

CRIMINAL OFFENCE VICTIMS BILL 1995

EXPLANATORY NOTES

PURPOSE OF LEGISLATION

The need for this Bill arises out of concern both nationally and internationally about the position of the victim in the criminal justice system.

The primary purpose is to advance the position of victims of crime in the criminal justice process. This occurs in two ways. First, the Bill enshrines Fundamental Principles of Justice for Victims of Crime. These constitute a set of guiding principles for public officers dealing with victims of crime. Second, the Bill contains provisions governing the making of compensation claims against offenders and the State. These have been relocated from the Criminal Code and contain several reforms including permitting payments to the families of homicide victims and simplification of the process of applying for criminal compensation.

STATEMENT OF POLICY OBJECTIVES

The basic aim is to ensure that the role of the victim in the criminal justice system is sufficiently recognised.

Fundamental Principles of Justice for Victims of Crime

There has been international recognition of the special needs of victims of crime, for example, the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

The purpose is to advance the position of victims of crime by the articulating in legislative form the principles by which they can expect to be treated by public officers and to improve the delivery of justice to victims of crime. The principles so stated constitute guiding principles for police, prosecutors and other officials dealing with victims of crime. They will also

serve an educative function, in informing victims of crime in easily understood terms of the principles which they can expect will underlie the treatment given to them by police, prosecutors and other officials.

Criminal Compensation

A long-recognised right, conferred by the current *Criminal Code*, is that of access by the victim of personal violence or sexual offence to a criminal injuries compensation scheme.

These provisions will be relocated to the specific legislation for victims of crime.

The principal reforms are:

- a. To permit for the first time compensation to be paid to dependants of a victim of murder or manslaughter, or for funeral or other expenses of a victim of murder or manslaughter, where the victim has no dependants;
- b. Court applications will be dealt with informally;
- c. Amounts will be assessed according to a 'Compensation Table' with the objective of simplifying the process and reducing the inconsistencies in the awards made.

The system for compensation is intended to provide some measure of compensation in a summary way to the victim of a crime without the delay, costs and formality of a civil action for damages, for example, for assault or trespass. The amount paid is a solatium only and does not represent the amount of compensation which would be awarded in a common law action against the offender for damages.

ACHIEVEMENT OF POLICY OBJECTIVES

The Fundamental Principles represent the minimum standards which public officers should apply in dealing with victims of crime.

It is intended that they will be complemented by sets of guidelines issued by particular agencies, which will cause officers to apply the Fundamental Principles.

The reforms to the system of criminal compensation will ensure that the compensation to victims of personal or sexual violence is paid according to

a Compensation Table, so that the awards made are consistent for particular injuries, and to simplify the procedure for applications. For the first time, compensation will be available to the survivors of victims of murder or manslaughter, but the amount will depend on whether the survivor was dependent on the victim of murder or manslaughter.

ADMINISTRATIVE COST TO GOVERNMENT

It is estimated that the additional cost to the State of these reforms will be around \$2.7 million. The expected increased expenditure results from the new payments to survivors of victims of murder or manslaughter; the need to appoint some additional staff to assist victims in bringing their applications and an anticipation that there will be an increase in the number of applications given the extra publicity given to the compensation scheme.

The current cost of the scheme is around \$4 million.

CONSULTATION

There has been extensive consultation on this proposal with community groups and interested bodies. In the initial policy development stage, peak bodies were invited to comment on the Fundamental Principles for justice for Victims of Crime and on reforms to the compensation system. More recently, consultation has occurred with numerous groups or organisations representing or dealing with victims of crime. These consultations have occurred with groups like the Cairns Victims of Crime Association and the Townsville Homicide Support Group and Citizens Against Road Slaughter. Versions of the Bill have also been forwarded to peak bodies, like the Queensland Law Society and the Queensland Council of Civil Liberties. In addition the Department of Justice and Attorney-General, in conjunction with the Australian Institute of Criminology, held a seminar on the proposal.

PART 1—PRELIMINARY

Short Title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the provisions of the Bill.

Definitions—the dictionary

Clause 3 provides for the dictionary which is Schedule 3 to the bill.

**PART 2—FUNDAMENTAL PRINCIPLES OF JUSTICE
FOR VICTIMS OF CRIME***Division 1—Explanatory provisions***Reasons for declaration and its effect**

Clause 4 sets out the need and reasons for the declaration. It also states the effect of the declaration and guidelines. The clause encourages victims of crime to assert the Principles in ways that do not involve legal process or proceedings.

Who is a victim under the declaration

Clause 5 defines who is a “victim” under the declaration.

*Division 2—Declaration of fundamental principles***Fair and dignified treatment**

Clause 6 provides that victims should be treated with courtesy and compassion and respect for their personal dignity.

Access to justice

Clause 7 provides that a victim should be given access to the State’s system of justice.

Guidelines to help response to victims

Clause 8 provides that the responsiveness of public officials dealing with victims should be assisted by the provision of appropriate guidelines for putting the principles into effect.

Information to be provided to victim about crime prevention methods

Clause 9 requires that victims should on request be given information on crime prevention methods.

Privacy of victim to be protected and property returned

Clause 10 provides that a victim's privacy should be protected and any property taken for an investigation should be returned as soon as reasonably possible.

Victim's version of events to be reported as soon as reasonably possible after crime.

Clause 11 provides that a law enforcement officer [a defined term] should make a report of the victim's version of events as soon as reasonably possible after the crime happens.

Protection from violence and intimidation from accused person

Clause 12 provides that a victim should be afforded all necessary protection from violence and intimidation from the person accused of the crime. Specific amendments to reinforce this principle will be made to the *Bail Act 1980* and to the *Criminal Code*.

Welfare of victim to be considered

Clause 13 provides that the welfare of the victim should be considered at all appropriate stages of the investigation and prosecution of a crime.

Information during sentencing of impact of crime on victim

Clause 14 provides that at the sentencing of an offender, the prosecutor should inform the sentencing court of appropriate details of the harm caused

to the victim by the crime and that the prosecutor may have regard to the victim's wishes.

Information about investigation and prosecution of offender

Clause 15 provides for information to be given to victims (on their request) about the progress of cases. In all crimes, a law enforcement officer should on request advise a victim of information concerning the investigation of the case and the prosecution of the offender. A victim of a sexual crime or a crime involving personal violence should also, on request, be supplied with details of the sentence imposed on the offender; and other correctional information.

Victim to be advised on role as witness

Clause 16 provides that the victim who is a witness in a trial, should be informed by the prosecution about the trial process and the victim's role as a prosecution witness.

Information about services

Clause 17 provides that a victim should have access to information about services for victims responsive to their needs including issues relating to welfare, health, counselling, medical, legal help and victim-offender conferencing programs.

Information about compensation or restitution

Clause 18 provides that a victim should have access to information about the availability of compensation or restitution for injury loss or damage caused to the victim by the crime. A victim should also be entitled, on request, to have relevant information placed before the court by the prosecutor in an application for an order for compensation or restitution for injury or for loss of, or damage to property caused by the crime. Finally the clause provides that where compensation for injury caused to a victim by a crime against the victim's person cannot be obtained from the offender or other sources, the victim should have recourse to a criminal injuries compensation scheme provided by the State.

PART 3—COMPENSATION FOR PERSONAL INJURY FROM INDICTABLE OFFENCES

Division 1—Explanation

Scheme for compensation for injury, death and expenses from indictable offence

Clause 19 provides for a scheme for the payment of compensation to a person for injury suffered by the person as a result of a personal offence [a defined term]; for the death of someone on whom the person was dependent or funeral and other expenses from the death of a member of a person's family, where the death occurs in circumstances constituting murder or manslaughter. The clause makes it clear that an application cannot be made for an injury caused to a person by an offence to which the applicant was a party or an unlawful killing to which the applicant was a party.

Meaning of “injury”

Clause 20 defines the term “injury” for which compensation may be paid.

Meaning of “personal offence”

Clause 21 defines the term “personal offence”.

Relationship of compensation under this part to rights under common law or otherwise

Clause 22 describes the relationship between the availability of compensation and other rights or entitlement a victim may otherwise have under the common law. The ability to apply for compensation under the scheme is in addition to, and not in derogation of any rights available under the common law. The clause makes clear that compensation paid to an applicant under the scheme is intended to help the applicant and is not intended to reflect the quantum of compensation to which the victim may be entitled under the common law. It is made clear that, in determining the

amount of compensation to be awarded, the maximum amount is reserved for the most serious cases and other less serious cases are to be scaled according to their seriousness.

Payments by State are ex gratia

Clause 23 makes clear that the payments made by the State are made ex gratia.

Division 2—Application to a court

Court may make an order compensating someone injured by personal offence

Clause 24 governs the making of applications to a court for compensation. Such applications lie where a person is convicted on indictment of a personal offence or is sentenced on indictment and a personal offence is taken into account.

The application can be made by the person against whom the personal offence is committed. It is intended to retain the effect of the decision in R v Moors; *ex parte Alex* (1994) 2 Qd R 315.

It is made clear that the court may order compensation for the injury suffered by the applicant because of the offence.

The court is able to make an order for an amount to be paid by the convicted person to the applicant because of the injury.

What amount may be required to be paid under a compensation order

Clause 25 limits the amounts which can be awarded in a compensation order. The intention is to ensure that awards are made by reference to the injuries and amounts detailed in the compensation table or a regulation and not by reference to the common law principles of damages assessment.

The total amount ordered shall not exceed the prescribed amount, called the “scheme maximum”. If more than one amount is payable (that is, there is more than one injury) the amounts are added together but the amount ordered must not exceed the scheme maximum.

Where an injury is specified in the compensation table, the court is limited to making an order for, if there is only one percentage listed for the injury—an amount up to the amount that is the listed percentage of the scheme maximum; or, if there is a range of percentages for the injury—an amount that is within the listed range of percentages.

Where an injury is specified under a regulation, the court is limited to making an order for the prescribed amount.

Where the injury is not specified in the compensation table or in a regulation, the court is to decide the amount by comparing the injuries with those in the compensation table and any regulations and having regard to the amounts which can be paid for those injuries. The aim is to ensure that, even where the injury is not in the compensation table or regulation, there is some consistency in the awards, reached by comparing the injury under consideration with those in the table or regulation and the amounts for those injuries. At the same time, the court should always be guided by the principle that the maximum amount of compensation is reserved for the most serious cases and the amounts in other cases are intended to be scaled according to their seriousness.

In all cases, the court is to have regard to everything relevant, including any behaviour by the applicant that directly or indirectly contributed to the injury.

Finally, it is expressly stated that a decision on the amount to be ordered does not involve the application of the principles used to assess common law damages for personal injuries. It is intended to overcome the decision in *McClintock v Jones* (1995). The level of assistance is to be determined by reference to percentage or range of percentages listed in the compensation table or regulation, or by comparing an injury with those in the compensation table or regulations and the amounts awarded for those injuries.

When single or multiple compensation orders may be made

Clause 26 is designed to indicate whether a single order or multiple compensation orders are appropriate in relation to an injury or injuries. The test for whether a single order is appropriate is whether the applicant has suffered injury from a substantially single incident or a substantially single state of injury. In making this determination, the court can have regard to the injuries constituting the state of injury, the time over which the injuries

were caused, the similarity or connection between the injuries or the events or anything else relevant. However, where there is more than one convicted person the court may make a compensation order against each of more than 1 of the persons. It is provided that an order can be made against each of more than 1 of the convicted persons, but only in a situation where the involvement of the other convicted persons had a direct and material effect on the injury suffered.

Order for repayment of amounts paid by State under division 3

Clause 27 allows the State to apply for a court order requiring a person convicted of murder or manslaughter to pay to the State any amount paid by the State under *Clause 35* in relation to someone's murder or manslaughter.

Provisions about the convicted person

Clause 28 provides for a convicted person to be notified of an application for a compensation or repayment order. It also permits money belonging to the offender, which comes into the possession of the police or court during an investigation or proceedings, to be applied towards the compensation order. Enforcement of a compensation or repayment order may be as a judgement of the court in its civil jurisdiction.

Compensation or repayment orders are not part of a sentence of a convicted person

Clause 29 makes clear that compensation or repayment orders are in addition to and not part of the sentence.

Application proceeding is civil and strict evidence rules need not apply

Clause 30 governs the proceedings on an application providing that they are civil proceedings, decided on the balance of probabilities but to which the rules of evidence need not apply.

No cost orders on application

Clause 31 prevents the court making costs orders on an application to government.

Division 3—Application to the government**Application for payment by State of amount of unsatisfied compensation order**

Clause 32 provides that, where a person is entitled to an amount under a compensation order, the person can apply to the State for payment and the State can pay all or part of the amount.

Application for payment by State of compensation for injury from personal offence

Clause 33 details the cases in which and how a person can apply to the State for a payment of an amount for an injury because of certain acts committed against the person and permits the State to make a payment as if the person who committed the act or offence were convicted on indictment of the act or offence. In relation to cases where the offender cannot be found or identified, it is provided that the applicant must show that the act was reported as soon as possible, having regard to all the circumstances, to a police officer or for a sexual offence to a police officer, doctor or appropriate agency.

Application to State for payment for injury suffered when helping a police officer

Clause 34 allows a person, who suffers injury when helping a police officer in certain circumstances, to apply to the State for payment of an amount for the injury and allows the State to make a payment to the person.

Application to State for payments about someone's murder or manslaughter

Clause 35 allows application for payment to be made where a person dies in circumstances constituting murder or manslaughter. A dependant can apply for the payment of an amount up to the prescribed amount and for an amount up to the prescribed amount for funeral and other expenses. A member of the deceased's family, who is not a dependant, can apply for payment of funeral or other expenses caused in the course of the crime's commission up to the prescribed amount. It is provided that the State can make a payment up to the relevant prescribed amount.

How applications are processed

Clause 36 details how the applications are processed and sets out the matters to which the Governor-in-Council may have regard. A power to defer a decision on an application is conferred.

Payment from Consolidated Fund

Clause 37 provides that payments are from the Consolidated Fund and declared to be appropriated from the Fund.

State's subrogation rights

Clause 38 confers on the State, to the extent of any payment made under the Bill, a right of subrogation to all the rights and remedies the injured person has for the injury against anyone responsible for the injury. The clause further provides for those circumstances in which the State decides to pay an amount to an injured person and the person then becomes entitled to receive an amount for the injury from the person responsible for the injury. In such cases, the State has a first charge over the amount, to the extent of any payment made by the treasurer and the entitlement of the injured person to receive further amounts as part of the payment from the State stops unless the Governor in Council directs. Finally, the clause confers a power on the court, when a person is convicted on indictment for a personal offence causing injury, to make any order necessary to give effect to the State's rights under this section.

Governor-in-Council may delegate

Clause 39 contains a power of delegation allowing the Governor-in-Council to delegate its powers under the division to the Minister.

Time within which applications for compensation must be made

Clause 40 establishes time limits for the bringing of applications for compensation. Generally, applications to the court should be brought within 3 years of the convicted person's trial or if the applicant was a child at the time of trial within 3 years after the child becomes an adult. The court has a power to extend time under clause 41. In relation to applications made to

the Minister, the time period of 3 years runs from the time of the relevant offence, murder or manslaughter or if the applicant was a child at that time, the child has 3 years from the age of majority to bring the application. Again there is a power to extend the time.

Order for extension of time

Clause 41 applies the provisions of the *Limitations of Actions Act 1974*, sections 30 and 31 to applications to the court or to the Minister to permit an extension of the time for bringing the application in confined circumstances.

PART 4—MISCELLANEOUS

Applications

Clause 42 permits the Director of Public Prosecutions to make an application under section 24 for a compensation order for an injured person.

Approval of forms

Clause 43 allows the chief executive to approve forms under the Act.

Regulation making power

Clause 44 confers on the Governor-in-Council a power to make regulations under the Act, including for the process for considering or dealing with applications under *part 3, division 3*.

Acts amended in Schedule 2

Clause 45 provides that *Schedule 2* amends the Acts mentioned in it.

PART 5—TRANSITIONAL

Application of Act to previous acts and to subsequent acts and events

Clause 46 provides that the new scheme does not apply to injury suffered due to an offence which occurs before its commencement and that in relation to such injury, the *Criminal Code*, chapter 65A, applies.

SCHEDULE 1

Schedule 1 contains a Compensation Table setting out various injuries and percentages of the scheme maximum which relate to the specific injuries. The contents of the Compensation Table limit the amounts which can be ordered by the court or awarded by the Governor-in-Council for the particular injuries specified in the table. Where an injury suffered by an applicant is not specified in the Compensation Table or a regulation, the contents of the Compensation Table are to be used by the court or the Governor-in-Council in setting the amount to be ordered or awarded as compensation. In those cases the decision-maker must compare the injury suffered with injuries specified in the Compensation Table and have regard to the amounts that can be ordered for those injuries (see *Clause 25(6)*).

SCHEDULE 2

Schedule 2 contains amendments to other legislation, which reinforce the policy objectives of the Bill.

***Criminal Code* (1899)—Amendments**

Clause 1 omits *Criminal Code* (1899), Chapter 65A (*Compensation for injury*), which presently regulates criminal compensation applications. The operation of these provisions in relation to injuries which are sustained because of an offence committed prior to the commencement of the Bill is preserved by *Clause 46*.

Clause 2 inserts a new provision, *Clause 695A, Power to protect victim of violence by prohibiting publication of information about proceedings*, into the *Criminal Code* (1899). The new clause reinforces the principle contained in *Clause 12* of the Bill, dealing with protection from violence and intimidation by the accused person. The new *Clause 695A* will permit a court to make an order prohibiting, either indefinitely or for a particular time, the publication of information about the address (a defined term) of a person against whom the violence is alleged to have been committed. The new clause further provides that this application can be brought by the person seeking to have the information suppressed or by the prosecution and for the procedure on the application. Finally, the clause provides that the order can only be made where the information, publication of which is suppressed, is not relevant to the guilt or innocence of the charged person.

Criminal Code (1995)—Amendments

Clause 1 omits *Criminal Code* 1995, *section 416, Power to prohibit publication of drugs misuse offence proceedings* and inserts new *Clause 416, General provisions, Clause 416A, Power to prohibit publication of proceedings about drugs misuse offences* and *Clause 416B, Power to protect victim of violence by prohibiting publication of information about proceedings* and *Clause 416C, Saving of other relevant provisions*. The new *Clause 416* provides the court with authorisation to prohibit publication of certain information and governs the procedure for applying for such an order. *Clause 416A* regulates the application where the proceedings are for a drugs misuse offence. *Clause 416B* permits the court to order the suppression of the address (a defined term) of a person against whom violence is alleged to have been committed (but only where the information is not relevant to the guilt or innocence of the charged person) and is intended to reinforce the principle contained in *Clause 12* of the Bill, dealing with protection from violence and intimidation by the accused person. *Clause 416C* states that the provisions of the division are in addition and not in substitution for certain other specific provisions, such as *Children's Services Act 1965*, section 128, **Restrictions on reporting concerning child**.

Clause 2 inserts into Schedule 2, part 2 of the ***Criminal Code*** (1995), an amending provision which inserts certain provisions in the ***Criminal Offence Victims Act 1995***.

Bail Act 1980—Amendments

Clause 1 omits *section 16(1)(a)(ii)* and inserts a new *Clause 16(1)(a)(ii)*, which repeats the current law, but also requires the relevant decision maker to refuse bail where satisfied that there is an unacceptable risk that the defendant if released on bail would endanger the safety or welfare of a person who is alleged to be a victim of the offence with which the defendant is charged. The amendment is designed to require the decision maker to consider specifically the interests of the person alleged to be the victim of the offence. This amendment reinforces *clause 12*, dealing with protection from violence and intimidation by the accused person.

Juvenile Justice Act 1992—Amendments

Clause 1 omits *Part 5, division 10* and inserts a new **Division 10—Application of Criminal Offence Victims Act 1995**, which in new *clause 195* declares that the ***Criminal Offence Victims Act 1995*** applies to an offence committed by a child.

Penalties and Sentences Act 1992—Amendments

Clause 1 omits *section 5(1)* and inserts a new *clause 5(1)* which provides a new definition of a penalty unit. The purpose of the new definition is to ensure that where by court order a fine or penalty is imposed the value of a penalty unit is \$75, but that for minor offences prosecuted by an infringement notice, the value of a penalty unit is \$60. The aim of increasing the value of a penalty unit for court ordered fines is to ensure that those committing offences contribute to partly offset the cost to the community of the compensation scheme. It is expected that courts imposing fines will increase the level of fine imposed to reflect the higher value of a penalty unit.

SCHEDULE 3

Schedule 3 contains a dictionary which defines various terms used in the Bill.