of the nature and particulars of the protected counselling communication (other than particulars disclosing the content of the communication); and
 - (c) if the counsellor or counselled person to whom the communication relates is not a party to the proceeding—that the counsellor or counselled person may appear in the proceeding under section 14L.
- (4) If the counselled person to whom the protected counselling communication relates is not a party to the proceeding, the prosecutor must, as soon as practicable after a notice is given under subsection (2), give the counselled person a copy of the notice.
- (5) The court can not decide the application until at least 14 days after subsection (2) is complied with.
- (6) However, the court may waive the requirement to comply with subsection (2) if, in relation to the proceeding—
 - (a) notice has been given of a previous application for leave under this subdivision relating to the same protected counselling communication; or
 - (b) the counselled person to whom the protected counselling communication relates has consented to the waiver of the requirement; or
 - (c) the court is satisfied—

- (i) exceptional circumstances exist that require the waiver of the requirement; and
 - (ii) it is in the public interest to waive the requirement.
- (7) For subsection (6)(b), the consent must be given—
- (a) in writing; or
 - (b) if the counselled person can not give written consent because of a disability—orally.

14H Deciding whether to grant leave

- (1) The court can not grant an application for leave under this subdivision unless the court is satisfied that—
- (a) the protected counselling communication the subject of the application will, by itself or having regard to other documents or evidence produced or adduced by the applicant, have substantial probative value; and
 - (b) other documents or evidence concerning the matters to which the communication relates are not available; and
 - (c) the public interest in admitting the communication into evidence substantially outweighs the public interest in—
 - (i) preserving the confidentiality of the communication; and
 - (ii) protecting the counselled person from harm.
- (2) In deciding the matter mentioned in subsection (1)(c), the court must have regard to the following matters—

[s 7]

- (a) the need to encourage victims of sexual assault offences to seek counselling;
 - (b) that the effectiveness of counselling is likely to be dependent on maintaining the confidentiality of the counselling relationship;
 - (c) the public interest in ensuring victims of sexual assault offences receive effective counselling;
 - (d) that disclosure of the protected counselling communication is likely to damage the relationship between the counsellor and the counselled person;
 - (e) whether disclosure of the communication is sought on the basis of a discriminatory belief or bias;
 - (f) that the disclosure of the communication is likely to infringe a reasonable expectation of privacy;
 - (g) the extent to which the communication is necessary to enable the accused person to make a full defence;
 - (h) any other matter the court considers relevant.
- (3) For deciding the application, the court may consider a written or oral statement made to the court by the counselled person outlining the harm the person is likely to suffer if the application is granted.
- (4) If an oral statement is made by the counselled person under subsection (3), while the statement is being made the court must exclude from the room in which the court is sitting—
- (a) anyone who is not an essential person; and
 - (b) an essential person, if—

- (i) the counselled person asks that the essential person be excluded; and
 - (ii) the court considers excluding the essential person would serve a proper interest of the counselled person.
- (5) The court must not disclose, or make available to a party to the proceeding, a statement made to the court under subsection (3).
- (6) The court must state its reasons for granting or refusing to grant the application.
- (7) If the proceeding is a trial by jury, the court must hear and decide the application in the absence of the jury.
- (8) In this section—
harm includes physical, emotional or psychological harm, financial loss, stress or shock, and damage to reputation.

Subdivision 4 Waiver or loss of privilege

14I Waiver of privilege by counselled person

- (1) This section applies, in relation to a proceeding to which subdivision 2 or 3 applies, if a document or evidence is a protected counselling communication.
- (2) This division does not prevent the document being produced, or the evidence being adduced, if the counselled person to whom the protected counselling communication relates—
 - (a) is 16 years or more; and
 - (b) consents to the production of the document or adducing of the evidence; and

[s 7]

- (c) is not a person with an impaired capacity for giving the consent.
- (3) For subsection (2)(b), the consent must—
 - (a) expressly state the counselled person—
 - (i) consents to the production of a stated document, or the adducing of stated evidence, that is a protected counselling communication relating to the person; and
 - (ii) has had an opportunity to seek legal advice about giving the consent; and
 - (b) be given—
 - (i) in writing; or
 - (ii) if the counselled person can not give written consent because of a disability—orally.
- (4) To remove any doubt, it is declared that subsection (3)(b) does not require the office of the director of public prosecutions to give the counselled person legal advice.
- (5) In this section—

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

14J Loss of privilege if communication made in commission of offence

This division does not apply to a document or evidence that is a protected counselling communication if the communication was made in the commission of an offence.

Subdivision 5 General provisions

14K Court to inform of rights

- (1) This section applies in relation to a proceeding to which subdivision 2 or 3 applies if it appears to the court a person may have grounds for—
 - (a) applying for leave under subdivision 3; or
 - (b) objecting to the production of a document, or the adducing of evidence, that is a protected counselling communication.
- (2) The court must satisfy itself the person is aware of the relevant provisions of this division and has had an opportunity to seek legal advice.
- (3) If the proceeding is a trial by jury, the court must satisfy itself of the matter under subsection (2) in the absence of the jury.
- (4) To remove any doubt, it is declared that subsection (2) does not require the office of the director of public prosecutions to give the person legal advice.

14L Standing of counsellor and counselled person

- (1) This section applies if—
 - (a) a counselled person or counsellor is not a party to a proceeding to which subdivision 2 or 3 applies; and
 - (b) the court is deciding whether a document or evidence relating to the counselled person or counsellor is a protected counselling communication.
- (2) The counselled person or counsellor may appear in the proceeding, including any appeal.

[s 7]

14M Deciding whether document or evidence is protected counselling communication

- (1) This section applies if a question arises under this division in relation to a proceeding to which subdivision 2 or 3 applies.
- (2) The court may consider a document or evidence to decide whether it is a protected counselling communication.
- (3) While the court is considering the document or evidence, the court must exclude from the room in which it is sitting—
 - (a) anyone who is not an essential person; and
 - (b) an essential person, if—
 - (i) the counselled person to whom the document or evidence relates asks that the essential person be excluded; and
 - (ii) the court considers excluding the essential person would serve a proper interest of the counselled person.
- (4) The court may make any other order it thinks fit to facilitate its consideration of the document or evidence.
- (5) This section applies despite sections 14D and 14F.

14N Ancillary orders

- (1) A court may make any order it considers appropriate to limit the extent of the harm likely to be caused to the counselled person by the production of a document, or the adducing of evidence, that is a protected counselling communication relating to the person.

Example—

an order that all or part of the evidence be heard, or the document produced, in camera

(2) In this section—

harm see section 14H.

14O Application of division despite Justices Act 1886

To the extent of an inconsistency, this division applies despite a provision of the *Justices Act 1886*.

14P Application of privilege in civil proceedings

(1) This section applies if, in a proceeding to which subdivision 2 or 3 applies, a protected counselling communication is privileged under this division.

Note—

A protected counselling communication is not privileged under this division if—

(a) leave is granted under subdivision 3 in relation to it; or

(b) the privilege is waived or lost under subdivision 4.

(2) A person can not produce a document containing, or adduce evidence of, the protected counselling communication in a civil proceeding arising from the act or omission to which the proceeding mentioned in subsection (1) relates.

8 Amendment of s 21A (Evidence of special witnesses)

(1) Section 21A(1)—

insert—

sexual offence means an offence of a sexual nature, including, for example—

[s 9]

- (a) an offence against a provision of the Criminal Code, chapter 32; and
 - (b) an offence against a provision of the Criminal Code, chapter 22, other than section 224, 225 or 226.
- (2) Section 21A(1), definition *special witness*—
insert—
- (e) a person—
 - (i) against whom a sexual offence has been, or is alleged to have been, committed by another person; and
 - (ii) who is to give evidence about the commission of an offence by the other person.

9 Insertion of new pt 9, div 9

Part 9—

insert—

Division 9 Victims of Crime Assistance and Other Legislation Amendment Act 2017

153 Sexual assault counselling privilege

- (1) Part 2, division 2A applies to a proceeding for an offence, or a domestic violence proceeding, only if an originating step for the proceeding is taken on or after the commencement.
- (2) Subsection (1) applies—

-
- (a) for an offence—whether the act or omission constituting the offence happened before or after the commencement; or
- (b) for a domestic violence proceeding—whether the ground for making the domestic violence order the subject of the proceeding arose before or after the commencement.
- (3) In this section—
- domestic violence proceeding*** means a proceeding relating to a domestic violence order under the *Domestic and Family Violence Protection Act 2012*.
- originating step***, for a proceeding for an offence or a domestic violence proceeding, means—
- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 382; or
- (d) the making of an application for, or the making of a decision by a court to make, the domestic violence order the subject of the proceeding.

10 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

counsel, a person for part 2, division 2A, see section 14B.

[s 11]

counselled person, for part 2, division 2A, see section 14B.

counsellor, for part 2, division 2A, see section 14B.

essential person, for a proceeding for part 2, division 2A, see section 14B.

protected counselling communication, for part 2, division 2A, see section 14A.

religious representative, for part 2, division 2A, see section 14B.

sexual assault offence, for part 2, division 2A, see section 14B.

Part 4 **Amendment of Penalties and Sentences Act 1992**

11 Act amended

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

Note—

See also the amendments in schedule 1.

12 Insertion of new pt 10B

After part 10A—

insert—

Part 10B **Victim impact statements**

179I Definitions for part

In this part—

harm means physical, mental or emotional harm.

victim see the *Victims of Crime Assistance Act 2009*, section 5, including a victim mentioned in section 5(3) of that Act.

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.

179J Application of part

This part applies for sentencing an offender for an offence that is a crime within the meaning of the *Victims of Crime Assistance Act 2009*, section 6.

179K Giving details of impact of crime on victim during sentencing

- (1) A victim of the 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 sentencing court.

Notes—

- 1 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.

[s 12]

- 2 See also the victim's rights set out in the victims charter under the *Victims of Crime Assistance Act 2009*.
- (2) The prosecutor may continue with the sentencing proceeding without having permitted the victim to give details of the harm if it is reasonable to do so in the circumstances, having regard to the following matters—
- (a) the interests of justice;
 - (b) whether permitting the details of the harm to be given would unreasonably delay the sentencing of the offender;
 - (c) anything else that may adversely affect the reasonableness or practicality of permitting details of the harm to be given.
- (3) If details of the harm are given to the prosecutor, the prosecutor must—
- (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 under section 179L.

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) section 9(2)(c)(i); or
 - (b) if the offender is a child—the *Youth Justice Act 1992*, section 150(1)(h).
- (4) In deciding what details are appropriate, the prosecutor may have regard to the victim's wishes.
- (5) 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.

- (6) 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.
- (7) Subject to section 179M, 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.

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

production of a victim impact statement to the sentencing court

179L Preparation of victim impact statement

- (1) For section 179K(3), details of the harm caused to a victim by the offence may be given to the prosecutor in the form of a victim impact statement prepared by—
 - (a) the victim; or
 - (b) another person if the victim can not give the statement because of the victim's age or impaired capacity.
- (2) If a victim impact statement is given to the prosecutor electronically, the statement is taken to have been signed by the person who gives it.

179M Reading aloud of victim impact statement during sentencing

- (1) This section applies if a person has prepared a victim impact statement under section 179L.
- (2) The prosecutor for the offence may request, orally or in writing, that all or part of the victim impact statement be read aloud before the court by—

[s 12]

- (a) if the person who prepared the statement wishes to read it—the person; or
 - (b) if the person who prepared the statement wishes the prosecutor to read it—the prosecutor.
- (3) If a request is made under subsection (2), the court must allow the person stated in the request to read the whole of the victim impact statement, or a part of the victim impact statement identified in the request, aloud before the court unless the court considers that, having regard to all relevant circumstances, it is inappropriate to do so.
- (4) To remove any doubt, it is declared that—
- (a) the purpose of the reading aloud of the victim impact statement before the court is to provide a therapeutic benefit to the victim; and
 - (b) it is not necessary for a person, reading aloud the victim impact statement before the court under this section, to read the statement under oath or affirmation.

179N Special arrangements for reading aloud of victim impact statement during sentencing

- (1) This section applies if a person who is to read aloud a victim impact statement (the *reader*) is the person who prepared the statement.
- (2) The sentencing court may, on its own initiative or on the application of the prosecutor for the offence, direct that any of the following arrangements be made that the court considers, having regard to all relevant circumstances, are appropriate—
 - (a) that, while the reader is reading aloud the victim impact statement before the court,

-
- the offender be obscured from the view of the reader;
- (b) that, while the reader is reading aloud the victim impact statement before the court, all persons other than those specified by the court be excluded from the courtroom;
 - (c) that a person approved by the court be present while the reader is reading aloud the victim impact statement to provide emotional support to the reader;
 - (d) if there is an audiovisual link within the court precincts—that the reader read aloud the victim impact statement outside the courtroom and the reading be transmitted to the courtroom by means of the audiovisual link.
- (3) For subsection (2)(c), the person providing emotional support to the reader must be permitted to be in close proximity to the reader, and within the reader's sight, while the reader is reading aloud the victim impact statement before the court.
- (4) For subsection (2)(d)—
- (a) the place outside the courtroom from which the reader reads aloud the victim impact statement is taken to be part of the sentencing court; and
 - (b) it is not necessary that the place be within the court precincts.
- (5) The court may, on its own initiative or on the application of the prosecutor, vary or revoke a direction made under subsection (2).

13 Insertion of new pt 14, div 18

Part 14—

[s 14]

insert—

Division 18 **Transitional provision for
Victims of Crime
Assistance and Other
Legislation Amendment
Act 2017**

253 Victim impact statements

- (1) Part 10B applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.
- (2) A victim impact statement given under the *Victims of Crime Assistance Act 2009*, repealed section 15(5) before the commencement, including a statement given electronically, is taken to have been given under section 179L.
- (3) In this section—
repealed section 15(5), of the *Victims of Crime Assistance Act 2009*, means section 15(5) of that Act as it was in force from time to time before its repeal by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017*.

Part 5 **Amendment of Victims of
Crime Assistance Act 2009**

14 **Act amended**

This part amends the *Victims of Crime Assistance Act 2009*.

Note—

See also the amendments in schedule 1.

15 Long title

Long title, from ‘principles’ to ‘crime’—

omit, insert—

a charter of rights for certain victims

16 Amendment of s 3 (Purposes of Act)

(1) Section 3(1)(a)—

omit, insert—

(a) to declare a charter of rights for victims; and

(2) Section 3(1)(b), ‘principles’—

omit, insert—

rights

(3) Section 3(3), ‘49(1)(f)’—

omit, insert—

49(f)

17 Replacement of ch 2, hdg (Fundamental principles of justice for victims)

Chapter 2, heading—

omit, insert—

Chapter 2 Charter of victims’ rights

18 Omission of ch 2, pt 1, hdg (Preliminary)

Chapter 2, part 1, heading—

omit.

[s 19]

19 Amendment of s 5 (Meaning of *victim*)

Section 5—

insert—

- (3) For sections 18 to 20 and schedule 1AA, part 1, divisions 1 and 3, *victim* includes a person, other than a person mentioned in subsection (1), who has suffered harm—
 - (a) because domestic violence is committed against the person; or
 - (b) because the person is a family member or dependant of a person mentioned in paragraph (a); or
 - (c) as a direct result of intervening to help a person mentioned in paragraph (a).

20 Replacement of s 6 (Purposes of declaring principles)

Section 6—

omit, insert—

6 Meaning of *crime* for chapter

- (1) In this chapter and schedule 1AA, *crime* means an act or omission constituting any of the following offences—
 - (a) an offence against the person of someone;
 - (b) a domestic violence offence within the meaning of the Criminal Code, section 1;
 - (c) an offence against the *Domestic and Family Violence Protection Act 2012*, section 177(2), 178(2) or 179(2);
 - (d) an offence of attempting to commit, or conspiring to commit, an offence mentioned in paragraph (a), (b) or (c).
- (2) For deciding whether an act or omission

constitutes an offence mentioned in subsection (1)(a), (b), (c) or (d)—

- (a) any justification, excuse or defence a person may have for doing the act or making the omission is to be disregarded; and
 - (b) it does not matter whether 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) 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.

6A Meaning of *prescribed person*

- (1) *Prescribed person* means—
- (a) a government entity; or
 - (b) a non-government entity; or
 - (c) an officer, member or employee of a government entity or non-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 or domestic violence against the victim.

6B Charter of victims' rights

- (1) The Charter of Victims' Rights (the *victims charter*) is set out in schedule 1AA.
- (2) As far as practicable and appropriate, the victims

[s 21]

charter is to govern the conduct of prescribed persons in dealing with victims.

6C Purposes of victims charter

The purposes of the victims charter are to—

- (a) advance the interests of victims by stating rights that are to be observed by prescribed persons in dealing with victims; and
- (b) inform victims of the rights the victims can expect will underlie the conduct of prescribed persons in dealing with the victims.

21 Amendment of s 7 (Principles do not give legal rights or affect legal rights or obligations)

- (1) Section 7, heading, ‘Principles do’—

omit, insert—

Victims charter does

- (2) Section 7(1), ‘The principles’—

omit, insert—

The rights stated in the victims charter

- (3) Section 7(2)—

omit, insert—

- (2) Subsection (1) does not prevent disciplinary action being taken against a prescribed person who contravenes processes for implementing the rights stated in the victims charter that have been adopted by the government entity or non-government entity responsible for the prescribed person’s conduct.

-
- 22 Omission of ch 2, pt 2 (Declaration of fundamental principles)**
Chapter 2, part 2—
omit.
- 23 Omission of ch 2, pt 3, hdg (Implementing principles)**
Chapter 2, part 3, heading—
omit.
- 24 Omission of s 17 (Guidelines and processes for compliance with principles)**
Section 17—
omit.
- 25 Amendment of s 18 (Conduct to be consistent with principles)**
- (1) Section 18, heading, ‘principles’—
omit, insert—
victims’ rights
- (2) Section 18(1)(b), ‘principles’—
omit, insert—
rights stated in the victims charter
- (3) Section 18(2), ‘principles’—
omit, insert—
rights
- 26 Amendment of s 19 (Victim may make complaint)**
- (1) Section 19(1), ‘principles’—
omit, insert—

[s 27]

rights stated in the victims charter

(2) Section 19(2)(b)—

omit, insert—

- (b) if the prescribed person is a non-government entity—the non-government entity; or
- (c) if the prescribed person is an officer, member or employee of a government entity or non-government entity—the government entity or non-government entity concerned; or
- (d) the victim services coordinator.

(3) Section 19(3) to (5)—

omit, insert—

- (3) A complaint may be made for the victim by another person acting with the victim's consent.

27 Replacement of s 20 (Dealing with complaint)

Section 20—

omit, insert—

20 Dealing with complaint—government entity or non-government entity

- (1) This section applies if—
 - (a) a complaint is made to a government entity or non-government entity (the *relevant entity*) under section 19(2)(a), (b) or (c); or
 - (b) the victim services coordinator refers a complaint made under section 19(2)(d) to a government entity or non-government entity (also the *relevant entity*).
- (2) The relevant entity must—

- (a) give the victim information about the process that will be used for resolving the complaint; and
 - (b) take all reasonable steps to resolve the complaint as soon as is reasonably practicable.
- (3) Without limiting subsection (2)(b), the relevant entity may comply with the subsection by—
- (a) referring the complaint to another entity mentioned in subsection (4) to resolve; and
 - (b) giving the other entity timely and reasonable assistance to resolve the complaint.
- (4) For subsection (3)(a), the other entities are—
- (a) for a complaint mentioned in subsection (1)(a)—the victim services coordinator; or
 - (b) for a government entity—another government entity; or
Example of another government entity—
the ombudsman
 - (c) for a non-government entity—the government entity that gives the relevant entity funding to provide services to help victims.

20A Dealing with complaint—victim services coordinator

- (1) This section applies if a complaint is made to the victim services coordinator under section 19(2)(d).
- (2) The victim services coordinator may—
 - (a) liaise with the relevant entity concerned and facilitate the resolution of the complaint; or

[s 28]

- (b) refer the complaint to the relevant entity concerned.
- (3) For this section, a complaint concerns a relevant entity if the complaint is about the conduct of—
 - (a) the relevant entity; or
 - (b) an officer, member or employee of the relevant entity.

28 Amendment of s 21 (Scheme for financial assistance)

Section 21(3)(b), before ‘the person has’—

insert—

for an act that is a crime or a series of related crimes—

29 Replacement of s 25 (Meaning of *act of violence*)

Section 25—

omit, insert—

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—
 - (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) Also, an ***act of violence*** is domestic violence, or a series of related acts of domestic violence, that—
 - (a) is committed in Queensland; and
 - (b) directly results in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened; and
 - (c) is not an act of violence under subsection (1).
- (3) 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.

25A Meaning of *crime*

- (1) 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.
- (2) However, a reference to a justification, excuse or defence in subsection (1)(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.

[s 29]

(3) In this section—

prescribed offence means—

- (a) an offence committed against the person of someone; or
- (b) an offence of attempting to commit, or conspiring to commit, an offence mentioned in paragraph (a).

25B Meaning of *series of related crimes* and *series of related acts of domestic violence*

(1) A *series of related crimes* is 2 or more crimes that are related because the crimes—

- (a) 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) all contribute to the death of or injury to a person; or
- (c) having regard to the circumstances of the crimes, are related in some other way.

(2) 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.

(3) A *series of related acts of domestic violence* is 2 or more acts or omissions constituting domestic violence that are related because the acts or omissions—

- (a) are committed in relation to the same person and—

-
- (i) are committed at about the same time;
or
 - (ii) are committed over a period by the
same person; or
 - (iii) share another common factor; or
- (b) all contribute to the death of or injury to a
person; or
- (c) having regard to the circumstances, are
related in some other way.
- (4) However, an act or omission constituting
domestic violence (*later domestic violence*) is not
related to a previous act or omission constituting
domestic violence (*earlier domestic violence*) if
the later domestic violence is committed after
assistance is granted in relation to the earlier
domestic violence.
- (5) To remove any doubt, it is declared that, for this
chapter—
- (a) a series of related crimes, or a series of
related acts of domestic violence, is taken to
be a single act of violence; and
 - (b) assistance may be granted only for the
single act of violence.

30 Amendment of s 27 (Meaning of *injury*)

Section 27(1)(f), after ‘sexual offence’—
insert—

or domestic violence

**31 Amendment of s 33 (When a person’s workers’
compensation application is finally dealt with)**

Section 33, after ‘under the Workers’ Compensation Act’—

[s 32]

insert—

, including the person's entitlement to treatment, care and support payments under chapter 4A of that Act,

32 Omission of ss 35 and 36

Sections 35 and 36—

omit.

33 Insertion of new ch 3, pts 3A and 3B

Chapter 3—

insert—

**Part 3A Relationship with
Motor Accident
Insurance Act 1994**

36A Application of part

This part applies if—

- (a) for an act of violence, a person is a primary victim, secondary victim or related victim; and
- (b) the act resulted in a motor vehicle accident within the meaning of the *Motor Accident Insurance Act 1994*; and
- (c) the person has made, or is or was entitled to make, a motor accident claim in relation to the motor vehicle accident.

36B Making of victim assistance application not affected by motor accident claim

The person may apply for victim assistance in

relation to the act of violence whether or not—

- (a) a motor accident claim has been made in relation to the motor vehicle accident; or
- (b) if a motor accident claim has been made in relation to the motor vehicle accident—the claim has been finally dealt with.

Note—

However, under section 86 the amount of victim assistance that would otherwise be payable to an applicant is reduced by the amount of a relevant payment the applicant has received or will receive. An amount payable under the *Motor Accident Insurance Act 1994* is a relevant payment—see schedule 3, definition *relevant payment*.

36C When motor accident claim is finally dealt with

For this part, a motor accident claim is finally dealt with when 1 of the following things happens under the *Motor Accident Insurance Act 1994*—

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

36D Requirement to defer decision—motor accident claim not made

- (1) This section applies if—
 - (a) the person (the *applicant*) applies for victim assistance in relation to the act of violence; and
 - (b) the applicant has not made a motor accident claim in relation to the motor vehicle accident.

[s 33]

- (2) The government assessor must defer deciding the application until—
- (a) the applicant has made a motor accident claim in relation to the motor vehicle accident; and
 - (b) the claim has been finally dealt with.

Note—

However, under section 36F the government assessor must decide the application to the extent it relates to assistance for counselling expenses despite the deferral under this section.

- (3) However, subsection (2) does not apply if the scheme manager is satisfied—
- (a) that—
 - (i) a motor accident claim by the applicant in relation to the motor vehicle accident is barred under the *Motor Accident Insurance Act 1994*, section 37(3); or
 - (ii) the applicant has tried unsuccessfully under the *Motor Accident Insurance Act 1994*, section 37(3) to give notice of a motor accident claim in relation to the motor vehicle accident after the period mentioned in section 37(2) of that Act; and
 - (b) the applicant has a reasonable excuse for not making the motor accident claim within the period mentioned in section 37(2) of that Act.
- (4) For deciding whether the applicant has a reasonable excuse under subsection (3)(b), the scheme manager must have regard to each of the following—
- (a) the applicant's age at the time the act of violence occurred;

-
- (b) whether the applicant has 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 applicant;

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

the applicant's parent, spouse or carer

- (d) the physical or psychological effect of the act of violence on the applicant;
 - (e) any other matter the scheme manager considers relevant.
- (5) If the scheme manager decides the applicant does not have a reasonable excuse, the scheme manager 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.

36E Requirement to defer decision—motor accident claim made but not finally dealt with

- (1) This section applies if—
 - (a) the person applies for victim assistance in relation to the act of violence; and
 - (b) a motor accident claim made by the person in relation to the motor vehicle accident has not been finally dealt with.
- (2) The government assessor must defer deciding the application until the motor accident claim is

[s 33]

finally dealt with.

Note—

However, under section 36F the government assessor must decide the application to the extent it relates to assistance for counselling expenses despite the deferral under this section.

36F Decision about assistance for counselling expenses

- (1) This section applies if—
 - (a) the person applies for victim assistance in relation to the act of violence; and
 - (b) the government assessor defers deciding the application under section 36D or 36E.
- (2) Despite the deferral of the decision, the government assessor must decide the application to the extent it relates to assistance mentioned in section 39(a), 42(a), 45(a), 46(a) or 49(a).

Note—

The effect of this subsection is that the person may be granted assistance for counselling expenses before the motor accident claim has been finally dealt with.

- (3) The government assessor must give the person a notice for the decision mentioned in subsection (2) stating—
 - (a) if the decision is to grant the application to the extent mentioned in the subsection—
 - (i) the amount payable to the person; 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 the application to the extent mentioned in the subsection—
- (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) If the government assessor decides to grant the application to the extent mentioned in subsection (2), for section 100 the assistance granted is taken to be interim assistance granted under part 14.

Note—

See section 100 in relation to the effect of the decision made on the application for victim assistance in relation to an amount paid in interim assistance.

- (5) This section does not limit part 14.

Part 3B Relationship with national injury insurance scheme—motor vehicle accidents

36G Application of part

This part applies to the primary victim of an act of violence if the primary victim or another person has made, or is entitled to make, an application (an *NIISQ application*) under the NIISQ Act for approval to participate in the scheme in relation to the injury suffered by the primary victim as a

[s 33]

direct result of the act of violence.

Note—

See the NIISQ Act, sections 16 to 18.

36H Making of victim assistance application not affected by application for approval to participate in scheme

The primary victim may apply for victim assistance in relation to the act of violence whether or not—

- (a) an NIISQ application has been made in relation to the injury suffered by the primary victim as a direct result of the act of violence; or
- (b) if an NIISQ application has been made—the application has been decided by the agency under the NIISQ Act.

Note—

However, under section 86 the amount of victim assistance that would otherwise be payable to an applicant is reduced by the amount of a relevant payment the applicant has received or will receive. An amount payable under the NIISQ Act is a relevant payment—see schedule 3, definition *relevant payment*.

36I Deferring decision if NIISQ application not made or not decided

- (1) This section applies if—
 - (a) the primary victim applies for victim assistance in relation to the act of violence; and
 - (b) either—
 - (i) an NIISQ application has not been made; or

- (ii) an NIIAQ application has been made but has not been decided by the agency under the NIIAQ Act.
- (2) The government assessor may defer deciding the application, or defer deciding the amount of assistance to be granted, until the NIIAQ application is decided.

Note—

However, under section 36J the government assessor must decide the application to the extent it relates to assistance for particular expenses despite the deferral under this section.

- (3) If, under subsection (2), the application or the amount of assistance to be granted is not decided within 2 years after the application was made, the government assessor must, despite that subsection, make the decision as soon as reasonably practicable.
- (4) If the government assessor defers deciding the application or the amount of assistance to be granted under subsection (2), the government assessor must give the primary victim 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.

36J Decision about assistance for particular expenses

- (1) This section applies if—

[s 33]

- (a) the primary victim applies for victim assistance in relation to the act of violence; and
 - (b) the government assessor defers deciding the application, or the amount of the assistance to be granted, under section 36I; and
 - (c) section 36F does not apply.
- (2) Despite the deferral, the government assessor must decide the application to the extent it relates to assistance mentioned in section 39(a) and (c) to (h).
- (3) The government assessor must give the primary victim a notice for the decision mentioned in subsection (2) stating—
- (a) if the decision is to grant the application to the extent mentioned in the subsection—
 - (i) the amount payable to the primary victim; 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 the application to the extent mentioned in the subsection—
 - (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) If the government assessor decides to grant the application to the extent mentioned in subsection (2), for section 100 the assistance granted is taken to be interim assistance granted under part 14.

Note—

See section 100 in relation to the effect of the decision made on the application for victim assistance in relation to an amount paid in interim assistance.

- (5) This section does not limit part 14.

34 Amendment of s 39 (Composition of assistance)

Section 39(g), ‘other expenses’—

omit, insert—

other reasonable expenses

35 Amendment of s 41 (Amount of assistance)

- (1) Section 41(2)—

omit.

- (2) Section 41(3)—

renumber as section 41(2).

36 Amendment of s 42 (Composition of assistance)

- (1) Section 42(1)(e), ‘after the act’—

omit, insert—

after becoming aware of the act

- (2) Section 42(1)(f), ‘other expenses’—

omit, insert—

other reasonable expenses

[s 37]

- (3) Section 42(2)—
omit.

37 Amendment of s 45 (Composition of assistance—witness to more serious act of violence)

- (1) Section 45(1)(f), ‘other expenses’—
omit, insert—
other reasonable expenses

- (2) Section 45(2)—
omit.

38 Amendment of s 48 (Amount of assistance)

- (1) Section 48(1) and (2)—
omit, insert—
(1) A related victim of an act of violence may be granted assistance of up to \$50,000 less any funeral expense assistance granted to the victim in relation to the act.
- (2) Section 48(3), ‘subsection (2)’—
omit, insert—
subsection (1)
- (3) Section 48(3)—
renumber as section 48(2).

39 Amendment of s 49 (Composition of assistance)

- (1) Section 49(1), ‘48(2)’—
omit, insert—
48(1)
- (2) Section 49(1)(g), ‘other expenses’—

omit, insert—

other reasonable expenses

(3) Section 49(2)—

omit.

40 Amendment of s 50 (Eligibility and assistance)

Section 50(3) and (4), '\$6000'—

omit, insert—

\$8000

41 Amendment of s 51 (Who may apply for victim assistance)

(1) Section 51(4)(a) to (c), 'for a legal matter'—

omit.

(2) Section 51(4)(d), 'for legal matters'—

omit.

(3) Section 51(7), definition *legal matter*—

omit.

42 Replacement of ss 52 and 53

Sections 52 and 53—

omit, insert—

52 Form of application

An application for victim assistance must—

- (a) be in the approved form; and
- (b) be accompanied by documents supporting the application; and
- (c) contain the consent of the relevant person for the government assessor to obtain

[s 43]

information mentioned in section 74 or 77(1) or (4).

43 Amendment of s 55 (Applying for victim assistance and funeral expense assistance together)

Section 55(3)—

omit.

44 Amendment of s 57 (Form of application)

Section 57, from ‘must—’—

omit, insert—

must be in the approved form.

45 Amendment of s 58 (Time limit)

Section 58—

insert—

- (2) The scheme manager may, on application by a person, extend the time for the person to make an application for funeral expense 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 death occurred;
 - (b) whether the person has impaired capacity;
 - (c) the physical or psychological effect of the act of violence on the person;
 - (d) whether the delay in making the application undermines the possibility of a fair decision;
 - (e) any other matter the scheme manager considers relevant.
- (3) The scheme manager must give the person notice

of the scheme manager's decision on the application.

(4) If the scheme manager decides not to grant the application, 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.

46 Amendment of s 64 (Further information, document or consent)

Section 64(1)—

insert—

Note—

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

47 Amendment of s 65 (Obtaining information about act of violence)

(1) Section 65, heading, after 'violence'—

insert—

from police commissioner

(2) Section 65(1)(a)(i), after 'violence'—

insert—

, including details of the injury suffered by a victim of the act

(3) Section 65(1)(b), after 'of the act'—

insert—

[s 47]

or the person who allegedly committed the act, including a recording of the questioning of the person under the *Police Powers and Responsibilities Act 2000*, section 436

(4) Section 65(1)(c), after ‘paragraph (a)’—

insert—

or (b)

(5) Section 65(3)—

omit, insert—

(3) The police commissioner’s obligation to comply with a request under subsection (1) applies only—

(a) to information in the police commissioner’s possession or to which the police commissioner has access; and

(b) for a statement requested under subsection (1)(b) that is made by the person who allegedly committed the act of violence—if the police commissioner is reasonably satisfied the government assessor reasonably requires the statement to decide the application.

(6) Section 65(4)(a), after ‘investigation’—

insert—

or prosecution

(7) Section 65(4)—

insert—

(d) may lead to the disclosure of methods, practices or systems used generally by police in investigating alleged offences.

(8) Section 65(5) and (7), from ‘, a copy’ to ‘details’—

omit.

(9) Section 65—

insert—

(8) In this section—

information includes a document.

Example of a document—

a recording from a body-worn camera under the *Police Powers and Responsibilities Act 2000*, section 609A.

48 Amendment of s 66 (Obtaining copies of witness statements, or information about particular conduct, in relation to act of violence)

(1) Section 66(1), (2)(b) and (3), ‘documents and’—

omit.

(2) Section 66(2), ‘documents and information are the documents and’—

omit, insert—

information is the

(3) Section 66(2)(a), after ‘made’—

insert—

by any person about the act of violence, including statements made

(4) Section 66(2)(b)(iii)—

renumber as section 66(2)(b)(iv).

(5) Section 66(2)(b)—

insert—

(iii) if the applicant for assistance is not the primary victim of the act of violence—whether the applicant was aware of the primary victim’s involvement in a criminal activity mentioned in subparagraph (ii); or

(6) Section 66(5), ‘statements or’—

[s 49]

omit.

- (7) Section 66(6)(a), after ‘investigation’—

insert—

or prosecution

- (8) Section 66(6)—

insert—

(d) may lead to the disclosure of methods, practices or systems used generally by police in investigating alleged offences.

- (9) Section 66(7), ‘a document or’—

omit.

- (10) Section 66—

insert—

- (8) In this section—

information includes a document.

Example of a document—

a recording from a body-worn camera under the *Police Powers and Responsibilities Act 2000*, section 609A.

49 Insertion of new ss 67A and 67B

After section 67—

insert—

67A Obtaining information about act of violence from court

- (1) The government assessor may ask the registrar of a court for information about a stated act of violence, including details of the injury suffered by the primary victim of the act, for which an application for victim assistance has been made.
- (2) The registrar must give the government assessor the requested information if the registrar is

reasonably satisfied the government assessor reasonably requires the information to decide the application.

- (3) The registrar may give the requested information by allowing the government assessor to access an electronic database kept for the court.
- (4) If the registrar gives the government assessor access to an electronic database under subsection (3), the access to, and use of, the database is limited to the extent it is connected with the requested information.
- (5) The giving of information by the registrar 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.

- (6) In this section—

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

67B Obtaining information about relevant payments from SPER registrar

- (1) The government assessor may ask the SPER registrar for information about compensation amounts for a stated act of violence in relation to which assistance is sought.
- (2) The SPER registrar must comply with the request if the registrar is reasonably satisfied the government assessor reasonably requires the information to decide the application.
- (3) The giving of information by the SPER registrar under subsection (2) is authorised despite any

[s 50]

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—

compensation amount, for an act of violence, means an amount—

- (a) ordered by a court to be paid to a person, under the *Penalties and Sentences Act 1992*, by way of restitution or compensation for the act; and
- (b) particulars of which are registered under the *State Penalties Enforcement Act 1999*, section 34.

50 Amendment of s 69 (Obtaining primary victim’s criminal history from police commissioner)

(1) Section 69(9), from ‘only’—

omit, insert—

only for the following purposes—

- (a) deciding whether an application should be refused under section 80;
- (b) deciding an application for amendment of a grant of assistance under section 103;
- (c) the State recovering an amount from a person under part 16.

(2) Section 69(10)—

omit, insert—

- (10) The government assessor must destroy a report obtained under this section—

-
- (a) if assistance is granted for the act of violence and an offender is convicted of a relevant offence for the act, at the later of the following times—
 - (i) when the period mentioned in section 110A ends;
 - (ii) when the scheme manager decides not to recover the assistance from the offender under part 16; or
 - (b) otherwise—when the report 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.

51 Amendment of s 70 (Deciding applications for series of related crimes)

- (1) Section 70, heading, after ‘crimes’—

insert—

or series of related acts of domestic violence

- (2) Section 70(1)(b), after ‘crimes’—

insert—

or a series of related acts of domestic violence

- (3) Section 70(2) and (3)(a)(i), after ‘crimes’—

insert—

or series of related acts of domestic violence

52 Omission of ss 71 and 72

Sections 71 and 72—

omit.

[s 53]

53 Amendment of s 77 (Obtaining information about relevant payments)

(1) Section 77—

insert—

(3A) Also, 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 ask the chief executive officer (NIISQ) for information about the matters mentioned in subsection (5) or (6).

(3B) If the act of violence resulted in a motor vehicle accident within the meaning of the *Motor Accident Insurance Act 1994*, the matters are—

(a) whether the applicant has made an NIISQ application in relation to the injury suffered by the applicant as a direct result of the act of violence and, if so, the status of the application; and

(b) if the applicant has been accepted under the NIISQ Act as a participant in the scheme in relation to the injury mentioned in paragraph (a)—

(i) a support plan made under that Act for the applicant; and

(ii) any service requests made or decided under that Act for the applicant; and

(iii) any funding agreement entered into by the agency under that Act for the applicant's treatment, care or support; and

(iv) any payment requests made or decided under that Act for the applicant's treatment, care or support.

(3C) If the applicant has made a workers'

compensation application, the matters are—

- (a) whether the agency under the NIISQ Act has been engaged by an insurer under the Workers' Compensation Act, section 232ZI, to perform the insurer's functions, or exercise the insurer's powers, under chapter 4A of the Workers' Compensation Act in relation to the applicant; and
- (b) if the agency under the NIISQ Act has been engaged as mentioned in paragraph (a)—
 - (i) the applicant's entitlement to treatment, care or support payments under the Workers' Compensation Act; and
 - (ii) any support plan made under that Act for the applicant; and
 - (iii) any service requests made or decided under that Act for the applicant; and
 - (iv) any funding agreement entered into by the agency under that Act for the applicant's treatment, care or support; and
 - (v) any payment requests made or decided under that Act for the applicant's treatment, care or support.

(2) Section 77(4), 'or (3)'—

omit, insert—

, (3) or (4)

(3) Section 77(5), 'or (3), subsection (4)'—

omit, insert—

, (3) or (4), subsection (7)

(4) Section 77(7)—

insert—

[s 54]

chief executive officer (NIISQ) means the chief executive officer of the National Injury Insurance Agency, Queensland under the NIISQ Act.

- (5) Section 77(3A) to (7)—
renumber as section 77(4) to (10).

54 Amendment of s 81 (No grant if act of violence not reported)

- (1) Section 81(1)(a)(ii), from ‘a police officer’—
omit, insert—

a police officer, the victim’s counsellor, psychologist or doctor, or a domestic violence service; and

- (2) Section 81(2)—
insert—

domestic violence service means an entity that provides services to persons who fear or experience domestic violence.

- (3) Section 81(2), definition *special primary victim*, paragraph (a)—
insert—
- (iii) involving domestic violence; or

55 Amendment of s 82 (No grant if reasonable assistance not given)

- (1) Section 82(1)(a)(i), after ‘investigation’—
insert—

(if any)

- (2) Section 82(1)(a)(ii)—
omit, insert—

-
- (ii) if the act of violence in relation to which assistance is sought is a crime or series of related crimes—the arrest or prosecution of the person who committed, or allegedly committed, the act; and
- (3) Section 82(1)(b), before ‘the failure’—
insert—
if paragraph (a)(ii) applies—
- (4) Section 82(3)—
insert—
(da) whether the act of violence involves domestic violence;
- (5) Section 82(3)(da) to (h)—
renumber as section 82(3)(e) to (i).

56 Amendment of s 83 (Dealing with application if applicant has earlier application)

- (1) Section 83(4), after ‘relate to a series of related crimes’—
insert—
or a series of related acts of domestic violence
- (2) Section 83(4)(b), note, after ‘crimes’—
insert—
, or a series of related acts of domestic violence,
- (3) Section 83(5)—
omit, insert—
(5) Subsection (2) does not apply if 1 of the applications is an application for victim assistance and the other application is for funeral expense assistance.

[s 57]

57 Insertion of new ss 84A–84C

Chapter 3, part 12, division 4—

insert—

84A Deferring decision if cause of death unknown

- (1) This section applies if—
 - (a) an applicant has applied for assistance in relation to an act of violence; and
 - (b) the primary victim has died as a direct result of the act of violence; and
 - (c) the police commissioner has notified the government assessor under section 65 that the cause of the primary victim’s death is unknown.
- (2) The government assessor may defer deciding the application until the first of the following happens—
 - (a) a person is charged with an offence the government assessor reasonably considers is a relevant offence for the act of violence;
 - (b) a coroner under the *Coroners Act 2003* makes a finding under that Act in relation to the death of the primary victim;
 - (c) a cause of death certificate for the primary victim is issued under the *Births, Deaths and Marriages Registration Act 2003*;
 - (d) the police commissioner advises the government assessor about the cause of the primary victim’s death.
- (3) If the government assessor defers deciding the application, 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.

84B Deferring decision if false or misleading information allegedly provided by applicant

- (1) This section applies if the scheme manager has made a complaint to a police officer alleging that an applicant for assistance has committed an information offence.
- (2) The government assessor may defer deciding the application, or defer deciding the amount of assistance to be granted, until either of the following happens—
 - (a) the applicant is charged with an information offence and the proceeding relating to the offence ends, including any appeal;
 - (b) the police commissioner advises the scheme manager the investigation into the scheme manager's complaint has ended without the applicant being charged with an information offence.
- (3) If the government assessor defers deciding the application or the amount of assistance to be granted, 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.
- (4) If, under subsection (2), the application or the

[s 57]

amount of assistance to be granted is not decided within 2 years after the application was made, the government assessor must, despite that subsection, make the decision as soon as reasonably practicable.

(5) In this section—

information offence means an offence involving the giving of false or misleading information by the applicant in connection with the application.

84C Deferring decision if recovery of assistance granted to someone else is disputed

(1) This section applies if—

- (a) an applicant for assistance has been given a notice under section 115 in relation to an offence; and
- (b) the applicant has given the scheme manager a notice under section 116 (the *applicant's notice*) disputing the claim; and
- (c) the dispute mentioned in the applicant's notice has not been finally decided as mentioned in section 117(2)(b)(i).

(2) The government assessor may defer deciding the application, or defer deciding the amount of assistance to be granted, until the dispute mentioned in the applicant's notice is finally decided as mentioned in section 117(2)(b)(i).

(3) If the government assessor defers deciding the application or the amount of assistance to be granted, 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.
- (4) If, under subsection (2), the application or the amount of assistance to be granted is not decided within 2 years after the application was made, the government assessor must, despite that subsection, make the decision as soon as reasonably practicable.

58 Amendment of s 86 (Reduction if relevant payment received)

Section 86—

insert—

- (2A) However, subsection (2) does not apply to the extent the government assessor is satisfied the purpose for which the relevant payment was or will be made does not include compensating the applicant for expenses in relation to which the applicant is eligible for assistance.

Example—

An applicant is eligible for assistance for counselling expenses mentioned in section 39(a), 42(a), 45(a), 46(a) or 49(a). A relevant payment is received by the applicant under the NIISQ Act for the applicant's treatment, care and support within the meaning of that Act. The purpose of the relevant payment does not include compensating the applicant for counselling expenses.

59 Amendment of s 87 (Deferring decision if victim's conduct may be relevant)

- (1) Section 87(1)(c) and (3), from 'a justification' to 'conduct'—

omit, insert—

a relevant justification, excuse or defence

[s 60]

(2) Section 87—

insert—

(6) In this section—

relevant justification, excuse or defence means a justification, excuse or defence that involves the conduct of—

- (a) the applicant; or
- (b) if the applicant is not the primary victim of the act of violence—the primary victim.

60 Amendment of s 88 (Inviting submissions from applicant)

Section 88—

insert—

(5) Despite subsections (2) to (4), the government assessor may decide the application before the stated time if the applicant has advised the government assessor that the applicant will not make a submission about the matter mentioned in subsection (2)(a).

61 Amendment of s 89 (Deciding application)

(1) Section 89(a), ‘with or without conditions’—

omit, insert—

with the condition mentioned in subsection (2) and any other conditions the government assessor considers appropriate

(2) Section 89—

insert—

(2) The government assessor must impose a condition on a grant of assistance that, if the applicant receives a relevant payment for the act of violence within 6 years after the assistance is

granted, the applicant must give the scheme manager written or oral notice of the payment within 28 days after receiving it.

Note—

Failure to comply with the condition imposed under subsection (2) is an offence—see section 141B.

62 Amendment of s 90 (Notice of decision to grant assistance)

(1) Section 90(b)—

omit, insert—

(b) the conditions imposed on the grant of assistance;

(2) Section 90(e)—

omit.

63 Amendment of s 94 (Paying assistance to someone else)

Section 94(2), definition *lump sum assistance*, paragraph (c), '49(1)(e)'—

omit, insert—

49(e)

64 Amendment of s 97 (Application of pt 14)

Section 97(c), 'incur, expenses'—

omit, insert—

incur before the general application is decided, urgent and immediate expenses

65 Amendment of s 98 (Deciding application for interim assistance)

(1) Section 98(1), 'for the expenses'—

[s 66]

omit, insert—

for urgent or immediate expenses

(2) Section 98—

insert—

(1A) The government assessor must impose a condition on the grant of interim assistance that, if the person receives a relevant payment for the act of violence before the general application is decided, the applicant must give the scheme manager written or oral notice of the payment within 28 days after receiving it.

Notes—

- 1 Failure to comply with the condition imposed under subsection (2) is an offence—see section 141B.
- 2 Under section 89(2), a similar condition is required to be imposed if the government assessor grants the applicant assistance.

(3) Section 98(2), after ‘impose’—

insert—

other

(4) Section 98(1A) to (3)—

renumber as section 98(2) to (4).

66 Amendment of s 99 (Steps after application for interim assistance decided)

Section 99(1)(a)(i), ‘(if any)’—

omit.

67 Insertion of new ch 3, pt 15, div 1 hdg

Chapter 3, part 15, before section 101—

insert—

Division 1 Amendment on application

68 Amendment of s 101 (Application for amendment)

- (1) Section 101(2)(b), after ‘grant’—
insert—

, other than the condition imposed under section 89(2)
- (2) Section 101(3)(a), after ‘after the assistance was’—
insert—

originally
- (3) Section 101—
insert—
 - (7) Subsection (5) does not prevent an application being made if the person has been given an amendment notice under division 2 for the grant of assistance.

69 Amendment of s 103 (Considering application)

- (1) Section 103(1)(c) and (d), ‘or section 36’—
omit.
- (2) Section 103(2)—
omit, insert—
 - (2) The following provisions apply in relation to the amendment application in the same way as they apply in relation to the original application for assistance—
 - (a) sections 63 to 69;
 - (b) sections 73 to 77;
 - (c) part 12, division 5.

[s 70]

70 Amendment of s 104 (Decision on application)

(1) Section 104(1)(b), ‘, including,’—

omit, insert—

, other than the condition imposed under section 89(2), including

(2) Section 104(3)—

omit.

71 Insertion of new ch 3, pt 15, div 2, hdg

After section 105—

insert—

**Division 2 Amendment without
application—uncounted
relevant payments**

72 Replacement of s 106 (Amendment of assistance if uncounted relevant payment received)

Section 106—

omit, insert—

106 Definitions for division

In this division—

amendment notice see section 106A(2).

response period see section 106A(2)(c).

scheme manager, in relation to a grant of assistance, includes the government assessor who granted the assistance, or another government assessor, if the scheme manager asks the government assessor to perform the scheme manager’s functions under this division in relation to the assistance.

uncounted relevant payment, in relation to a grant of assistance, means a relevant payment for the act of violence in relation to which the assistance was granted that—

- (a) was not taken into account by the government assessor when the assistance was granted; and
- (b) 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.

106A Notice proposing to amend grant of assistance

- (1) This section applies if—
 - (a) a person is granted assistance; and
 - (b) the scheme manager reasonably suspects the person has received, or is likely to receive, an uncounted relevant payment.
- (2) The scheme manager must give the person a notice (an ***amendment notice***) stating the following—
 - (a) that the scheme manager proposes to amend the grant of assistance under this division;
 - (b) the basis on which the scheme manager reasonably suspects the person has received, or is likely to receive, an uncounted relevant payment;
 - (c) that the person may, within a stated period (the ***response period***), make oral or written representations to the scheme manager—
 - (i) agreeing to the proposed amendment;
or

[s 72]

- (ii) about why the proposed amendment should not be made;
 - (d) that the person may, within the response period, avoid further action being taken under this division by applying for an amendment of the grant of assistance under division 1 in relation to the uncounted relevant payment.
- (3) The response period must end at least 14 days after the person is given the amendment notice.
- (4) An amendment notice may only be given for a grant of assistance—
- (a) if the assistance was granted to an adult—within 6 years after the assistance was originally granted; or
 - (b) if the assistance was granted to a child—before the child turns 24.

106B Obtaining information from chief executive (transport) for giving amendment notice

- (1) This section applies if the scheme manager—
- (a) proposes to give a person an amendment notice for a grant of assistance; and
 - (b) reasonably believes the scheme manager does not possess up-to-date information about the person's address.
- (2) The scheme manager may, to enable the scheme manager to give the person an amendment notice, ask the chief executive (transport) for the person's address.
- (3) The chief executive (transport) must comply with the request if the chief executive is reasonably satisfied the scheme manager reasonably requires the information to give the person an amendment notice.

-
- (4) The giving of information by the chief executive (transport) 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) If the scheme manager uses the information to give the person an amendment notice, the notice must state that the scheme manager has obtained information under this section.

106C Obtaining information for making decision about uncounted relevant payment

- (1) This section applies if the scheme manager has given a person an amendment notice for a grant of assistance.
- (2) Sections 65 to 67B and 74 to 77 (the *applied provisions*) apply in relation to the amendment notice as if the notice were an application for assistance.
- (3) However, the scheme manager may obtain information under an applied provision only if the scheme manager reasonably requires the information to decide whether the person has received, or is likely to receive, an uncounted relevant payment.
- (4) For subsection (2), the applied provisions apply as if a reference in the provisions to—
- (a) the government assessor were a reference to the scheme manager; and
 - (b) deciding an application for assistance were a reference to deciding whether the person has

[s 72]

- received, or is likely to receive, an uncounted relevant payment; and
 - (c) the applicant were a reference to the person; and
 - (d) an act of violence in relation to which assistance is sought were a reference to the act of violence in relation to which the assistance was granted.
- (5) If the scheme manager asks an entity for information under an applied provision, the scheme manager must, within 28 days after the request is made, give the person a notice stating the name of the entity from whom information has been requested.

106D Decision about receipt of uncounted relevant payment

- (1) This section applies if—
- (a) the response period for an amendment notice has ended; and
 - (b) the person to whom the notice was given has not applied during the response period to amend the grant of assistance under division 1 in relation to the uncounted relevant payment; and
 - (c) information requested by the scheme manager under an applied provision within the meaning of section 106C has been received or the scheme manager's request for the information has been otherwise dealt with.
- (2) The scheme manager must decide whether the person has received, or is likely to receive, an uncounted relevant payment.
- (3) In making the decision, the scheme manager

must—

- (a) consider all oral or written representations made by the person during the response period; and
- (b) observe the principles of natural justice.

106E Amendment of grant of assistance

- (1) This section applies if, under section 106D, the scheme manager decides the person has received, or is likely to receive, an uncounted relevant payment.
- (2) The scheme manager must amend the amount of assistance granted to reduce it to the amount that would have been granted under section 86 if the government assessor had taken the uncounted relevant payment into account when the assistance was granted.
- (3) If, after the reduction, an amount of assistance remains payable to the person, the scheme manager must decide the component of assistance for which the amount is payable.
- (4) In making the decision, the scheme manager must have regard to the following—
 - (a) the person's needs;
 - (b) whether the person has incurred expenses;
 - (c) anything else the scheme manager considers relevant.

106F Notice of decision

The scheme manager must give the person a notice stating the following—

- (a) the decisions under section 106D(2) and 106E(3);

[s 73]

- (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.

106G Refund of excess assistance

- (1) If the grant of assistance is amended under this division, 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.
- (2) An amount refundable under this section is a debt payable to the State by the person.

73 Insertion of new s 110A

After section 110—

insert—

110A Recovery available only if action taken within 6 years

The State may, under this part, recover assistance granted for an act of violence from a person only if action to recover the assistance is started within 6 years after the later of the following days—

- (a) the day the person was convicted of a relevant offence for the act;
- (b) the day the application for the grant of the financial assistance was made.

74 Amendment of s 111 (Recovery limited to category of act of violence for which assistance granted)

- (1) Section 111(2), ‘only an amount up to the maximum amount’—

omit, insert—

the amount

- (2) Section 111(2), example, ‘\$5000’—

omit, insert—

\$10,000

- (3) Section 111(2), example, from ‘The State’—

omit, insert—

The State may recover \$3500 from the convicted person, which is the amount stated in schedule 2, section 2 for a category B act of violence.

75 Amendment of s 113 (Using information obtained for application)

Section 113, ‘section 65, 66 or 67’—

omit, insert—

part 12, division 1 or section 74, 75, 76 or 77

76 Amendment of s 114 (Obtaining information from court)

Section 114(5)—

omit, insert—

- (5) The giving of information by the registrar 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.

77 Insertion of new ss 114A and 114B

After section 114—

[s 77]

insert—

114A Obtaining information from SPER registrar

- (1) The scheme manager may, for the purpose of the State recovering an amount from a person under this part, ask the SPER registrar for information mentioned in subsection (2) in relation to a stated act of violence.
- (2) For subsection (1), the information is—
 - (a) information about an unpaid amount—
 - (i) ordered by a court to be paid to a person, under the *Penalties and Sentences Act 1992*, by way of restitution or compensation for the act of violence; and
 - (ii) particulars of which are registered under the *State Penalties Enforcement Act 1999*, section 34; and
 - (b) the address of the offender for an unpaid amount mentioned in paragraph (a).
- (3) The SPER registrar must comply with the request if the registrar is reasonably satisfied the information will help the State recover an amount under this part.
- (4) The giving of information by the SPER 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.

114B Obtaining information from chief executive (transport)

- (1) The scheme manager may, for the purpose of the State recovering an amount from a person under this part, ask the chief executive (transport) for the address of a stated person who has been convicted of a relevant offence for a stated act of violence.
- (2) The chief executive (transport) must comply with the request if the chief executive is reasonably satisfied the information will help the State recover an amount under this part.
- (3) The giving of information by the chief executive (transport) 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.

78 Amendment of s 115 (Notice of intended recovery)

Section 115(b), ‘(if any)’—

omit.

79 Amendment of s 121 (Application of pt 17)

Section 121(b), ‘408C(1)(d)’—

omit, insert—

408C

80 Amendment of s 124 (Internal review of decision)

(1) Section 124(1)—

omit, insert—

[s 81]

- (1) An applicant to whom a decision identified in schedule 1 applies may apply to the scheme manager for a review of the decision.
- (2) Section 124(2), ‘person’—
omit, insert—
applicant
- (3) Section 124—
insert—
 - (2A) However, the scheme manager may, at any time, extend the time for applying for a review of the decision if the scheme manager considers it is reasonable in the circumstances to do so.
- (4) Section 124(5), ‘(4)(b)’—
omit, insert—
 - (5)(b)
- (5) Section 124(7)—
omit.
- (6) Section 124(2A) to (6)—
renumber as section 124(3) to (7).

81 Amendment of s 125 (External review of reviewed decision)

Section 125(3)—
omit.

82 Amendment of s 130 (Disclosure of interests)

Section 130(6), definition *application*, paragraph (b), ‘36 or’—
omit.

83 Omission of s 136 (Obtaining information about other victims)

Section 136—

omit.

84 Amendment of s 137 (Inadmissibility of particular matters)

Section 137(2), definition *application for assistance*, paragraph (b), ‘36 or’—

omit.

85 Amendment of s 139 (Functions of victim services coordinator)

(1) Section 139(1)(b), ‘principles’—

omit, insert—

rights stated in the victims charter

(2) Section 139(1)(e) to (g)—

omit, insert—

(e) to help government entities and non-government entities comply with the victims charter; and

(f) to deal with complaints made to the victim services coordinator under section 19, or referred to the victim services coordinator under section 20, about contraventions of the victims charter by prescribed persons; and

(3) Section 139(1)(h)—

renumber as section 139(1)(g).

(4) Section 139(2), definition *victim*, after ‘crime’—

insert—

[s 86]

or domestic violence

86 Amendment of s 140 (Confidentiality)

Section 140(3)(c), ‘136’—

omit, insert—

140A

87 Insertion of new s 140A

After section 140—

insert—

140A Disclosure by scheme manager of information for research purposes

- (1) The scheme manager may disclose confidential information to a person undertaking research if—
 - (a) the scheme manager is satisfied the research is genuine; and
 - (b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.
- (2) The person must not contravene the undertaking.
Maximum penalty—200 penalty units.
- (3) If the person contravenes the undertaking and, by contravening it, also contravenes the *Child Protection Act 1999*, section 189, the person may be prosecuted under this section or the *Child Protection Act 1999*, section 189 at the election of the prosecution.
- (4) In this section—
confidential information means information about a person.

88 Insertion of new ss 141A and 141B

After section 141—

insert—

141A Requirement to notify scheme manager about relevant payment

- (1) This section applies to an applicant for assistance for an act of violence if, before the application is decided under section 89 or interim assistance is granted to the applicant under section 98, the applicant receives a relevant payment for the act of violence.
- (2) The applicant must give the scheme manager written or oral notice of the relevant payment within 28 days after receiving the payment, unless the applicant has a reasonable excuse.

Maximum penalty—100 penalty units.

141B Requirement to comply with mandatory condition

An applicant to whom assistance or interim assistance is granted must not, without a reasonable excuse, contravene the condition imposed on the grant of the assistance under section 89(2) or 98(2).

Maximum penalty—100 penalty units.

89 Amendment of s 143 (Protection from civil liability)

Section 143—

insert—

- (3) This section does not apply to an official if the official is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

[s 90]

Note—

For protection from civil liability in relation to State employees—see the *Public Service Act 2008*, section 26C.

90 Omission of s 144 (Review of Act)

Section 144—

omit.

91 Omission of s 147 (Temporary regulation-making power)

Section 147—

omit.

92 Insertion of new ch 8

After chapter 7—

insert—

Chapter 8 Transitional provisions for Victims of Crime Assistance and Other Legislation Amendment Act 2017

Part 1 Preliminary

197 Definitions for chapter

In this chapter—

amending Act means the *Victims of Crime Assistance and Other Legislation Amendment Act 2017*.

application decided after the commencement means an application for victim assistance—

- (a) made, but not decided, before the commencement; or
- (b) made after the commencement, regardless of whether the act of violence for which assistance is sought happened before or after the commencement.

assistance limit has the meaning given under previous schedule 3.

new, for this Act or a provision of this Act, means the provision as in force from the commencement.

previous, for a provision of this Act, means the provision as in force from time to time before the commencement.

Part 2 Victims charter

198 Complaints about prescribed persons and victims charter

New chapter 2 and new schedule 1AA apply in relation to conduct of a prescribed person, within the meaning of the new Act, engaged in on or after the commencement.

Part 3 Financial assistance

Division 1 Basic concepts

199 Definition of *act of violence*

- (1) New section 25 applies in relation to an act of violence that is domestic violence only if the domestic violence is committed on or after the commencement.
- (2) However, subsection (3) applies if—
 - (a) a person dies or suffers injury as a direct result of 2 or more acts or omissions constituting domestic violence; and
 - (b) at least 1 of the acts or omissions was committed before the commencement; and
 - (c) at least 1 of the acts or omissions is committed on or after the commencement; and
 - (d) had all of the acts or omissions been committed after the commencement, all of the acts or omissions would have formed part of a series of related acts of domestic violence under new section 25B.
- (3) All of the acts or omissions are taken to be a series of related acts of domestic violence.

Note—

Under section 204, the availability of financial assistance for an act of violence that is a series of related acts of domestic violence to which subsection (3) applies is limited to expenses incurred on or after the commencement.

Division 2 Relationship with other legislation

200 New ch 3, pts 3–3B

New chapter 3, parts 3 to 3B apply only to an application for victim assistance made on or after

the commencement.

Division 3 Amount and composition of assistance

201 Other expenses

New section 39(g), 42(f), 45(f) or 49(g) applies in relation to an application decided after the commencement.

202 Pools of assistance

- (1) This section applies to an application made by any of the following victims of an act of violence that is an application decided after the commencement—
 - (a) a parent secondary victim;
 - (b) a witness secondary victim;
 - (c) a related victim.
- (2) The new entitlement provisions apply in relation to the application.
- (3) Subsection (4) applies if—
 - (a) a proportion of an assistance limit was granted before the commencement to another victim of the act of violence; and
 - (b) the assistance limit would have applied to the applicant had the amending Act not commenced.
- (4) Despite subsection (2), the previous entitlement provisions and the ancillary provisions apply in relation to the application.
- (5) This section applies subject to section 201.

(6) In this section—

ancillary provisions means—

- (a) previous sections 71, 72, 85(3) and 90(e);
and
- (b) for a parent secondary victim—previous
sections 53 and 55(3); and
- (c) for a related victim—previous sections 53,
55(3) and 85(2)(b) and (4).

entitlement provisions means—

- (a) for a parent secondary victim—chapter 3,
part 5; or
- (b) for a witness secondary victim—chapter 3,
part 6; or
- (c) for a related victim—chapter 3, part 7.

203 Amount of funeral expense assistance

New section 50 applies in relation to an application decided after the commencement.

204 Series of related acts of domestic violence that started before commencement

- (1) This section applies if a person applies for financial assistance for an act of violence that is a series of related acts of domestic violence to which section 199(3) applies.
- (2) The assistance that may be granted to the applicant for expenses is limited to expenses incurred on or after the commencement.
- (3) This section does not limit assistance payable to the applicant for an act of violence, within the meaning of previous section 25—
 - (a) committed before the commencement; and

- (b) constituted by an act or omission that forms part of the series of related acts of domestic violence.

Division 4 Applying for assistance

205 Form of applications

New section 52 or 57 applies only in relation to an application for victim assistance or funeral expense assistance made on or after the commencement.

206 Extension of time for applying for funeral expense assistance

New section 58 applies to an application for extension of time made on or after the commencement, regardless of whether the act of violence was committed before or after the commencement.

Division 5 Considering applications for assistance

207 Obtaining information etc.

New chapter 3, part 12, division 1 and new sections 84A to 84C apply only to an application for assistance made on or after the commencement.

208 Reduction if relevant payment received

New section 86 applies—

[s 92]

- (a) in relation to an application decided after the commencement; and
- (b) if the relevant payment is or will be received on or after the commencement.

209 Deferral if victim's conduct may be relevant

New section 87 applies to an application decided after the commencement.

Division 6 Deciding applications for assistance

210 Inviting submissions from applicant

New section 88 applies in relation to an application decided after the commencement, regardless of whether notice was given to the applicant under section 88(2) before or after the commencement.

211 Mandatory conditions

- (1) New sections 89 and 90 apply in relation to an application decided after the commencement.
- (2) This section applies subject to section 202.

Division 7 Other provisions about assistance

212 Interim assistance

New chapter 3, part 14 applies in relation to an application decided after the commencement.

213 Amendment of grants

- (1) New chapter 3, part 15, division 1 applies in relation to an application for amendment of a grant of assistance decided on or after the commencement, regardless of whether the act of violence was committed before or after the commencement.
- (2) Subsection (3) applies if—
 - (a) a proportion of an assistance limit was granted before the commencement to another victim of the act of violence; and
 - (b) the assistance limit would have applied to the applicant had the amending Act not commenced.
- (3) Despite subsection (1), for considering and deciding the application—
 - (a) section 103(2)(c) applies as if it refers to previous section 85 and new sections 86 and 87; and
 - (b) previous section 104(3) applies.

214 Amendment of grant without application

- (1) New chapter 3, part 15, division 2 applies in relation to any grant of assistance, whether the grant was made before or after the commencement.
- (2) Subsection (3) applies, for new chapter 3, part 15, division 2, if the grant of assistance was made before the commencement.
- (3) Whether a relevant payment would have resulted in a reduction of assistance granted to the person under section 86 must be decided as if new section 86 had been in effect when the grant was made.

215 Recovering assistance from offender

- (1) New chapter 3, part 16, other than new section 114, applies in relation to any grant of assistance, whether the grant was made before or after the commencement.
- (2) However, subsection (1) does not apply if notice of the intended recovery was given under previous section 115 before the commencement.
- (3) New section 114 applies to any request for information whether before or after the commencement.

216 Effect of conviction for fraud etc.

New chapter 3, part 17 applies in relation to an applicant whose application for assistance is an application decided after the commencement.

217 Review of decisions

- (1) Previous chapter 3, part 18 continues to apply to a decision identified in previous schedule 1 made before the commencement.
- (2) However, new section 124(3) applies to a decision identified in previous schedule 1 made before the commencement.
- (3) New chapter 3, part 18 applies to a decision identified in new schedule 1 made on or after the commencement.
- (4) However, previous sections 124(7) and 125(3) and previous schedule 1 apply to a decision made after the commencement if the victim to whom the decision relates is subject to an assistance limit because of the operation of this chapter.
- (5) Previous section 136 continues to apply to—

- (a) a person who was granted assistance before the commencement; or
- (b) an applicant for review mentioned in subsection (4).

218 Requirement to notify scheme manager about relevant payment

New section 141A applies to an applicant for assistance whose application is an application decided after the commencement.

219 Primary victims—special assistance

New schedule 2 applies in relation to special assistance for an act of violence if the application for assistance is an application decided after the commencement.

93 Insertion of new sch 1AA

Before schedule 1—

insert—

Schedule 1AA Charter of victims' rights

section 6B

Part 1 Rights of victims

Division 1 General rights

[s 93]

Note—

For this division, *victim* includes a victim of domestic violence that is not a crime. See section 5(3) of this Act.

- 1 A victim will be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs.
- 2 A victim's personal information, including the victim's address and telephone number, will not be disclosed unless authorised by law.
- 3 A victim will be informed at the earliest practicable opportunity about services and remedies available to the victim.

Division 2 Rights relating to the criminal justice system

- 1 A victim will be informed about the progress of the investigation of the crime, unless informing the victim may jeopardise the investigation. If the investigation may be jeopardised, the victim will be informed accordingly.
- 2 A victim will be informed of each major decision (including the reasons for the decision) made about the prosecution of a person accused of committing the crime, including decisions about any of the following matters—
 - (a) the charges brought against the accused;
 - (b) not bringing charges, or substantially changing the charges, against the accused;

-
- (c) accepting a plea of guilty to a lesser or different charge.
- 3 A victim will be informed of the following matters—
- (a) the name of a person charged with an offence in relation to the crime;
- (b) the issue of a warrant for the arrest of a person accused of committing the crime;
- (c) details of relevant court processes, including when the victim may attend a court proceeding and the date and place of a hearing of a charge against the accused;
- Example of a relevant court process—*
- an application for bail made by the accused
- (d) details of any diversionary programs available to the accused in relation to the crime;
- (e) the outcome of a criminal proceeding against the accused, including the sentence imposed and the outcome of an appeal.
- 4 A victim will be informed about the outcome of a bail application made by the accused and any arrangements made for the release of the accused, including any special bail conditions imposed that may affect the victim's safety or welfare.
- 5 If a victim is a witness at the accused's trial, the victim will be informed about the trial process and the victim's role as a witness.
- 6 During a court proceeding, the victim will be protected from unnecessary contact with, or violence or intimidation by, the accused,

[s 93]

defence witnesses and family members and supporters of the accused.

- 7 A victim may make a victim impact statement under the *Penalties and Sentences Act 1992* for consideration by the court during sentencing of a person found guilty of an offence relating to the crime.
- 8 A victim's property held by the State for an investigation or as evidence will be returned to the victim as soon as possible.

Division 3 Complaints

Note—

For this division, *victim* includes a victim of domestic violence that is not a crime. See section 5(3) of this Act.

- 1 A victim may make a complaint about a contravention of a right under this charter, and will be given information about the procedure for making a complaint, under chapter 2 of this Act.

Part 2 Rights of eligible persons

- 1 An eligible person in relation to an offender will be kept informed of the following matters—
 - (a) the offender's period of imprisonment or detention;
 - (b) the transfer of the offender to another facility;

(c) the escape of the offender from custody or whether the offender is unlawfully at large.

2 An eligible person will be given the opportunity to make written submissions to the parole board under the *Corrective Services Act 2006* about granting parole to the offender.

94 Amendment of sch 1 (Reviewable decisions)

(1) Schedule 1, entries for sections 36, 72, 106(2) and 106(3)—
omit.

(2) Schedule 1—
insert—

- section 36D decision that applicant does not have a reasonable excuse for not making a motor accident claim within the period mentioned in the *Motor Accident Insurance Act 1994*, section 37(2)
- section 36E deferring decision of application for assistance
- section 36F decision about the amount of assistance granted
- section 36F refusing an application for assistance
- section 36I deferring decision of application for assistance or deferring decision about amount of assistance
- section 36J decision about the amount of assistance granted
- section 36J refusing an application for assistance
- section 58(2) deciding not to extend time for making an application for funeral expense assistance
- section 84A deferring decision of application for assistance
- section 84B deferring decision of application for assistance or deferring decision about amount of assistance

[s 95]

section 84C deferring decision of application for assistance or
 deferring decision about amount of assistance

section decision that uncounted relevant payment received or
106D(2) likely to be received

section decision about component for which reduced assistance
106E(3) is payable

- (3) Schedule 1, first entry for section 89(a), ‘, including the proportion of an assistance limit the amount represents’—

omit.

- (4) Schedule 1, second entry for section 89(a), after ‘assistance’—

insert—

, other than a condition imposed under section 89(2)

- (5) Schedule 1, second entry for section 98, after ‘assistance’—

insert—

, other than a condition imposed under section 98(2)

95 Amendment of sch 2 (Amounts and categories for special assistance)

- (1) Schedule 2, section 1(1), ‘an amount between the minimum amount and maximum amount’—

omit, insert—

the amount

- (2) Schedule 2, section 1(2), after ‘related crimes’—

insert—

or a series of related acts of domestic violence

- (3) Schedule 2, section 1(2), ‘the crime’—

omit, insert—

the act of violence

- (4) Schedule 2, section 1(3), definitions *category B circumstances*, paragraphs (a)(ii) and (b) and *category C circumstances*, paragraphs (a) and (b), after ‘related crimes’—
insert—

or a series of related acts of domestic violence

- (5) Schedule 2, section 2—
omit, insert—

2 Amount of special assistance

The amount of special assistance payable in relation to an act of violence is as follows—

Act of violence	Amount
category A act of violence	\$10,000
category B act of violence	\$3,500
category C act of violence	\$2,000
category D act of violence	\$1,000

- (6) Schedule 2, section 3(1) to (3)—
omit, insert—

- (1) A ***category A act of violence*** is an act of violence involving any of the following—
- (a) attempted murder;
 - (b) rape;
 - (c) incest with a person under the age of 16 or with an impaired capacity;
 - (d) maintaining a sexual relationship with a person under the age of 16.
- (2) A ***category B act of violence*** is an act of violence that is not a category A act of violence and involves any of the following—

[s 95]

- (a) an attempt to commit a category A act of violence;
 - (b) a sexual offence;
 - (c) grievous bodily harm;
 - (d) an offence described in the Criminal Code, section 317;
 - (e) robbery while armed or with personal violence or in company;
 - (f) burglary with violence;
 - (g) torture;
 - (h) kidnapping;
 - (i) an offence described in the Criminal Code, section 316.
- (3) A **category C act of violence** is an act of violence that is not a category A or B act of violence and involves any of the following—
- (a) an attempt to commit a category B act of violence;
 - (b) serious assault as described in the Criminal Code, section 340;
 - (c) robbery;
 - (d) unlawful wounding;
 - (e) assault occasioning bodily harm, including while armed or in company;
 - (f) an offence described in the Criminal Code, section 364.
- (7) Schedule 2, section 3(4)—
- insert—*
- (c) an act of violence that is domestic violence.

96 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions *assistance limit*, *crime*, *more serious act of violence*, *prescribed person*, *remaining pool amount*, *scheme manager*, *temporary regulation* and *the principles*—
omit.

(2) Schedule 3—
insert—

amendment notice, for chapter 3, part 15, division 2, see section 106A(2).

chief executive (transport) means the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

crime—

(a) for chapter 2 and schedule 1AA, see section 6; or

(b) for chapter 3, see section 25A.

domestic violence see the *Domestic and Family Violence Protection Act 2012*.

eligible person, in relation to an offender, for schedule 1AA, means—

(a) if the offender is a prisoner under the *Corrective Services Act 2006*—an eligible person in relation to the prisoner within the meaning of that Act; or

(b) if the offender is a child detained in a detention centre under the *Youth Justice Act 1992*—an eligible person in relation to the child within the meaning of that Act.

more serious act of violence means an act of violence involving murder, unlawful striking causing death, manslaughter or dangerous driving causing death.

[s 96]

motor accident claim means a motor vehicle accident claim under the *Motor Accident Insurance Act 1994*.

NIISQ Act means the *National Injury Insurance Scheme (Queensland) Act 2016*.

NIISQ application see section 36G.

non-government entity means an entity funded by the Commonwealth or State to provide a service to help victims as its primary function.

prescribed person see section 6A.

relevant entity see section 20(1).

response period, for chapter 3, part 15, division 2, see section 106A(2)(c).

scheme manager—

- (a) generally, means the manager of victims assistance appointed under section 127; or
- (b) for chapter 3, part 15, division 2, see section 106.

series of related acts of domestic violence see section 25B(3).

uncounted relevant payment, for chapter 3, part 15, division 2, see section 106.

victims charter see section 6B.

- (3) Schedule 3, definition *diversionary program*, paragraph (b)—
omit, insert—

- (b) the restorative justice process under the *Youth Justice Act 1992*, part 3.

- (4) Schedule 3, definition *relevant payment*—
insert—

- (c) also includes an amount paid or payable under the NIISQ Act, for a person's

treatment, care or support needs resulting from the act of violence—

- (i) that is funded under the scheme; or
- (ii) for an expense incurred for the person's treatment, care or support.

- (5) Schedule 3, definition *relevant person*, paragraph 1(c)(i) to (iii), 'for a legal matter'—

omit.

- (6) Schedule 3, definition *relevant person*, paragraph 1(c)(iv), 'for legal matters'—

omit.

Part 6 **Amendment of Youth Justice Act 1992**

97 **Act amended**

This part amends the *Youth Justice Act 1992*.

Note—

See also the amendments in schedule 1.

98 **Insertion of new pt 8, div 7**

Part 8—

insert—

Division 7 Releasing information to eligible persons

282A Eligible persons register

- (1) The chief executive must keep a register of persons who are eligible to receive information (*detainee information*) under section 282F about

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a child detained in a detention centre who has been sentenced to detention for a violent offence or a sexual offence.

- (2) The following persons (each an *applicant*) may apply in writing to the chief executive to be registered as an eligible person in relation to the child—
- (a) a victim of the offence;
 - (b) if a victim is deceased because of the offence—an immediate family member of the deceased victim;
 - (c) if a victim is a child or has a legal incapacity—the victim’s parent;
 - (d) another person who satisfies the chief executive the person’s life or physical safety could reasonably be expected to be endangered because of—
 - (i) the child’s history of violence against the person; or

Example—

a domestic violence order has been made against the child under the *Domestic and Family Violence Protection Act 2012* for the benefit of the person

- (ii) a connection between the person and the offence.
- (3) An application must be accompanied by documentary evidence satisfying the chief executive of the applicant’s identity.
- (4) The applicant may nominate a person (a *nominee*) to receive the detainee information for the applicant.

Example—

a victim support worker from a victims’ support agency

- (5) Before deciding an applicant is eligible under

subsection (2)(d) to make the application, the chief executive must give the child a reasonable opportunity to make a submission to the chief executive about why the applicant should not be registered as an eligible person.

(6) In this section—

sexual offence see the *Corrective Services Act 2006*, schedule 4.

violent offence means an offence in which a victim suffers actual or threatened violence.

282B Non-release declaration

The applicant and, if the applicant nominated a nominee, the nominee must sign a declaration stating that the applicant or nominee will not disclose detainee information received by the applicant or nominee other than as permitted under section 282G(3).

282C Application by child

If the applicant is a child, the chief executive must, before registering the child as an eligible person—

(a) give the child information about registering; and

Example—

how to register and how the child's details may be removed from the register

(b) tell the child that the child's parent may register to receive the detainee information for the child.

282D Deciding application

(1) The chief executive may grant the application if

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the chief executive is satisfied the applicant may, under section 282A(2), make the application.

- (2) However, the chief executive may refuse the application if the chief executive reasonably believes releasing detainee information to the applicant may endanger—
 - (a) the security of a detention centre; or
 - (b) the safe custody or welfare of a child detained in a detention centre; or
 - (c) the safety or welfare of another person.

Example—

Releasing detainee information to a child who is also detained in a detention centre may endanger the safe custody or welfare of the child sentenced to detention for the offence.

- (3) Also, the chief executive may grant an application by a child only if the child's registration as an eligible person is in the child's best interests.
- (4) If the applicant is a child in care, the chief executive must consult with the chief executive (child safety) before deciding what is in the child's best interests.
- (5) In this section—

child in care means a child—

- (a) who is in the custody or guardianship of the chief executive (child safety); or
- (b) who, under an agreement entered into by the chief executive (child safety) and a parent of the child, has been placed in the care of a person other than a parent of the child.

282E Removing details from eligible persons register etc.

- (1) The chief executive must remove an eligible

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- person's details from the eligible persons register—
- (a) when the child in relation to whom the person is registered—
 - (i) is discharged; or
 - (ii) if the child is released from detention under a supervised release order—stops being subject to the order; or
 - (iii) dies in detention; or
 - (iv) is transferred to another jurisdiction; or
 - (v) is transferred to a corrective services facility; or
 - (b) if the child's conviction in relation to which the person is registered is overturned; or
 - (c) if asked to do so by the eligible person.
- (2) The chief executive may remove an eligible person's details from the register if—
- (a) the chief executive reasonably considers the person's continued registration may endanger—
 - (i) the security of a detention centre; or
 - (ii) the safe custody or welfare of a child detained in a detention centre; or
 - (iii) the safety or welfare of another person; or
 - (b) the eligible person discloses detainee information received under this division other than as permitted under section 282G(3).
- (3) The chief executive may also remove an eligible person's details from the register if the chief executive is unable, after making reasonable

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efforts, to contact the eligible person.

- (4) If a nominee nominated under section 282A(4) to receive detainee information for an eligible person discloses detainee information received under this division other than as permitted under section 282G(3)—
 - (a) the chief executive may remove the nominee's details from the register; and
 - (b) if the chief executive removes the nominee's details from the register—the nominee is taken not to have been nominated under section 282A(4) to receive detainee information for the eligible person.
- (5) In this section—

details, of an eligible person, includes details of a nominee nominated under section 282A(4) to receive detainee information for the eligible person.

282F Releasing information

- (1) The chief executive may, to the extent the chief executive considers it appropriate, give an eligible person in relation to a child detained in a detention centre the following information about the child—
 - (a) the transfer of the child—
 - (i) interstate or overseas under a scheme for the transfer of children detained under a sentence; or
 - (ii) to a corrective services facility;
 - (b) the length of the period of the child's detention;

- (c) the day the child is eligible for, or due for, discharge or release, including under a supervised release order;
 - (d) any further cumulative periods of detention imposed on the child while the child is detained for the offence;
 - (e) the granting to the child of leave of absence under section 269;
 - (f) whether the child is unlawfully at large;
 - (g) the death of the child.
- (2) If the eligible person nominated a nominee under section 282A(4) to receive the information, the chief executive may give the information to the nominee.

282G Confidentiality of detainee information

- (1) This section applies to a person who receives detainee information.
- (2) The person must not disclose detainee information received by the person to another person other than under subsection (3).

Maximum penalty—100 penalty units or 2 years imprisonment.

- (3) The person may disclose detainee information—
 - (a) for this Act; or
 - (b) to discharge a function under another law or if the disclosure is otherwise authorised under another law; or
 - (c) for a proceeding in a court, if the person is required to do so by order of the court or otherwise by law; or
 - (d) if authorised by the child to whom the information relates; or

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- (e) if reasonably necessary to obtain counselling, advice or other treatment.

99 Insertion of new pt 11, div 16

Part 11—

insert—

**Division 16 Transitional provision for
Victims of Crime
Assistance and Other
Legislation Amendment
Act 2017**

392 Eligible persons register

- (1) This section applies to a person who, immediately before the commencement, was a victim who had requested information under the *Victims of Crime Assistance Act 2009*, repealed section 16, about a child detained in a detention centre.
- (2) From the commencement, the person is taken to be included on the eligible persons register as an eligible person in relation to the child.

100 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

applicant, for part 8, division 7, see section 282A(2).

detainee information, for part 8, division 7, see section 282A(1).

eligible person, in relation to a child detained in a detention centre, means a person included on the

eligible persons register as an eligible person in relation to the child.

eligible persons register means the register kept under section 282A(1).

nominee, for part 8, division 7, see section 282A(4).

Part 7 **Amendments of other legislation**

101 **Legislation amended**

Schedule 1 amends the legislation mentioned in it.

Schedule 1 Legislation amended

section 101

Bail Act 1980

1 Section 8(1), note—

omit, insert—

Notes—

- 1 If the court is a Magistrates Court, see the *Justices Act 1886*, part 6A, for provisions about the use of video link facilities or audio link facilities for proceedings, including bail proceedings.
- 2 The provisions about the sexual assault counselling privilege in the *Evidence Act 1977*, part 2, division 2A apply in relation to bail proceedings.

Corrective Services Act 2006

1AA Section 320(5)—

insert—

history of violence includes a history of domestic violence within the meaning of the *Domestic and Family Violence Protection Act 2012*.

1 Section 325(1)(c), from ‘transfer’—

omit, insert—

transfer—

- (i) between corrective services facilities; or

- (ii) interstate or overseas under a scheme for the transfer of persons imprisoned under a sentence;

2 Section 325(1)—

insert—

- (ca) the length of the term of imprisonment the prisoner is serving;
- (cb) any further cumulative terms of imprisonment imposed on the prisoner while in custody for the offence;

3 Section 325(1)(ca) to (g)—

renumber as section 325(1)(d) to (i).

Criminal Code

1 Section 590AA(2)—

insert—

- (ka) matters relating to protected counselling communications under the *Evidence Act 1977*, part 2, division 2A; or

Domestic and Family Violence Protection Act 2012

1 Section 145—

insert—

- (1A) Despite subsection (1), the *Evidence Act 1977*,

part 2, division 2A applies to a proceeding under this Act.

2 Section 145(1A) to (3)—

renumber as section 145(2) to (4).

3 Section 154(1)—

insert—

Note—

See, however, section 145(1A) of this Act and the *Evidence Act 1977*, part 2, division 2A.

Evidence Act 1977

1 Section 132C(5), definition *allegation of fact*, paragraph (c), ‘*Victims of Crime Assistance Act 2009*, section 15’—

omit, insert—

Penalties and Sentences Act 1992, section 179K

Justices Act 1886

1 Section 83A(5)—

insert—

(h) matters relating to protected counselling communications under the *Evidence Act 1977*, part 2, division 2A.

2 Section 110A(1)—

insert—

Note—

The provisions about the sexual assault counselling privilege in the *Evidence Act 1977*, part 2, division 2A apply in relation to committal proceedings.

Penalties and Sentences Act 1992

1 Section 4—

insert—

harm, for part 10B, see section 179I.

victim, for part 10B, see section 179I.

victim impact statement, for part 10B, see section 179I.

2 Section 9(2)(c)(i), ‘the Victims of Crime Assistance Act 2009, section 15’—

omit, insert—

section 179K

3 Section 172C(d)—

omit, insert—

(d) have regard to the rights stated in the victims charter under the *Victims of Crime Assistance Act 2009*.

4 Section 179K(1), note 1—

omit, insert—

- 1 If the offender's mental condition relating to the offence is referred to the Mental Health Court under the *Mental Health Act 2016*, see section 162 of that Act for the information a victim of the offence may give that court to help it make a decision on the reference.

Recording of Evidence Regulation 2008

1 Section 10A—

omit, insert—

10A Government assessor or scheme manager under Victims of Crime Assistance Act 2009

- (1) This section applies to a government assessor or the scheme manager in performing any of the following functions under the *Victims of Crime Assistance Act 2009*—
 - (a) dealing with an application for assistance, or amendment of a grant of financial assistance, under chapter 3 of that Act;
 - (b) amending financial assistance under chapter 3, part 15, division 2 of that Act;
 - (c) recovering, for the State, an amount from a person under chapter 3, part 16 of that Act.
- (2) The government assessor or scheme manager is entitled to—
 - (a) 1 free copy of an existing transcription of a record under the Act of—
 - (i) a criminal proceeding relating to a relevant offence for the act of violence for which financial assistance is sought or has been granted; or

- (ii) a proceeding under the *Domestic and Family Violence Protection Act 2012* relating to the act of violence for which financial assistance is sought or has been granted; or
- (b) free electronic access to the part of a record under the Act, consisting of an audio recording, of a proceeding mentioned in paragraph (a)(i) or (ii).
- (3) The copy mentioned in subsection (2)(a) may be issued—
 - (a) in printed or electronic form; and
 - (b) even if the proceeding has ended.
- (4) In this section—
 - government assessor** see the *Victims of Crime Assistance Act 2009*, schedule 3.
 - relevant offence** see the *Victims of Crime Assistance Act 2009*, schedule 3.
 - scheme manager** see the *Victims of Crime Assistance Act 2009*, schedule 3.

Victims of Crime Assistance Act 2009

1 Section 6B—

insert—

Note—

See also the principles for victims and others under the *Mental Health Act 2016*, section 6.

2 Section 32(3)(a), '45(1)(f)'—

omit, insert—

45(f)

3 Section 32(5)(a), ‘48(2)’—

omit, insert—

48(1)

4 Section 32(5)(a)(i), ‘49(1)(a),’—

omit, insert—

49(a),

5 Section 32(5)(b), ‘48(3)’—

omit, insert—

48(2)

6 Section 32(8), definition *non-expense assistance*, ‘49(1)(e)’—

omit, insert—

49(e)

7 Section 70(2), note, ‘25(6)’—

omit, insert—

25B(4)

8 Section 85(2)(b)—

omit.

9 Section 85(2)(c)—

renumber as section 85(2)(b).

- 10 Section 85(3) and (4)—**
omit.
- 11 Section 85(7), ‘(1)(c)’—**
omit, insert—
(2)(b)
- 12 Section 85(5) to (7)—**
renumber as section 85(3) to (5).
- 13 Schedule 3, definition *prescribed offence*, ‘25(8)’—**
omit, insert—
25A(3)
- 14 Schedule 3, definition *series of related crimes*, ‘25’—**
omit, insert—
25B(1)

Youth Justice Act 1992

- 1 Section 150(1)(h), ‘Victims of Crime Assistance Act 2009, section 15’—**
omit, insert—
Penalties and Sentences Act 1992, section 179K