

# Corrective Services and Other Legislation Amendment Bill 2008

## Explanatory Notes

### Short Title of the Bill

Corrective Services and Other Legislation Amendment Bill 2008

### Objectives of the Bill

The Bill will create a scheme:

- to ensure offenders are required to utilise existing complaint mechanisms prior to making complaints to the Anti-Discrimination Commission Queensland (ADCQ);
- modify how the *Anti-discrimination Act 1991* applies to awards made to offenders;
- modify how the *Anti-discrimination Act 1991* applies to the consideration of direct and indirect discrimination for corrective services;
- provide a mechanism to freeze compensation and damages awards made in favour of offenders and notify victims of crime so they are given the opportunity to make a civil claim against the frozen funds; and
- enable prescribed Queensland Corrective Services (QCS) Dog Squad Officers to lawfully possess dangerous drugs for the purpose of training drug detection dogs and to outline the manner in which drugs possessed for such purposes must be managed.

### Policy Rationale

#### Context

In respect of corrective services, the government is committed to providing “community safety and crime prevention through an integrated correctional

services system delivering humane containment, supervision and intervention for prisoners”. Effective management of prisoners requires standardised practices to minimise the potential for security and safety issues. However, as the population grows and becomes more diverse, corrective services are faced with the challenge of meeting increasing and varied needs.

The recent Supreme Court appeal decision of *State of Queensland v Mahommed [2007] QCS 018* addressed the issue of offender compensation through the ADCQ. In its original ruling, the Anti-Discrimination Tribunal Queensland (ADTQ) held that prisoner Mahommed was the victim of direct and indirect discrimination under the *Anti-Discrimination Act 1991*. This decision was upheld by the Supreme Court. This decision has significant implications for the management of offenders within the correctional environment and how requests from individuals for different treatment are managed. An unintended consequence of the application of the anti-discrimination laws in the realm of corrective services is that the standards that have been established as a result of the *Mahommed* decision cannot be met by government and in turn encourage unrealistic and unreasonable expectations of prisoners.

In recent years, offenders have sent complaints about treatment directly to the ADCQ rather than use an internal complaints process. A comprehensive complaints management system for offenders was introduced based on the Ombudsman’s Development of *Effective Complaints Management Policy* and the *National Standard on Complaints Handling*.

In order to ensure that offenders use the new complaints management system, it is proposed that a statutory duty should be placed on the ADCQ to ensure that it only considers complaints from offenders who have made reasonable use of all of the internal mechanisms available to them to resolve their complaint.

Under the *Criminal Offences Victims Act 1995* (COVA), victims who suffer injury as a result of criminal conduct may receive compensation from an offender or, if the offender cannot pay, the State Government. This compensation differs from compensation that a victim may receive following a claim against the offender in civil proceedings. Civil claims may reflect damages that are not considered as part of a claim under COVA such as property damage or loss of earnings, and victims may wish to make a civil claim if an offender is in a position to pay such damages.

In many cases offenders are unable to pay any damages resulting from a civil claim at the time of conviction. If, however an offender receives compensation as a result of an incident that occurs in prison, a civil claim may then be viable. It is important that the victim is made aware of the offender's new circumstances. It is also important to ensure that victims are not disqualified from making a claim because the limitation period has expired.

New South Wales and New Zealand have introduced measures to ensure that, where a prisoner has been awarded compensation, any money is frozen for a period of time to ensure that victims are made aware of this and are provided with an opportunity to make a civil claim. Queensland is following the general approach adopted by these jurisdictions.

### **Achievement of the Objectives**

The amendments will make it mandatory for an offender to use all available internal complaints mechanism before taking their complaint to the ADCQ.

In determining whether to make a finding of discrimination (direct or indirect) in respect of the treatment an offender received during the course of their sentence by the correctional management (the Protected Defendant), the ADTQ must consider whether the offender's treatment was reasonable under all the circumstances.

The amendments will also set down criteria that the ADTQ must consider when determining whether the treatment was reasonable under the circumstances.

In order to ensure that awards of money are appropriately made and not act as an enticement to offenders to bring mischievous complaints, the amendments will also require that the ADTQ only award compensation to an offender in circumstances where the Protected Defendant has acted maliciously towards the offender and where no other available remedy would be effective.

Any award or payment to the offender for treatment that has occurred while under the supervision of the Protected Defendant, whether the action is based on discrimination or a civil wrong, will not be made to the offender. Instead the Protected Defendant will pay the award or payment directly into a Victim Trust Fund established and managed by the Public Trustee. Medical expenses and legal costs will be excluded from the Victim Trust Fund.

The money contained within the Victim Trust Fund will be frozen for a period of six months to allow eligible victims to be notified of the fund and that a civil claim may be viable for compensation in respect of injuries caused by the offender. The amendments allow for the funds to be frozen for a further month once all eligible victim claims have been finally decided to allow certain State and Commonwealth entities to recover money from the frozen funds in respect of any unpaid debts the offender has accumulated. Any residual remaining in the fund will be paid to the offender.

An **‘offender’** is as defined in the *Corrective Services Act 2006* and includes a prisoner, parolee, individual on a community based order or continuing supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. **‘Protected Defendant’** includes the Crown, government departments, engaged service providers, community service supervisors and their employees, and other persons exercising official functions with respect to the supervision and rehabilitation of offenders and an entity employed or engaged under this Act whose functions include rehabilitating offenders.

The amendments also enable prescribed Queensland Corrective Services Dog Squad Officers to lawfully possess dangerous drugs for the purpose of training drug detection dogs in the manner in which drugs possessed for such purposes must be managed.

### **Estimated Cost for Government Implementation**

The costs of operating the victim trust fund will be met from within existing agency resources.

### **Consistency with Fundamental Legislative Principles**

The *Legislative Standards Act 1992* defines fundamental legislative principles as “principles in relation to legislation that underlies a parliamentary democracy based on the rule of law”.

It is arguable that modifying the way offenders will access anti-discrimination proceedings and providing a mechanism to require compensation and damages that traditionally would have been made to offenders to be redirected to victims of crime (and, in certain circumstances, the State and Commonwealth for unpaid debts) does not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*.

From the outset, it can generally be stated that the constraints of the correctional environment, the need to protect the safety and security of the correctional system and the people therein, together with the need to protect the wider community, justifies the need for the proposed actions to be taken. The Scrutiny of Legislation Committee in Alert Digest No. 4 of 2006 in relation to the *Corrective Services Act 2006* commented on the issue of prisoners' rights as follows:

- “12 In the circumstances, the committee proceeds from the position that prisoners have rights. However, those rights must necessarily take a significantly attenuated form, given the status of prisoners and the imperatives necessarily associated with the conduct of corrective institutions. These imperatives include the need to maintain order and security, to prevent violence and to prevent escapes. In addition, whilst the focus of incarceration has moved substantially towards rehabilitation, it rightly retains a punitive and deterrent element. On that basis, it is inevitable that a prison environment will afford prisoners fewer facilities and personal freedoms than those enjoyed by the general public.
13. Against this background the basic question is whether the bill, both generally and in respect of specific issues, achieves an appropriate balance between the rights of prisoners and the countervailing rights of the public, corrective services staff and even of other prisoners. That is ultimately a matter for Parliament to determine.”

The amendments depart from the fundamental legislative principles as follows:

1. The application of the Bill to unsentenced persons under the supervision of the protected defendant.
2. The provision for the offender to make full use of internal complaints mechanism prior to complaints being made to the ADCQ.
3. The determination of victims claims where there has been no progression of the claim
4. The Bill transitionally provides that payment of compensation for a contravention of the *Anti-Discrimination Act 1991* or for an award of damages for a civil wrong committed prior to commencement and paid after commencement by a Protected Defendant is subject to the creation of a victim trust fund.

5. The Bill provides for a change to prisoners' status under the *Limitation of Actions Act 1975* so they are no longer considered to be "under a disability".

### **1. The application of the Bill to unsentenced persons under the supervision of the protected defendant**

The Bill applies to all 'prisoners' as defined under the *Corrective Services Act 2006*. The definition under Schedule 4 of the *Corrective Services Act 2006* includes individuals, such as persons on remand, who have not been convicted but are in the custody of the chief executive.

#### **The Fundamental Legislative Principle**

The legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively. (*Section 4 (3) (g) Legislative Standards Act 1992*).

#### **The Departure**

The Bill applies to 'prisoners' as presently defined under the *Corrective Services Act 2006*.

#### **The Reason for the Departure**

Although an individual who is on remand may not have been convicted or sentenced they are not prevented from making a complaint or obtaining a remedy in respect of a complaint.

In addition, as with all offenders, if an individual on remand receives an award of compensation or payment of damages their victim/s may be entitled to make a civil claim in tort against an offender, regardless of the amendments the Bill introduces. The Bill does not diverge significantly from existing civil remedies available to victims, other than introduce a mechanism for recovery and remove the limitation period in which a potential victim may bring a claim. The victim must still prove on the balance of probabilities that the unsentenced person committed a wrong against the victim before the victim has any entitlement to access compensation.

Regardless of the Bill providing that the State and Commonwealth may recover from the fund victim compensation payments, outstanding fines or child support payments the offender would be liable for these debts. The provisions simply provide another method of recovery for the relevant collection entities.

## **2. The provision for the offender to make full use of internal complaints mechanisms prior to complaints being made to ADCQ**

The *Corrective Services Act 2006* is to be amended by Clause 4 of the Bill to require that offenders use internal complaints mechanism, which includes making a complaint to an official visitor in the custodial environment, prior to making a complaint to the ADCQ. This process may take up a period of five months for an offender in custody and four months for an offender supervised in the community.

### **The Fundamental Legislative Principle**

The legislation is consistent with principles of natural justice. (*Section 4 (3) (b) Legislative Standards Act 1992*).

### **The Departure**

Clause 4 of the Bill inserts sections 319E and 319F which require an offender to use internal complaints mechanism prior to making a complaint to the ADCQ.

### **The Reason for the Departure**

In the prison environment in particular, offenders are able to lodge complaints through many different avenues and processes. Prisoners may seek internal reviews or confidentially refer matters of concern to prison management, the Director-General or the Minister. In addition, Official Visitors attend each centre on a regular basis to hear and make recommendations on complaints. Prisoners may also correspond confidentially with the Ombudsman.

However, offenders with perceived discrimination complaints have increasingly sought to by-pass established internal complaints mechanisms established by correctional authorities and take their complaints directly to the ADCQ. This provides no opportunity for correctional management to attempt to resolve the matter internally or review its practices.

Correctional authorities have identified that many of the complaints made by offenders which are ultimately resolved through the conciliation process, are complaints that could have been resolved through internal complaints processes just as effectively and with significantly less burden on public and correctional resources.

The clause requires that offenders use internal complaints mechanisms, which includes making a complaint to an official visitor in the custodial

environment, prior to making a complaint to the ADCQ. It does not prevent offenders from making a complaint to the ADCQ.

This process may take up a period of five months for an offender in custody and four months for an offender supervised in the community. However, the new provisions do not mandate that each complaint must take four to five months before a final decision is made, rather it is the longest period it would take if action were taken by either party using the period considered necessary for investigating minor and major complaints and utilising the review provisions.

For example, an offender in custody makes a written complaint to the General Manager of the corrective services facility where the offender is currently accommodated. The complaint is investigated by Queensland Corrective Services' Ethical Standards Unit, who identify that the complaint is one of a minor nature and therefore a written response to the complaint will be provided to the offender within 30 days, this may take considerably less time. If the offender is satisfied by the response to the complaint then the matter is resolved. However, should the offender be unsatisfied with response, then the offender must make a further written complaint to the Official Visitor who attends the corrective services facility where the offender is currently accommodated. The Official Visitor has 30 days in which to provide a formal response to the offender's complaint.

Should the Official Visitor identify that the decision of the corrective services facility can not be resolved the Official Visitor will formally advise the offender, who will then be able to take the complaint to the ADCQ.

The use of the internal complaint mechanism will provide an opportunity for decisions to be reviewed and most matters to be resolved quickly at a local level in order to avoid delays associated with pursuing judicial remedies. In addition, as correctional management will be alerted to the alleged discrimination the offender will not be unnecessarily subjected to any protracted unfair treatment arising out of the complaint.

### **3. Finally deciding victims claims where there has been no progression of the claim**

The *Corrective Services Act 2006* is to be amended by clause 4 of the Bill to include new provisions regarding the payment of eligible victim claims from the victim trust fund.



### **The Fundamental Legislative Principle**

The legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively. (*Section 4 (3) (g) Legislative Standards Act 1992*).

### **The Departure**

The amendment clause 4 inserts section 319Y to direct the payment of eligible victim claims from the victim trust fund. Payments are to be made as soon as practicable after all victim claims have been finally decided. In the Bill the Public Trustee may be satisfied that a victim claim is finally decided where a victim fails to progress a claim against the victim trust fund after one year from the last step taken in the proceedings.

This may be considered to be a breach of the *Legislative Standards Act 1992* as the rights of the victim to take action against the claim have been made based on the lapse of time.

### **The Reason for the Departure**

The inclusion section 319Y (3) (c) in the Bill is necessary to provide certainty in respect of competing claims and timeframes for victims who have decided to pursue a claim and ensure that the process is not unnecessarily protracted for an offender who would be denied payment of the residual of the victim trust fund by the Public Trustee for an extended time.

**4. The Bill transitionally provides that payment of compensation for a contravention of the *Anti-Discrimination Act 1991* or for an award of damages for a civil wrong committed prior to commencement and paid after commencement of the amendments by a Protected Defendant is subject to the creation of a victim trust fund.**

The *Corrective Services Act 2006* is to be amended by clause 7 of the Bill to provide that any payment or award of compensation will be subject to sections 319D and 319I (1), (4) and (5) of the Bill.

### **The Fundamental Legislative Principle**

The legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively. (*Section 4 (3) (g) Legislative Standards Act 1992*).

## **The Departure**

The amendment clause 7 inserts sections 319D and 319I (1), (4) and (5) to provide that the amendments will apply to any payment of compensation or damages made by the protected defendant after commencement.

## **The Reason for the Departure**

It has been identified that the legislation will adversely affect those who may have incurred injury before the amendments was brought into force. The scheme will not apply to a decision, in respect of a complaint under the *Anti-Discrimination Act 1991* which has been made prior to the commencement of the amending provisions. However, in aiming to balance the rights of victims it is considered in the public interest that victims be able to access this money as soon as possible once the scheme comes into operation. Therefore, the scheme will apply to any award of compensation and any payment of compensation or damages made after commencement.

There can be a considerable amount of time elapse between when an injury may occur to an offender and when a claim is finally determined and payment made by the State. There are a number of offender claims where an injury occurred while under supervision prior to the commencement of the new provisions. If these matters were to be paid out after commencement, and were not included within the scope of the proposed legislative scheme there could be negative implications in relation to the intent of the new legislation, particularly as it may raise victim expectations that the new provisions will enable them to make a decision about bringing a civil claim against a victim trust fund.

It is considered to be on balance, in the public interest that the operation of the scheme aims to provide victims access to any available money that falls within the ambit of the scheme over the offender's expectation to receive money that will not be subject to the new provisions. Indeed this is also in keeping with the common law position that if a victim were to become aware of any offender money regardless of when the injury occurred that they would be entitled to make a claim for compensation against that offender. Therefore, the scheme will apply to any payment of compensation and damages made by the State after commencement for any injury occurring before or after commencement.

The scheme will not apply to a decision, in respect of a complaint under the *Anti-Discrimination Act 1991* which has been made prior to the commencement of the amending provisions.

**5. The Bill provides for a change to prisoners' status under the *Limitation of Actions Act 1974* so they are no longer considered to be "under a disability".**

Clause 12 amends the *Limitations of Actions Act 1974* to provide that prisoners are no longer considered to be "under a disability." For example, prisoners will have three years from the date on which a cause of action arose to make a claim for negligence occurring while serving their sentence.

**The Fundamental Legislative Principle**

The legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively. (*Section 4 (3) (g) Legislative Standards Act 1992*).

**The Departure**

Clause 12 amends section 5 (2) of the *Limitations of Actions Act 1974* to remove a convict who, after conviction, is undergoing a sentence of imprisonment as a person considered to be "under a disability" for the purposes of the *Limitations of Actions Act 1974*.

**The Reason for the Departure**

Prisoners are deemed to be "under a disability" by virtue of section 5(2) of the Act. This means for example, that a prisoner would have three years from the date they are released from prison to bring a claim for negligence occurring whilst in prison.

This disparity reflects a time when prisoners may have been considered to be at a disadvantage when attempting to gain access to justice. Prisoners now have access to telephones and videoconferencing and also official visitors and other external agencies such as the Ombudsman.

It is no longer justifiable to consider a prisoner to be "under a disability" for the purposes of the Act. There are also practical considerations in respect of claims brought by prisoners who are serving indefinite or life sentences and the ability of prison authorities to respond to these claims many years after the cause of action arose.

Furthermore, an offender may seek to use the extended limitation period to avoid having to pay compensation to a victim under the "freeze and notify" procedure above. In certain circumstances, the prisoner may simply delay bringing a claim for negligence in the hope that the victim may no longer be around to make a claim against any compensation received.

## **Consultation**

The Departments of Premier and Cabinet, Justice and Attorney General, Queensland Health, Queensland Police Service and Queensland Treasury have been consulted on the policy objectives and on the drafting of the provisions.

The Solicitor-General's advice has been obtained on the Bill.

# **Notes On Provisions**

## **Part 1                      Preliminary**

**Clauses 1 and 2** provide for the short title of the Act and commencement of the provisions of the Act on proclamation.

## **Part 2                      Amendment of the Corrective Services Act 2006**

**Clause 3** is a formal provision that give effect to the amendments to the *Corrective Services Act 2006*.

**Clause 4** provides for the insertion of new Parts 12A and 12B into Chapter 6 of the *Corrective Services Act 2006*.

### **319A Definitions**

This section provides the meaning of “tribunal,” “protected defendant” and “relevant person” for part 12A. Protected defendant includes the Crown, government departments, engaged service providers, community service supervisors and their employees, and other persons exercising official functions with respect to the supervision and rehabilitation of offenders. As offenders who are supervised in the community are referred to rehabilitation services that are operated by non-government organisations,

protected defendant also includes an entity employed or engaged under this Act whose functions include rehabilitating offenders.

### **319B Purpose of part and its achievement**

The section reflects section 3(2) and (3) *Corrective Services Act 2006* which recognises that every offender should be treated humanely and with dignity and that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded.

However, the section also recognises that other factors also impact on the supervision of offenders and the provision of these entitlements in the correctional setting. The role of the correctional authorities is to balance tensions between ensuring the safety and security of corrective services facilities, delivering rehabilitative services within limited resources and managing offender and community expectations.

As with any government agency the community expect that public funds will be responsibly managed. In the correctional environment this means that the services that correctional authorities deliver, which include basic entitlements such as food and shelter, is in keeping with a level that is not disproportionate to that available to the community, is reasonably available within the correctional environment and does not compromise the safety and security of corrective services facilities.

Offender expectations of what they should receive or access in the correctional environment is often in contrast to the community expectations. For many offenders in the custodial setting this will be the first time in their adult life that they will receive three balanced meals a day and under the government's duty of care, basic health care. Correctional authorities attempt to accommodate requests by offenders that are within reason, for example requests associated with managing a medical condition which may require the offender be treated differently to other offenders, requests that are excessive and are not in line with a practical or medical need will not be met.

Law-abiding citizens are subject to their own financial constraints when seeking to acquire goods and services. An individual by virtue of his or her incarceration should not be able to demand that the government provide a specific or idealistic level of service where their needs are already being adequately met by correctional management.

This section makes it clear that in managing the expectations of offenders in custody there is a balance between the financial and other constraints to which protected defendants are subject in their treatment of offenders and the need to continue to respect the offender's dignity.

The above purpose is achieved by requiring offenders to use internal complaints procedures provided by the department before making a complaint to the ADCQ and modifying the way the ADCQ treat complaints by offenders regarding a protected defendant.

### **319C Relationship with Anti-Discrimination Act**

This section is a formal provision that gives effect to the amendments to the *Corrective Services Act 2006* despite the *Anti-Discrimination Act 1991*.

### **319D No property or interest right of complaint**

This section describes how the Bill will affect an offender's right to make a complaint and access money awarded by the ADTQ and alter the way in which that right can be exercised but does not remove the right.

Subsection (1) confirms that offenders have the right to make a complaint about an alleged contravention of the *Anti-Discrimination Act 1991* by a protected defendant.

Subsection (2) specifies that although the right is preserved the offender has no property or interest in the right of complaint.

Subsection (3) clarifies that the right to make a complaint is subject to sections 319E and 319F requiring other complaint mechanisms to be used before making a complaint to the ADCQ.

### **319E Complaint to chief executive required first**

This section sets out the first step in the internal complaints process that offenders are required to use before making a complaint with the ADCQ. Subsection 1(a) and (b) distinguish who the complaint in writing must be made to based on whether the offender was supervised in the community or in custody at the time of the alleged contravention of the *Anti-Discrimination Act 1991*.

Subsection (2) provides for situations where a formal response to the complaint by the chief executive is provided within the prescribed timeframes.

Subsection (3) clarifies that subsection 1(a) applies subject to the requirement to make a complaint to an official visitor as set out in section 319F.

### **319F Complaint to official visitor required first**

This section only applies to an offender who is in custody when the offender has been notified in writing that the chief executive is finished dealing with the offender's complaint.

Subsection (3) provides for situations where a formal response to the complaint by the official visitor is provided within the prescribed timeframes.

319G When treatment of offender by protected defendant is not direct discrimination. 319H When term imposed on offender by protected defendant is not indirect discrimination

These sections make it clear that the correctional environment is unique and that any alleged discriminatory action or conduct must be considered within this context.

These provisions require the ADTQ to consider whether or not correctional management's attempt to accommodate such a request was reasonable or not under the circumstances in relation to both direct and indirect discrimination cases.

Prison management in particular must have authority to make decisions to ensure the good order and security of corrective services facilities and the safety of the community, staff, visitors and offenders. It is due to the level of control over offenders that is required to ensure safety and security and the use of standard practices to facilitate this outcome that decisions are frequently questioned and complaints are regularly made by offenders.

Correctional authorities receive requests for special treatment from offenders on an almost daily basis. Corrective Services must be able to consider factors such as available resources, community expectations and fairness to other offenders when deciding whether to grant a request and to reach a compromise solution where necessary in order to maintain the security and safety of staff, visitors and offenders.

For example, a prisoner requests a kosher diet. The practical realities of operating a corrective services facility mean there is insufficient storage space to keep the kosher food separate from other foods, difficulties with preparing and cooking kosher meals separately and the human resources required to train staff to cook the meal appropriately causes administrative

and operational burden. Therefore a decision is made to provide the prisoner with a pre-packaged frozen kosher meal.

While the frozen meal is not a fresh meal in line with what other prisoners are served it is adequate to meet the need of the offender to obtain a nutritionally balanced meal and fulfil their religious requirements.

However, what is expected by the prisoner is a fresh meal and the provision of the frozen meal by correctional management is not optimal in the prisoner's view.

These sections require the ADTQ to consider the criteria set out as described, despite section 10 and 11 (2) of the *Anti-Discrimination Act 1991*, in cases where the treatment complained of occurred while an offender was under the supervision of the Protected Defendant.

### **319I Restrictions on tribunal compensation orders**

This section restricts the ability of the ATDQ to award compensation for a contravention of the *Anti-Discrimination Act 1991* in relation to an offender and provides that money can only be awarded where the ADTQ finds that the protected defendant acted in bad faith and no other non-compensatory order, such as an apology or an undertaking to discontinue the practice in question, under the *Anti-Discrimination Act 1991* would effectively redress the matter.

Subsection (3) places a requirement on the ADTQ to provide written reasons to the offender and the protected defendant that no non-compensatory order effectively redresses the offender for the contravention.

Subsection (4) clarifies that for the purposes of the clause 4 the ADTQ can not require that payment or interest on an amount of compensation be made directly to the offender. A compensation order has affect as an award of compensation only for part 12B and the offender will have no property or other interest in the compensation.

Subsection (5) defines compensation orders and non-compensatory orders by reference to the *Anti-Discrimination Act 1991*.

### **319J Definitions**

This section provides the meaning of “award of compensation”, “award of damages”, “child support registrar”, “collection entity”, “disbursements”, “finally decided”, “legal costs”, “potential claimant”, “relevant award”, “relevant money”, “victim claim” and “victim trust fund” for part 12B.



### **319K Interaction between divs 2 to 4 and div 5**

This section provides that Divisions 2 to 4 of this part are subject to Division 5.

### **319L No property or interest in causes of action**

This section confirms that offenders still have the right to bring a proceeding for a civil wrong against a protected defendant but provides that they have no property or interest in the cause of action. Any damages awarded for a cause of action against a protected defendant for a civil wrong must be dealt with under this part.

The *Civil Liability Act 2003* and the *Personal Injuries Proceedings Act 2002* apply to these proceedings.

### **319M No property or interest under agreements**

Where a protected defendant enters into an agreement to pay damages or compensation for a civil wrong committed by the protected defendant against an offender the agreement contains the terms implied by this section.

Subsection (2) implies terms that the damages or compensation are to be paid to the protected defendant to be dealt with under this part and the person has no property or interest in those funds.

Subsection (3) provides that an agreement to deal with compensation or damages other than as provided by this part is void.

### **319N Relevant money held in trust in a victim trust fund**

This section provides that relevant money awarded in relation to a person is deemed to be held in trust in a victim trust fund.

Subsection (1) specifies the purposes for which the relevant money is held on trust.

Subsection (2) provides that relevant money held under trust per this section form a victim trust fund.

Subsection (3) acknowledges that other provisions of State or Commonwealth law may apply to relevant money held in trust.

### **319O Chief executive to be notified of victim trust fund**

This section requires the protected defendant or a prescribed protected defendant to notify the chief executive within seven days after the relevant money is awarded if the protected defendant is not the State.

### **319P Victim trust fund to be transferred to public trustee**

This section requires the protected defendant to transfer an award of relevant money within one month after the award is made.

### **319Q Discharge of protected defendant**

This section discharges the protected defendant upon receiving a receipt from the public trustee for the amount of the victim trust fund or for the application, distribution or appropriation of the amount of the victim trust fund.

### **319R Relevant money to form a separate victim trust fund**

This section provides that the requirements of Clause 4 must be complied with for each award of relevant money.

### **319S What is a *victim claim***

This section provides a definition of a victim claim for the purposes of making distributions from a victim trust fund.

Subsection (1) provides that a victim claim relates to a claim of damages that a person has for an injury which was caused by conduct of a relevant person that, on the balance of probabilities, constitutes an offence. A victim claim could also arise from the death of a person that, on the balance of probabilities, resulted from an offence committed by the relevant person.

Subsection (2) provides that subsection (1) applies whether or not the relevant person was prosecuted for or convicted of an offence for the conduct. Subsection (1) will also apply if the relevant person was found to be of unsound mind or unfit for trial.

### **319T Notice to potential claimants**

This section requires protected defendants to give notice to potential claimants within 1 month of an award of relevant money being made.

Subsection (1) details the requirements of the written notice.

Subsection (2) sets out the methods for complying with subsection (1).

### **319U Identification of potential claimants**

This section allows protected defendants to consult with the director of public prosecutions or the commissioner of the police service and the chief executive of the department which administers the *Criminal Offence Victims Act 1995* to identify potential claimants.

Subsection (1) allows for the consultation for the purpose of identifying potential claimants.

Subsection (2) clarifies that any information disclosed by the director of public prosecutions is a disclosure for the purposes of another Act under the *Director of Public Prosecutions Act 1984* section 24A.

Subsection (3) clarifies that any information disclosed by the commissioner of the police service is an authorised or permitted disclosure as provided for by the *Police Service Administration Act 1990* section 10.1.

Subsection (4) clarifies that any information disclosed by the chief executive of the department in which the *Criminal Offence Victims Act*, is administered for the purpose in subsection (1) is authorised despite any other law.

Subsection (5) imposes an obligation on the chief executive, when satisfied that there are no potential claimants on a victim trust fund, to notify the public trustee in writing.

### **319V Giving of information to potential claimants**

This section specifies the information that is to be provided to potential claimants and the obligations of the protected defendant and claimants in relation to this information.

Subsection (1) specifies the particular information that a protected defendant must provide in response to a request from a potential claimant.

Subsection (2) permits this information to be provided despite any agreement in relation to the award limiting disclosure of the information. It further provides that such disclosure is not a contravention of the agreement.

Subsection (3) provides that the information in subsection (1) must not include personal details of a potential claimant unless that person has given written consent for such information to be disclosed.

Subsection (4) specifies the limitations on disclosure of information received information under subsection (1) by potential claimants.

Subsection (5) defines personal information for the purposes of the section.

### **319W Starting of victim claims proceedings despite expiry of limitation period**

This section allows for proceedings to be commenced after the expiry of the limitation period relating to the claim.

Subsection (1) allows for a victim claim against a person awarded relevant money to be made within 6 months after the award despite section 11 of the *Limitations of Actions Act*.

Subsection (2) provides that damages awarded for a claim brought under this section may only be paid from the victim trust fund formed by the relevant money and not otherwise enforced against the relevant person.

### **319X Notifying victim claims**

This section applies if a person has a victim claim where they have already started proceedings against the relevant person or commence such proceedings within 6 months after the award is made.

Subsection (2) provides for notification of the public trustee by the person and allows the public trustee to request further information in relation to the claim.

Subsection (3) provides that a claim notified in accordance with subsection (2) is an eligible victim claim.

Subsection (4) clarifies that if a potential claimant does not respond to a request by the public trustee, the claim may be rejected.

Subsection (5) requires that the public trustee give written notice of the details received under subsection (2) to the chief executive.

Subsection (6) defines written notice for the purposes of the section.

### **319Y Payment of eligible victim claims from victim trust fund**

This section specifies when payments from the victim trust fund are to be made and the manner in which the payments will be made. As there may be multiple claimants provision is also made for the proportional satisfaction of eligible victim claims from the victim trust fund. The section specifies the effect of payment of a claim.

Subsection (1) requires the public trustee to meet eligible victim claims against the person to whom the relevant award was made.

Subsection (2) requires that the payment is made as soon as practicable after all proceedings on eligible victim claims against the relevant offender that were started before the cut off day have been finally decided.

Subsection (3) defines the circumstances in which eligible victims claims are taken to be finally decided for the purposes of subsection (2). Paragraph 319Y(3) (c) provides certainty to victims who have decided to pursue a claim in respect of competing claims.

Subsection (4) allows for the proportional payment of eligible victims claims if the amount of the victim trust fund is not enough to pay all of the awards made on eligible victim claims.

Subsection (5) requires payments to be made to the person named in the award subject to any Act which provides for holding of money on trust for persons under a legal disability. Where the award has already been satisfied by someone else the payment made by the public trustee will be reduced accordingly.

Subsection (6) provides that an award on an eligible victim claim is, to the extent of any payment of the award, discharged and not capable of enforcement against the relevant offender or any other person.

Subsection (7) defines the terms award and cut-off day for the purposes of this section.

### **319Z What is an *entity claim***

This section defines the circumstances in which an entity claim will arise. Entity claims arise where the State has paid criminal compensation on behalf of an offender, the offender has outstanding fines or has a child support debt. These entities may be entitled to make a claim against an award of relevant money in a victim trust fund in certain circumstances.

Subsection (1) defines the circumstances in which the chief executive of the department administering the Criminal Offence Victims Act has an entity claim against a relevant offender. Where the State has paid an amount pursuant to a criminal compensation order made against the relevant offender and has not recovered the amount in full it has an entity claim.

Subsection (2) provides that the SPER registrar has an entity claim where there are fines owing by the relevant offender.

Subsection (3) provides that the child support registrar, as a collection entity listed in the definition in paragraph 319J(c), has an entity claim where the relevant offender owes a child support debt to the Commonwealth and this amount has not been received in full.

Subsection (4) defines child support debt for the purposes of the section.

### **319ZA Notice to collection entities of establishment of victim trust fund**

This section requires the chief executive to provide notice to collection entities. The section sets out the requirements of the notice to be given.

### **319ZB Notice to collection entities if amount left in victim trust fund**

This section specifies the requirement for the public trustee to notify collection entities when there is an amount left in the victim trust fund after satisfying eligible victim claims.

Subsection (1) determines when the public trustee must work out the amount left in the victim trust fund. Where eligible victims claims have been made, the amount left in the fund is to be determined within one month after paying those claims. Alternatively, the amount left in the victim trust fund must be determined within one month after the protected defendant has taken reasonable steps to identify persons who may have a victim claim and is satisfied that there is no person who has a victim claim relating to the fund.

Subsection (2) applies when there is amount left in the victim trust fund available for the satisfaction of eligible entity claims. In this situation subsection (2) specifies the requirements for the notice in writing which must be given to each collection entity.

### **319ZC Notifying entity claims**

This section provides that a collection entity has an eligible entity claim if it notifies the amount to the public trustee within one month of receiving notice under s319ZB(2) and providing evidence of the entity claim that satisfies the public trustee that the relevant person is liable for the entity claim.

Subsection (4) provides that the public trustee may reject an entity claim if the collection entity fails to comply with a request for evidence under subsection (2) (b) without reasonable excuse.

Subsection (5) provides that the public trustee must give a copy of the written notice or the evidence received under subsection (2) to the chief executive within 7 days after receiving the notice or the evidence.

### **319ZD Payment of eligible entity claims from victim trust fund**

This section provides for the payment of eligible entity claims and specifies how payment is to be made.

Subsection (1) requires the public trustee to pay from the amount left in the fund after satisfying eligible victim claims, amounts of eligible entity claims of which it has received notice.

Subsection (2) specifies when payment must be made.

Subsection (3) lists the order of priority for payment amongst collection entities.

Subsection (4) specifies that payment under this section discharges the eligible entity claim to the extent that it is paid.

### **319ZE Payment to offender of victim trust fund surplus**

This section sets out the circumstances in which an offender will be paid the amount left in a victim trust fund after the public trustee has met eligible victim claims and eligible entity claims.

Subsection (1) requires the public trustee to determine the amount left in the fund within one month of complying with the requirements to satisfy any eligible victim claims and eligible entity claims.

Subsection (2) applies when there is an amount left in the victim trust fund after satisfying eligible victim claims and eligible entity claims. If the person to whom the award was made is a prisoner payment of the surplus is made to the chief executive for transfer to the prisoner's trust account. If the person is not a prisoner the amount is to be paid at their direction.

### **319ZF Payment to offender if no victim claims or entity claims against offender**

This section provides for payment of the amount of the victim trust fund in the situation the public trustee is not notified under s319ZC of the amount of any entity claims against the offender. The public trustee must pay the amount of the victim trust fund to the relevant offender within 2 months after giving notice to collection entities under s319ZB.

### **319ZG Exception for future medical expenses**

This section provides that Divisions 2 to 4 do not apply to an amount being payable by a protected defendant as damages for future medical expenses.

### **319ZH Exception for legal costs**

This section provides that legal costs do not form part of a victim trust fund.

Subsection (1) specifies that the trust fund does not include (a) costs ordered to be paid by the protected defendant or, (b) under an agreement about relevant money or, (c) for an award of damages inclusive of costs, an amount reasonably attributable to the legal costs of the relevant offender.

Subsection (2) provides that the amount referred to in (1) (c) is the amount decided by the protected defendant based on a bill of costs from the legal practitioner concerned and notified to the relevant offender.

Subsection (3) provides for the relevant offender by written notice to dispute the protected defendant's decision as to the payment of costs and to apply for an assessment of costs under the *Legal Profession Act 2007*.

Subsection (4) specifies that the assessment of costs is to be conducted as if the defendant were ordered to pay an unstated amount of costs by a court. This allows for the assessor to determine the reasonableness of the costs claimed by the relevant offender.

Subsection (5) deals with the payment of expenses of the cost assessor. Where the amount of costs assessed is at least 10% more than that the amount decided by the protected defendant, the protected defendant will be responsible for the costs of the assessment. In other cases the cost of the assessment is payable from the victim trust fund.

### **319ZI Orders in relation to relevant money**

This section requires a court or tribunal when making an award of compensation or an award of damages in relation to a person, to make all necessary orders to ensure that an amount for future medical costs as mentioned in section 319ZG or for legal costs in section 319ZH is not held in a victim trust fund.

### **319ZJ Agreements in relation to relevant money**

This section provides that where the protected defendant enters into an agreement there is an implied term that an amount mentioned in section 319ZG or 319ZH is not held in a victim trust fund.

### **319ZK Amounts payable to public trustee for performance of functions**

Subsections (1) and (2) provide that the public trustee is entitled to the reasonable costs incurred in performance of functions under this part before payments on an eligible victim award or eligible entity claim or payment to an offender .

### **319ZL Maximum legal costs of victim claims**

This section limits the amount of a legal practitioner may charge and recover from a client for work done in relation to a victim claim that may be payable from a victim trust fund.



Subsection (1) sets out the formula for determining the maximum amount the legal practitioner can charge and recover. The amount that can be claimed as costs varies based on the amount recovered through the victim claim.

Subsection (2) defines amount recovered as the damages awarded on the victim claim and not just the amount of the award paid from a victim trust fund.

**Clause 5** provides for the insertion of a new Chapter 6 and parts 13A of the *Corrective Services Act 2006* to enable prescribed Queensland Corrective Services Dog Squad Officers to lawfully possess dangerous drugs for the purpose of training drug detection.

#### **344A Object of pt 13A**

This section provides that the object of part 4 is to ensure that training in the department in relation to dangerous drugs is realistic and effective. The section prescribes how the objective will be achieved.

#### **344B Definitions for pt 13A**

This section provides the meaning of “agency arrangement”, “dangerous drug”, “drug control direction”, “drug control officer”, “drug vault”, “register of dangerous drugs for training” and “secure facility” for this part.

#### **344C Appointment and qualifications**

This section allows the chief executive to appoint a corrective services officer as a drug control officer if the chief executive considers the person has the necessary expertise or experience or if the person has satisfactorily completed training approved by the chief executive.

#### **344D Appointment conditions**

This section provides that a drug control officer holds office on any conditions stated in the drug control officer’s instrument of appointment, a signed notice from the chief executive, or a regulation. The section provides that a drug control officer’s powers may be limited under a regulation, a condition of appointment, or by written notice given by the chief executive to the drug control officer.

#### **344E Issue of identity card**

This section requires the chief executive to issue to each drug control officer an identity card that identifies the person as a drug control officer under the Bill. The card must contain the signature and a recent photograph

of the drug control officer. The section allows a single identity card to be issued.

### **344F Resignation**

This section specifies how a drug control officer can resign.

### **344G Return of identity card**

This section requires that a person who ceases to be a drug control officer must return his or her identity card to the chief executive within 21 days, unless the person has a reasonable excuse for not doing so. The maximum penalty for a contravention of this clause is 40 penalty units.

### **344H Function and powers of drug control officer**

This section sets out the functions and powers of an appointed drug control officer under the *Corrective Services Act 2006*. The section provides that a drug control officer has power, within the department, to do all things that are necessary to be done in connection with the performance of the drug control officer's functions.

Example — A drug control officer may observe the operational performance of Queensland Corrective Services dogs that have been specifically trained for drug detection.

### **344I Keeping dangerous drug for use in department training**

This section provides for the keeping and use of dangerous drugs for training in accordance with a drug control direction.

### **344J Making drug control direction**

This section enables the chief executive of the department to make a 'drug control direction' in relation to a batch of a dangerous drug that has come into the possession of the department in a prescribed manner. The section provides mandatory conditions that must be included in a drug control direction. The section provides that the Chief executive must ensure the department complies with the conditions of a drug control direction.

### **344K Entering into agency arrangement**

This section authorises the chief executive of the department to enter into an agency arrangement with the chief executive of another department or agency if the other party to the arrangement is authorised to possess the dangerous drugs that are subject to the arrangement. The chief executive must ensure that the department complies with an agency arrangement.

### **344L Requirements for keeping of dangerous drugs for training purposes**

This section sets out the requirements that apply for the department's possession of dangerous drugs for training purposes.

### **344M Register of dangerous drugs for training**

This section requires the department to keep a register of dangerous drugs for training. The register may form part of another register whether kept under this or another Act. The register must be kept in a secure place and in the way, the chief executive considers appropriate. Unless the chief executive otherwise authorises, an entry in the register of dangerous drugs for training may only be made by a drug control officer in the exercise of his or her functions. The section enables the chief executive to give a direction to restrict access to information included in the register of dangerous drugs for training. It is the responsibility of a drug control officer authorised to record the information in the register to ensure that the information recorded is prevented from being disclosed to a person not authorised to have access to it.

### **344N Information to be recorded in the register of dangerous drugs for training**

This section prescribes the minimum requirements that must be recorded in the register of dangerous drugs for training about each batch of a dangerous drug that —

- (1) comes into the possession of the department to be used for training purposes;
- (2) is in the possession of the department for training purposes if the batch, or part of the batch, is taken from the drug vault where it is stored because it is to be used for training purposes; and
- (3) leaves a drug vault for the last time to be disposed of or to be returned to an entity under an agency arrangement. The recording of the information required to be recorded under this section must be performed as close as reasonably practicable to the happening of the event to which the recording relates.

### **344O Restriction on release of information from register of dangerous drugs for training**

This section ensures the security of a drug vault and the safety of a drug control officer or another person associated with keeping dangerous drugs

in the possession of the department for training purposes or a police officer who reasonably needs the information for the performance of the officer's functions under an Act. A direction may be given by the chief executive in circumstances where the safety of persons or security of the drug vault maybe prejudiced. The chief executive of the department may give a direction that restricts access to information recorded in the register of dangerous drugs for training to persons other than a drug control officer performing a function associated with the keeping of dangerous drugs in the possession of the department. If the chief executive gives a direction, a written record of the reasons for giving the direction must kept.

**Clause 6** provides for the amendment of section 349 of the *Corrective Services Act 2006* to include individuals employed or engaged by a protected defendant and the public trustee, when engaged by a protected defendant to administer a victim trust fund or an individual with whom the chief executive consults under section 319U eg. an officer from the Queensland Police Service. This ensures that persons involved in the administration of victim trust funds created from awards of offender money do not attract civil liability for an act done, or omission made, honestly and without negligence under the *Corrective Services Act 2006*

**Clause 7** provides for the replacement of chapter 7A heading in the *Corrective Services Act 2006*.

**Clause 8** provides for the insertion of a new 7A Transitional Provisions for the *Corrective Services and Other Legislation Act 2008*.

Section 478C provides for definitions for pt 2

Section 478D provides that where discrimination complaints that were not decided before the commencement, Chapter 6 part 12A other than section 319D and 319I(1),(4) and(5) does not apply to the complaint.

Where an award of offender money is made after the commencement of the section 478E provides that Chapter 6, 12B will apply to the award even if the wrong related to conduct of the protected defendant that occurred before the commencement of the section.

**Clause 9** amends the Schedule 4 dictionary to the *Corrective Services Act 2006* to include definitions for terms used in the Bill.

**Clause 10** is a formal provision that gives effect to the amendment to the *Drugs Misuse Act 1986*.

**Clause 11** amends s 125 of the *Drugs Misuse Act 1986* to clarify that a person who is a drug control officer within the meaning of the *Police*

*Powers and Responsibilities Act 2000* and *Corrective Services Act 2006* is permitted to receive and dispose dangerous drugs.

**Clause 12** is a formal provision which gives effect to the amendment of the *Health Act 1937*

**Clause 13** is a formal provision inserts a new heading for transitional provisions into Part 8 of the *Health Act 1937*.

**Clause 14** inserts a new part 8 to provide for the amendment of the *Health (Drug and Poisons) Regulation 1996* by the *Corrective Services and Other Legislation Amendment Act 2008* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

**Clause 15** is a formal provision which gives effect to the amendment of the *Health (Drug and Poisons) Regulation 1996*

**Clause 16** provides for the amendment of section 271 (Prohibition on dispensing etc. regulated poisons) by providing that the prohibition does not apply to a drug control officer within the meaning of the *Police Powers and Responsibilities Act 2000* and a drug control officer within the meaning of the *Corrective Services Act 2006* as prescribed by these provisions

**Clause 17** is a formal provision that gives effect to the amendments to the *Limitation of Actions Act 1974*.

**Clause 18** provides for the amendment of section 5 of the *Limitation of Actions Act 1974* to remove the words “or a convict” to imprisonment’

**Clause 19** is a formal provision which inserts a new part 7 Transitional provision for the *Corrective Services and Other Legislation Amendment Act* and provides that the amendment made by this Act only applies in relation to a cause of action arising from the commencement of this section.