

# Victims' Commissioner and Sexual Violence Review Board Bill 2024

## Explanatory Notes

### Short title

The short title of the Bill is the Victims' Commissioner and Sexual Violence Review Board Bill 2024.

### Policy objectives and the reasons for them

*Women's Safety and Justice Taskforce – Hear Her Voice – Report 2 – Women and girls' experience in the criminal justice system*

On 1 July 2022, the Women's Safety and Justice Taskforce (the Taskforce) released its second and final report, *Hear Her Voice – Report 2 – Women and girls' experience in the criminal justice system* (the Second Taskforce Report). The Second Taskforce Report focused on the experiences of women and girls in the criminal justice system as victim-survivors of sexual violence and as accused persons and offenders and contained 188 recommendations.

The Taskforce noted that as criminal justice systems evolve, there is increasing recognition of victims as 'integral players in criminal justice, rather than mere bystanders'. Reforms to recognise this in Queensland have included: the enactment of the *Charter of Victims' Rights* (the Charter) and the establishment of Victim Assist Queensland (VAQ); the ability of victims to provide victim impact statements and written statements for consideration by the Parole Board of Queensland; and measures to support special witnesses in giving evidence in court proceedings.

The Taskforce noted, however, there is no single independent body responsible for identifying and monitoring systemic issues, or issues of concern for victims of crime. There is no oversight of complaints about compliance with the Charter nor any mechanism to enforce compliance. It concluded that the establishment of a victims' commissioner as an independent statutory officer is necessary to fill a significant gap in the protection and promotion of victims' rights in Queensland.

On 21 November 2022, the Queensland Government response to the Second Taskforce Report supported 103 recommendations in full, 71 recommendations in-principle and 14 recommendations were noted. The Queensland Government response gave in-principle support for the recommendations to:

- establish a victims' commissioner and stated that the Queensland Government will work with relevant stakeholders to establish a victims' commissioner to promote and protect the needs of victims and determine the most appropriate model for Queensland (Recommendation 18);
- review the Charter in the *Victims of Crime Assistance Act 2009* (Victims of Crime Assistance Act) and consider whether additional rights should be recognised or if existing rights should be expanded, with the Minister to request the review be performed by the Victims' Commissioner (Recommendation 19);

- include specific functions for the Victims' Commissioner to:
  - develop and coordinate a multidisciplinary research program to inform policies and practices in consultation with stakeholders and relevant agencies; and
  - develop and implement mechanisms to regularly collect and share the views and experiences of victim-survivors including of domestic, family and sexual violence (Recommendation 181); and
- establish an independent sexual violence case review board and stated that the Queensland Government would consider the best way to give effect to the recommendation (Recommendation 46).

*Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence*

The Queensland Government established the *Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence* (the Commission of Inquiry). The Commission of Inquiry was established as part of the Queensland Government's response to the recommendations of the Taskforce's first report – *Hear her voice – Report One – Addressing coercive control and domestic and family violence in Queensland*.

In its report, *A Call for Change*, the Commission of Inquiry made 78 recommendations, including that:

- the Queensland Government establish a victims' commissioner as an independent statutory officer as outlined in the Taskforce's report;
- the Victims' Commissioner have, at a minimum, a function of:
  - assisting individual victim-survivors of domestic and family violence, including in relation to complaints about poor police responses to domestic and family violence; and
  - identifying systemic trends and issues relating to police responses to domestic and family violence;
- the Victims' Commissioner have a deputy commissioner to lead this capability.

On 21 November 2022, the Queensland Government released an initial response to the Commission of Inquiry's report, which provided in-principle support for all 78 recommendations and announced an initial \$100 million investment.

*Legal Affairs and Safety Committee inquiry into support provided to victims of crime*

On 16 March 2023, the Legislative Assembly passed a motion to allow the Parliamentary Legal Affairs and Safety Committee (LASC) to conduct an inquiry into the support provided to victims of crime in Queensland. The LASC conducted a wide-ranging inquiry into the legislative structures, organisational networks and support systems that impact on victims of crime. The LASC held public hearings with non-government organisations, support providers, community groups and members of the public across Queensland, including in Townsville, Cairns, Rockhampton, Logan, Ipswich, Gold Coast and Brisbane.

In its report, *Report No. 48, 57<sup>th</sup> Parliament – Inquiry into support provided to victims of crime* (LASC Report), the LASC made 18 recommendations, including to review the Charter, improved coordination of services, increasing access to information, trauma-informed training, investing in victims support services and access to restorative justice and youth justice conferencing. The LASC Report also supported the Taskforce's recommendations to establish a statutory role of a victims' commissioner in Queensland and a review of the Charter by the Victims' Commissioner, once established.

On 9 August 2023, the Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence tabled the Queensland Government response to the LASC Report in the Legislative Assembly which supported or supported in principle all recommendations.

## **Achievement of policy objectives**

The Bill achieves the policy objectives and supports the intent of the recommendations made by the Taskforce, the Commission of Inquiry and the LASC by:

- establishing the Victims' Commissioner to promote and protect victims' rights; and
- establishing the Sexual Violence Review Board (the Board) to identify and review systemic issues in relation to the reporting, investigation and prosecution of sexual offences.

### *Functions and scope of the Victims' Commissioner*

The Victims' Commissioner has functions as outlined in clause 9 of the Bill to:

- identify and review systemic issues relating to victims;
- conduct research into matters affecting victims, including particular cohorts of victims;
- consult in relation to matters relating to victims, including a person's experience as a victim and their experience in the criminal justice system;
- deal with complaints about alleged contraventions of the Charter;
- publish information in relation to the criminal justice system;
- promote the victims charter and rights of victims and to advocate on behalf of victims by making recommendations and providing advice, training, information or other help to government and non-government entities;
- provide advice to the Minister on issues affecting victims and the promotion of victims' rights, including making recommendations about improvements to government policy, practices, procedures and systems to support the rights of victims; and
- monitor the implementation of recommendations made by the Victims' Commissioner.

The Victims' Commissioner's functions, except its complaint function, apply to victims of all crime, including a person who suffers harm because of a criminal offence or domestic violence committed against the person. A victim also includes family members of a person who dies because of a criminal offence committed against them, and persons who witness or intervene in an offence and suffer harm as a result. A person suffers harm if: the person suffers physical, psychological or emotional harm; the person's property is taken, destroyed or damaged; or the person suffers financial or economic loss (clause 6).

The Victims' Commissioner's complaint function is linked to the Charter, which has a narrower application and relates to affected victims of relevant offences (e.g., an offence against the person) or domestic violence, who suffer personal harm. A person suffers personal harm if the person suffers physical, psychological or emotional harm. The Charter also applies to family members of affected victims and people who intervene in particular circumstances (clause 38).

To support trauma-informed, victim-centric and culturally appropriate engagement with victims by the Victims' Commissioner, in performing any of its functions, the Victims' Commissioner must have regard to the vulnerability of victims of sexual violence or domestic violence, victims who are Aboriginal persons or Torres Strait Islander persons, and victims who have characteristics that may make them particularly vulnerable to harm (clause 11).

The Victims' Commissioner must also ensure its functions are not performed in a way that duplicates the functions of other entities (clause 12). This includes bodies with systemic review functions, such as the Domestic and Family Violence Death Review and Advisory Board and the Child Death Review Board, and bodies with complaint-handling functions, such as the Queensland Human Rights Commission and the Queensland Ombudsman.

#### Systemic review function

The Victims' Commissioner has a function to identify and review systemic issues relating to victims of crime. The systemic review function is intended to provide a formal mechanism for the Victims' Commissioner to engage with victims and the community on systemic issues that affect victims of crime.

The Victims' Commissioner will be responsible for determining the terms of reference for a systemic review and may publish terms of reference (clause 37). The Victims' Commissioner may use insight from the performance of other functions to determine a matter for systemic review, such as the complaint function or the function to consult with victims of crime.

While it will be a matter for the Victims' Commissioner to determine issues for review and prepare terms of reference, it is intended that reviews will focus on systemic issues, including those that impact vulnerable cohorts of victims. It is not intended that the Victims' Commissioner would review a specific issue on behalf of an individual victim, seek to conduct a merit review of a proceeding or a decision made during a proceeding or otherwise intervene in a proceeding on behalf of a victim.

#### Complaint function and Charter of Victims' Rights

The Bill removes the Charter from the Victims of Crime Assistance Act and transfers the Charter in the same terms to Schedule 1 of the Bill. Chapter 3 of the Bill includes key definitions for the Charter and outlines the Victims' Commissioner's function to handle complaints about alleged contraventions of the Charter.

The Charter outlines how an affected victim can expect to be treated by a 'prescribed person', which is defined in clause 40 as a government entity, a non-government entity, or an officer, member or employee of such an entity. The Charter provides a general right that an affected victim is to be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs. The Charter also provides that an affected victim will be provided with certain information, including about the particulars or progress of their matter.

An affected victim may make a complaint to the Victims' Commissioner or to the relevant government or non-government entity about conduct of a prescribed person that is inconsistent with the rights in the Charter (clause 45). The affected victim does not need to make a complaint to the relevant entity before making a complaint to the Victims' Commissioner. An affected victim may also consent to another person making a complaint on their behalf.

A complaint must be written and include the complainant's name and contact details and enough details to indicate the alleged contravention to which the complaint relates (clause 47). The Bill outlines that the Victims' Commissioner must give reasonable help to a complainant to put the complaint in writing if the complainant requires assistance.

The Victims' Commissioner may make preliminary inquiries about a complaint to determine how to deal with it (clause 49). This could include requesting additional information about the complaint from the complainant or relevant entity or determining whether another prescribed person is dealing with the complaint.

The Victims' Commissioner must advise the complainant of any action taken in relation to the complaint, including if the Victims' Commissioner decides to deal with a complaint or refuses to deal with a complaint (clause 48). To support a trauma-informed approach to complaint management, the Bill does not prescribe the method in which the Victims' Commissioner must inform a complainant. It is intended that this could be done in writing or by phone, depending on the circumstances. The Bill outlines that the Victims' Commissioner will provide written notices to government and non-government entities when taking action to resolve a complaint.

In resolving a complaint, the Victims' Commissioner may take any steps it considers appropriate, including requiring information from the relevant entity or the complainant, and making recommendations about resolving the complaint (clause 52). If the complaint cannot be appropriately resolved, the Victims' Commissioner must prepare a report about the complaint, which can include steps the Victims' Commissioner considers should be taken to comply with the Charter. This report must be given to the relevant entity and the complainant (clause 54). The Victims' Commissioner may also choose to publish information, except personal information about an individual, about complaints it has finished dealing with (clause 55).

The Bill outlines that the Victims' Commissioner may refer a complaint or part of a complaint to another prescribed person if the Victims' Commissioner considers the complaint would be more appropriately dealt with by them. For example, the Victims' Commissioner may refer a complaint to the Queensland Human Rights Commission if the complaint would be more appropriately managed and resolved under the *Anti-Discrimination Act 1991*. It is also not a function of the Victims' Commissioner to deal with complaints about the decisions of judicial officers or about how a particular case is managed.

#### *Appointment and independence of the Victims' Commissioner*

As recommended by the Taskforce, the Bill establishes the Victims' Commissioner as an independent statutory appointment. The Victims' Commissioner will be appointed by the Governor in Council by recommendation from the Minister. To recommend a person for appointment, the Minister must be satisfied that the person is eligible for appointment and appropriately qualified to work with victims and perform the functions of the Victims' Commissioner effectively and efficiently (clause 14).

A person is not eligible for appointment if they have a conviction, other than a spent conviction, for an indictable offence, is an insolvent under administration or disqualified from managing corporations, or if the person does not consent to the Minister requesting their criminal history from the Police Commissioner (clause 15). The Governor in Council may appoint the Victims' Commissioner for a term of no more than five years. The Victims' Commissioner may be re-appointed (clause 16).

To support the Victims' Commissioner to carry out their functions and powers, the Bill establishes the Office of the Victims' Commissioner (the Office) (clause 25). The Victims' Commissioner controls the Office and is responsible for employing and directing staff (clauses 26 and 27). The Department of Justice and Attorney-General (DJAG) will support the Office with corporate services, as required.

### *Functions of the Sexual Violence Review Board*

Chapter 4 of the Bill establishes the Board with a main function to identify and review systemic issues in relation to the reporting, investigation and prosecution of sexual offences, including alleged sexual offences (clause 62). Sexual offence is defined to mean an offence or alleged offence of a sexual nature, including, for example, rape, attempt to commit rape, sexual assaults and indecent treatment of children under 16.

To support the Board's main function, the Board has functions to:

- review government policy, practices, procedures and systems to identify systemic issues;
- review and analyse data and information held by government entities and non-government entities;
- make recommendations to the Minister, government entities and non-government entities about improvements to government policy, practices, procedures and systems as a result of a review carried out by the Board; and
- monitor the implementation of recommendations.

The Board has a systemic focus to allow it to identify opportunities and make recommendations to support system improvements to the reporting, investigation and prosecution of sexual offences in the future. The scope of the Board is broad and is intended to allow it to review any part of the criminal justice system in relation to a sexual offence, ranging from a victim-survivor's initial reporting of an alleged offence to an entity, such as a health service, support service or the police, to the conduct of a court proceeding.

It is not intended that the Board will conduct case reviews of individual sexual offence matters or make recommendations regarding disciplinary action for the conduct of individuals in the investigation and prosecution of specific cases. However, in conducting an inquiry about a systemic issue, it is intended that the Board may consider:

- the progress of an investigation of an alleged sexual offence and whether further investigation or prosecution of a person accused of committing the offence has been affected by an act or omission during the investigation;
- major decisions, and reasons for the decisions, about the charges brought against a person accused of committing an alleged sexual offence, or not bringing charges against the accused; and

- major decisions, and reasons for the decisions, relating to the preparation and conduct of the prosecution, and conduct of the prosecution of a person accused of committing an alleged sexual offence.

Consideration of these issues is intended to allow the Board to identify and make recommendations to improve systemic issues that impact upon the successful reporting, investigation and prosecution of sexual offences.

The Board is independent and not subject to the direction of any person, including the Minister, and is responsible for determining the terms of reference for each review it conducts (clauses 64 and 94).

#### Membership and independence of the Board

As recommended by the Taskforce, the Board will be chaired by the Victims' Commissioner. The Board will comprise of the Victims' Commissioner and eight other members, to be appointed by the Minister (clause 69).

The Board will include four government members, being:

- the Police Commissioner or a nominee;
- the Director of Public Prosecutions or a nominee;
- one public sector employee who is appropriately qualified in forensic services or clinical forensic medicine; and
- one public sector employee who is appropriately qualified in matters relating to the court system.

The Board will also include four non-government members who have skills, knowledge and experience in one or more of the following areas:

- professional expertise in the field of sexual offence matters;
- providing support services to victims of sexual violence;
- experience as a victim of sexual violence, including, for example, experience as a victim in the criminal justice system.

The Bill provides for the Minister to appoint a Deputy Chairperson, who must be one of the appointed non-government members (clause 71).

The Minister must also ensure the Board's membership includes persons with a range of experience, knowledge or skills that are sufficient for the Board to perform its functions. The membership of the Board will be required to reflect the social, cultural and linguistic diversity of the Queensland community, and must include at least one person who has lived experience as a victim of sexual violence and at least one member who is an Aboriginal person or Torres Strait Islander person (clause 69).

A person is not eligible for appointment if they have a conviction, other than a spent conviction, for an indictable offence, if the person is an insolvent under administration, disqualified from managing corporations under part 2D.6 of the *Corporations Act 2001* (Cth) (Corporations Act), is a member of the Legislative Assembly, or if the person does not consent to the Minister requesting their criminal history from the Police Commissioner (clause 70).

As members may have a direct or indirect interest in matters that are considered by the Board, particularly members from the QPS or the Office of the Director of Public Prosecutions, the Bill requires that a member must disclose any interest in an issue that is being reviewed by the Board as soon as the member becomes aware of it. Once an interest has been disclosed, the Board will determine whether the member should be excluded from considering the issue further or making decisions about the issue and must record the disclosure of the interest in a register (clause 84). This is intended to give the Board flexibility in determining how it will manage conflicts of interest when deliberating and making decisions about particular matters.

The Board will be required to ensure transparency in the operations of the Board and to maintain public confidence in the independence of the Board, the annual report of the Board must include details about any conflicts of interest, and actions of the Board, if any, to address the conflict (clause 91).

*Reporting requirements for the Victims' Commissioner and the Board*

Chapter 2, Part 4 of the Bill outlines reporting requirements for the Victims' Commissioner and Chapter 4, Part 3 of the Bill outlines reporting requirements for the Board.

The Victims' Commissioner will be required to prepare an annual report, which includes details about the activities of the Victims' Commissioner, recommendations made by the Victims' Commissioner during the reporting period, and an evaluation of any actions taken in response to a recommendation made by the Victims' Commissioner (clause 34). This is intended to ensure transparency and accountability of Government and support the independence of the Victims' Commissioner. The report will also include details about the number of complaints received about alleged contraventions of the Charter.

The Board must also prepare an annual report which includes details of the activities of the board, recommendations made by the Board and an evaluation of an action taken in response to a recommendation (clause 91). The annual report must also include details of conflicts of interest disclosed by board members and action taken to address any conflicts. This is intended to promote transparency and support the independence of the Board.

The annual reports of the Victims' Commissioner and the Board must be given to Minister, as soon as practicable after the end of the financial year but no later than 31 October and tabled by the Minister within 14 sitting days of receipt (clauses 34 and 91).

The Victims' Commissioner and the Board are also able to prepare other reports that relate to the performance of their respective functions and may include recommendations (clauses 35 and 92). For example, the Victims' Commissioner may prepare a report after conducting a systemic review and outline the findings of the review and any recommendations.

These reports must be provided to the Minister and accompanied by a recommendation as to whether the report should be tabled in the Legislative Assembly. If the Victims' Commissioner or the Board recommends the report is tabled, the Minister must table the report in the Legislative Assembly within 14 sitting days of receipt unless there is a matter of public interest not to table. The Bill provides some guidance into matters that must not be taken into account when determining whether a report should be tabled, which includes where tabling may cause embarrassment to, or a loss of confidence in, the Government. Reports may only be published by the Victims' Commissioner or the Board if they are tabled in the Legislative Assembly.



Any reports prepared by the Victims' Commissioner and the Board must not include information that may prejudice an investigation or prosecution of an offence, or confidential information (clauses 36 and 93).

The Bill also requires government entities to include information about complaints about alleged contraventions of the Charter in their annual reports. This includes the number of complaints received and the right against which the complaint was made, and how each complaint was dealt with (clause 59).

#### Access to information and confidentiality

To support the Victims' Commissioner's systemic review and complaint functions and the Board's review function, it is important that the Victims' Commissioner and the Board can access a range of information, including confidential information.

The Bill provides the Victims' Commissioner with the power to request any information, including confidential information, from a 'prescribed entity' for the systemic review function (clause 29) and the Board's systemic review function (clause 86), and from a complainant or 'relevant entity' for the complaint function (clauses 50 and 51).

An entity must comply with a request unless there is a reasonable excuse not to, which includes where providing the information would prejudice the investigation or prosecution of a matter or would endanger a person's life or physical safety or may lead to the identification of an informant or a person who is a notifier under the *Child Protection Act 1999* (Child Protection Act).

Confidential information that is provided to the Victims' Commissioner must not be disclosed except in limited circumstances, such as where the disclosure is necessary to perform a function under the Bill, with the written consent of the person to whom the information relates, or where the disclosure does not identify the person (clause 95). In addition, if a person receives confidential information through the administration of the legislation, the person who receives the information must not disclose or use the information, unless it is permitted under the legislation or another law (clause 96).

The confidentiality provisions are intended to protect the privacy of any individuals whose information may be provided to the Victims' Commissioner or the Board and to mitigate any risk of inappropriate disclosure of this information.

To promote efficiency, the Bill allows the Victims' Commissioner to enter into information sharing arrangements for its systemic review function and research function (clause 33) and for its complaint handling function (clause 60). The Bill also outlines that the Board may enter into information sharing arrangements (clause 90). Arrangements may only be entered into with government entities and the arrangement must not provide for the sharing or exchanging of particular protected information, such as a person's criminal history, or evidentiary material.

## **Alternative ways of achieving policy objectives**

Legislation is required to support the establishment of the Victims' Commissioner as a statutory authority and the establishment of the Board.

Given the proposed functions and powers of the Victims' Commissioner and the Board and the need to empower them to access confidential information to support the exercise of these functions and powers, there are no alternative ways to achieve the proposed policy objectives.

## **Estimated cost for government implementation**

The Queensland Government has allocated \$18 million over five years to support the establishment, and ongoing operation, of the Victims' Commissioner and the Board.

## **Consistency with fundamental legislative principles**

The Bill has been drafted having regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are considered justified and are addressed below.

### **Legislation has sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(2)(a)***

#### *Right to privacy*

The Bill allows the Victims' Commissioner and the Board to request and have access to information, including confidential information, about individuals. This represents a potential departure from the fundamental legislative principle that legislation have sufficient regard to the rights and liberty of individuals, including privacy and confidentiality. The departures are considered to be justified, as outlined below.

#### *Systemic reviews by the Victims' Commissioner*

Clause 9(a) of the Bill provides the Victims' Commissioner with a function to identify and review systemic issues relating to victims. To assist the Victims' Commissioner to exercise this function, clause 29 of the Bill provides that the Victims' Commissioner may request information from a prescribed entity, including confidential information. Prescribed entities include government entities, the Police Commissioner, the Director of Public Prosecutions or an entity funded by the Commonwealth or the State that provides services to victims as its primary function. A prescribed entity must comply with the request unless they have a reasonable excuse.

Clause 29(5) of the Bill prescribes certain matter that may be considered reasonable excuses for why an entity may choose to not provide information to the Victims' Commissioner, including where complying with a request for information would:

- require the entity to disclose information that is the subject of legal professional privilege;
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law;
- prejudice a prosecution or another matter before a court or tribunal;
- endanger a person's life or physical safety; or
- may lead to the identification of an informant or a person who is a notifier under section 186 of the Child Protection Act.

Clause 32(2) of the Bill states that the requirement to provide information to the Victims' Commissioner applies despite any other law that would otherwise prohibit or restrict the giving of the information. This authorises entities to provide information to the Victims' Commissioner without being subject to liability or prosecution under an Act or law that restricts or prohibits the sharing of information, such as section 142 of the *Hospital and Health Boards Act 2011* (Hospital and Health Boards Act).

Clause 32(3) of the Bill also states that where an entity may claim privilege in relation to the information under another Act or law, the privilege is not affected only because the information may be, or is, disclosed under Chapter 2, Part 3 of the Bill.

Clause 29(6) of the Bill addresses an individual's right to protection against self-incrimination. It states that where the entity is an individual, it is not a reasonable excuse for the individual to fail to comply with the notice on the basis that complying with the notice might tend to incriminate the individual or expose the individual to penalty. However, to preserve a person's right to protection against self-incrimination, clause 100 of the Bill provides the individual with evidentiary immunity where they are complying with the request.

Clause 33 of the Bill allows the Victims' Commissioner to enter into arrangements with a government entity for the purposes of sharing information that assists the Victims' Commissioner to identify and review systemic issues impacting on victims. The types of information that may be shared under an arrangement is limited and must not include certain types of information, such as a person's criminal history, confidential information within the meaning of section 24A of the *Director of Public Prosecutions Act 1984* (Director of Public Prosecutions Act), sensitive information within the meaning of section 590AF of the *Criminal Code Act 1899* (Criminal Code) or a section 93A criminal statement within the meaning of the *Evidence Act 1977* (Evidence Act).

The Bill includes protections to ensure the preservation of confidential information through requiring a person who has obtained confidential information to not disclose the confidential information to anyone else, or use the information, other than where authorised under clause 95 of the Bill. Clause 96 of the Bill also prohibits a person who may receive confidential information from disclosing confidential information to anyone else or using the information other than where they are authorised under the Act or another Act to do so. The maximum penalty for failing to comply with these requirements is 200 penalty units.

In addition, clause 36 of the Bill outlines that an annual report or another report prepared by the Victims' Commissioner must not include information that is prejudicial to an investigation or prosecution, or information that is confidential or identifies an individual or entity.

A key function of the Victims' Commissioner is to identify and review systemic issues that relate to victims and make recommendations for improvements to government policy, practices, procedures and systems to support the rights of victims. The ability to access a wide range of information is integral to support the systemic review function, as it will enable the Victims' Commissioner to ascertain the facts of particular issues, what the cause of a particular systemic issue may be and what actions could be taken to respond to, or limit, issues impacting on victims into the future. It is considered necessary to allow the Victims' Commissioner to request access to confidential information, where it is relevant to a systemic review. The ability of a person or entity to refuse access to information, except where there is a reasonable excuse, would frustrate the ability of the Victims' Commissioner to exercise its functions and powers in identifying, reviewing and making recommendations about systemic issues impacting on

victims. Therefore, it is considered necessary and appropriate to compel particular entities to provide information to the Victims' Commissioner.

The Bill achieves an appropriate balance between ensuring that the Victims' Commissioner has access to relevant information, including confidential information, to support its review function, and protecting an individuals' privacy. This is achieved by providing a mechanism for entities to refuse to provide information with a reasonable excuse, the confidentiality provisions which prevent disclosure of confidential information except in specific circumstances, and provisions which prevent the inclusion of confidential information in reports prepared by the Victims' Commissioner. As such, the legislation is considered to have sufficient regard to the rights and liberties of individuals and any potential infringement of fundamental legislative principles is considered justifiable.

*Obtaining information to assist with dealing with a complaint against the Charter*

Clauses 50, 51 and 60 of the Bill provide the Victims' Commissioner with powers to make inquiries and request information to assist it with resolving a complaint from a person about an alleged contravention of the Charter.

Clause 51 of the Bill provides that the Victims' Commissioner may, by notice, given to a relevant entity for the complaint, ask the entity to give the Victims' Commissioner information, including confidential information, about the complaint. The maximum penalty for failing to comply with a request is 100 penalty units.

Clause 51(4) of the Bill provides that a relevant entity may fail to comply where they have a reasonable excuse. For example, if complying with the notice would require the entity to disclose information that is the subject of legal professional privilege. Clause 51(5) of the Bill also addresses an individual's right to self-incrimination as it states that it is not a reasonable excuse of the individual to comply with the notice on the basis that complying with the notice might tend to incriminate the individual or expose the individual to a penalty. However, to protect the person's right to self-incrimination, clause 100 of the Bill provides the individual with evidentiary immunity where they are complying with the request.

Clause 60 of the Bill provides for the Victims' Commissioner to enter into information-sharing arrangements with prescribed persons to assist it in dealing with complaints of alleged contraventions of the Charter. The types of information that may be shared does include some limitations, including that the Victims' Commissioner and prescribed person cannot enter into an agreement to share certain types of information, such as a person's criminal history, confidential information within the meaning of section 24A of the Director of Public Prosecutions Act, sensitive information within the meaning of section 590AF of the Criminal Code or a section 93A criminal statement within the meaning of the Evidence Act.

Clauses 95 and 96 of the Bill provide protections against the disclosure or use of confidential information.

Clause 55 of the Bill provides that the Victims' Commissioner may publish information about a complaint that the Victims' Commissioner has finished dealing with. The provision provides that any publication must not include personal information about an individual unless it has been previously published or it has been given for the purpose of publication.

To appropriately carry out its function to deal with complaints about potential contraventions of the Charter, it is essential that the Victims' Commissioner has access to information about the complaint from the complainant and the relevant entity. By explicitly stating the limited scope of these powers to resolve a complaint, and the relevant protections provided to protect the information about a complaint, the approach taken in the Bill is considered to have sufficient regard to the rights and liberty of individuals and is appropriate to ensure the Victims' Commissioner is able to access relevant information to resolve complaints about alleged contraventions of the Charter.

*Systemic reviews conducted by the Board*

Chapter 4 of the Bill establishes the Board and states that its main function is to identify and review systemic issues relating to the reporting, investigation and prosecution of sexual offences. To assist the Board to exercise this main function, clause 86 provides that the Chairperson of the Board may request information from an entity, including confidential information. Prescribed entities include government entities, the Police Commissioner, the Director of Public Prosecutions or an entity funded by the Commonwealth or the State that provides services to victims as its primary function. A prescribed entity must comply with the request for information unless they have a reasonable excuse.

Clause 86(5) of the Bill prescribes several circumstances that may be considered reasonable excuses for why an entity may not provide information to the Victims' Commissioner, including where complying with a request for information would:

- require the entity to disclose information that is the subject of legal professional privilege;
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law;
- prejudice a prosecution or another matter before a court or tribunal;
- endanger a person's life or physical safety; or
- may lead to the identification of an informant or a person who is a notifier under section 186 of the Child Protection Act.

Clause 89(2) of the Bill states that the requirement to provide information to the Chairperson of the Board applies despite any other law that would otherwise prohibit or restrict the giving of the information. This authorises entities to provide information to the Chairperson without being subject to liability or prosecution under an Act or law that restricts or prohibits the sharing of information, such as section 142 of the Hospital and Health Boards Act.

Clause 89(3) of the Bill also states that where an entity may claim privilege in relation to the information under another Act or law, the privilege is not affected only because the information may be, or is, disclosed under Chapter 4, Part 2 of the Bill.

Clause 86(6) of the Bill addresses an individual's right to protection against self-incrimination. This clause states that where the entity is an individual, it is not a reasonable excuse for the individual to fail to comply with the notice on the basis that complying with the notice might tend to incriminate the individual or expose the individual to penalty. However, to protect the person's right to self-incrimination, clause 100 of the Bill provides the individual with evidentiary immunity where they are complying with the request.

Clause 90 of the Bill allows the Board to enter into arrangements with a government entity for the purposes of sharing information that assists the Board to identify and review matters in relation to the reporting, investigation and reporting of sexual offences. The types of information that may be shared under an arrangement is limited and must not include certain types of information, such as a person's criminal history, confidential information within the meaning of section 24A of the Director of Public Prosecutions Act, sensitive information within the meaning of section 590AF of the Criminal Code or a section 93A criminal statement within the meaning of the Evidence Act.

The Bill provides protections to ensure the preservation of confidential information by requiring a person who has obtained confidential information to not disclose the confidential information to anyone else, or use the information, other than where authorised under clause 95 of the Bill. Clause 96 of the Bill also prohibits a person who may receive confidential information from disclosing confidential information to anyone else or using the information other than where they are authorised under the Act to do so. The maximum penalty for failing to comply with these requirements is 200 penalty units.

Clause 93 of the Bill provides that any report prepared by the Board must not include confidential information.

The Board's powers to access information are integral to support its main function to identify and review systemic issues in relation to the reporting, investigation and prosecution of sexual offences. Access to a wide range of information, including confidential information, will allow the Board to ascertain the facts of particular issues, determine what the cause of a particular issue may be and what actions could be taken to respond to, or limit, issues impacting on the reporting, investigation and prosecution of sexual offences. It is necessary to require entities to provide this information unless there is a reasonable excuse to ensure the Board can fulfil its functions.

The Bill is considered to achieve an appropriate balance between the need for the Board to obtain the information, including confidential information, that it requires to effectively identify and review matters impacting on the reporting, investigation and prosecution of sexual offences and the rights and liberties of individuals. Therefore, any infringement of fundamental legislative principles is considered be justified.

#### *Criminal history information of the Victims' Commissioner or a member of the Board*

Clauses 23 and 77 of the Bill allows the Minister to request a criminal history report from the Police Commissioner to support the Minister to assess whether a person is eligible, should remain eligible or is disqualified from holding the position of the Victims' Commissioner or as a member of the Board.

Any potential breach of fundamental legislative principles is mitigated by the requirement for the request to only be made with the person's consent. Allowing the Minister to undertake criminal history checks of the Commissioner and board members is important to ensure the integrity and appropriateness of appointments as a head of a statutory authority or member of a government board. Therefore, any departure from fundamental legislative principles is considered to be justified.

*Penalty for offence – Unlawful disclosure of confidential information*

Clause 95 of the Bill contains an offence, which gives rise to the consideration of whether the penalty is proportionate to the offence. The Bill proposes to make it an offence for a person, who becomes aware of confidential information by virtue of their position or otherwise, to use or disclose the information unless the use or disclosure is permitted in limited circumstances.

The proposed offence will apply to a person who possesses confidential information by being the Minister, a member of the Minister's staff, the Victims' Commissioner, a board member, an officer within the Office of the Victims' Commissioner or the department, the board secretariat or a person consulted or engaged by the Victims' Commissioner or the Board.

The proposed offence for using or disclosing, whether directly or indirectly, confidential information to another person, will carry a maximum penalty of 200 penalty units. Similar offences are included across the Queensland statute book, including section 36 of the *Family and Child Commission Act 2014* (Family and Child Commission Act) and section 140 of the *Public Guardian Act 2014* (Public Guardian Act) which provide similar protections to prevent confidential information from unauthorised use or disclosure.

Having regard to similar offences, and the need to protect the rights of an individual, particularly to have their personal information appropriately protected from unlawful use or disclosure, the penalty is considered justified.

*Penalty for offence – Unlawful disclosure of confidential information*

Clause 96 of the Bill contains an offence, which gives rise to the consideration of whether the penalty is proportionate to the offence. The Bill proposes to make it an offence for a person, who becomes aware of confidential information under clauses 31(1), 88(1) or 95(3), to use or disclose the information unless the use or disclosure is permitted in the limited circumstances.

The proposed offence will carry a maximum penalty of 200 penalty units. Similar offences are included across the Queensland statute book, including section 37 of the Family and Child Commission Act and section 141 of the Public Guardian Act, which provide similar protections to prevent confidential information from unauthorised use or disclosure.

Having regard to similar offences, and the need to protect the rights of an individual, particularly to have their personal information appropriately protected from unlawful use or disclosure, the penalty is considered justified.

*Penalty for offence – Unlawful disclosure of criminal history information*

Clause 97 of the Bill contains an offence, which gives rise to the consideration of whether the penalty is proportionate to the offence. The Bill prescribes that it is an offence for a person to unlawfully disclose a person's criminal history information. It is expected that the Minister or a member of the Minister's staff may receive criminal history information as part of their role in determining the eligibility of a person to be appointed to the Victims' Commissioner or the Board.

The Bill makes it an offence for a person, who becomes aware of criminal history information by virtue of their position or otherwise, to use or disclose the information unless the use or disclosure is permitted in the limited circumstances. The offence for using or disclosing, whether directly or indirectly, criminal history information to another person, carries a

maximum penalty of 100 penalty units. Similar offences are included across the Queensland statute book, including section 78C of the *Ombudsman Act 2001* section 117ZM of the *Public Trustee Act 1978* and section 25 of the *Queensland Veterans' Council Act 2021* which provide similar protections to prevent criminal history information from unauthorised use or disclosure.

Having regard to similar offences, and the need to protect the rights of an individual, particularly to have their criminal history information appropriately protected from unlawful use or disclosure, the penalty is considered justified.

**Legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice - *Legislative Standards Act 1992, section 4(3)(b)***

*Disclosure by a person charged with, or convicted of, an indictable offence*

Clauses 24 and 78 of the Bill will require the Victims' Commissioner or a board member who is charged with, or convicted of, an indictable offence to immediately notify the Minister of the offence, unless the person has a reasonable excuse. The requirement to notify the Minister is not viewed as breaching fundamental legislative principles as it only requires a person to notify of a specific event, namely being charged with, or convicted of, an indictable offence and the circumstances surrounding the event.

The Bill will require the relevant person to notify the Minister of the existence of the charge or conviction, details adequate to identify the alleged offence for which the person was charged or convicted, when the alleged offence was committed and, for a conviction, the sentence that was imposed. The matters required in the notice do not implicate the person or make any finding, or any inference, of fact or guilt in relation to the charge. Therefore, the requirement to notify the Minister is not considered to infringe a person's rights of natural justice or procedural fairness in responding to the matter. This provision is justified because it reinforces the expectation that the Victims' Commissioner and members of the Board are to observe ethical and legal behaviour in carrying out their functions.

The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for non-compliance. The information in the notice is also required to be kept confidential by a person who may have access to the information, including the Minister or a member of the Minister's staff or other prescribed persons. The proposed maximum penalty where a person fails to notify the Minister of being charged with, or convicted of, an indictable offence is 100 penalty units.

Similar offences are included across the Queensland statute book, such as the *Coroners Act 2003*, *Health and Wellbeing Queensland Act 2019* and *Racing Integrity Act 2016* which all impose penalties where a person fails to disclose a charge or conviction relating to an indictable offence.

The offence and its penalty are justified because the penalty reinforces the expectation that the Victims' Commissioner and board members are to uphold ethical and legal standards in carrying out their functions. The offence is considered to have a penalty which is proportionate to the offence.



### *Removal from office*

Clauses 19 and 74 of the Bill provide that the office of the Victims' Commissioner or a board member becomes vacant if the person completes a term of office and is not reappointed, is disqualified from continuing in the office, resigns by notice or is removed from office.

The Bill prescribes that a person is disqualified from appointment, or continuing to be appointed as the Victims' Commissioner or a board member, where the person:

- has a conviction, other than a spent conviction, for an indictable offence;
- is an insolvent under administration;
- is disqualified from managing corporations because of the Corporations Act; or
- the person does not consent to a criminal history check by the Minister under section 23 or 77 of the Bill.

A person may also not be appointed as a board member where they are a member of the Legislative Assembly.

These grounds for removal and disqualification raise the issue of whether the proposed Bill has sufficient regard for the rights of individuals consistent with natural justice principles. It is considered that, having regard to the significance of the role of the Victims' Commissioner and the board members and the responsibilities each role entails, natural justice principles are not breached in this case.

To ensure public confidence in the role of the Victims' Commissioner and the Board, these offices should be held to high standards of integrity and propriety, and the automatic disqualification of a person from office where they meet one of these criteria is appropriate and consistent with other legislative approaches taken across the Queensland statute book.

**Legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons, allows the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjects the exercised of a delegated legislative power to the scrutiny of the Legislative Assembly – *Legislative Standards Act 1992, sections 4(3)(c), 4(4)(a) and 4(4)(b)***

Clause 101 of the Bill provides for the delegation of powers and functions under the Act as follows:

- the Victims' Commissioner may delegate any of their functions and powers under this Act or another Act to an appropriate qualified public service officer; and
- the Board can delegate their functions and powers under this Act or another Act to an appropriately qualified public service officer.

The Bill enables the delegation of powers for the purpose of supporting the day-to-day operations of, and the exercise of functions and powers by, the Victims' Commissioner and the Board. The powers are limited to only allow for a delegation of a function or power to a person who is appropriately qualified to discharge the function or power and employed within the Queensland public service. By limiting the scope of the delegation powers to public service officers, there is no ability for decisions to be made in respect of the law or the operation of the Victims' Commissioner or the Board outside of the scrutiny of the Legislative Assembly.

Based on these limitations to the delegation of powers by the Victims' Commissioner and the Board, the delegation of administrative powers and legislative powers to the scrutiny of the Legislative Assembly in the way proposed in the Bill is considered to be appropriate.

**Legislation does not reverse the onus of proof in criminal proceedings without justification - *Legislative Standards Act 1992, section 4(3)(d)***

There are several clauses in the Bill which make it an offence to fail to comply with the requirement, unless the individual or entity has a 'reasonable excuse'. For example, clauses 29(4), 51(3), 86(4) prescribe offences for failing to comply with an information request unless an individual or entity has a reasonable excuse. The clauses also prescribe particular matters that would, or would not, be considered a reasonable excuse. The inclusion of this requirement may be considered to reverse the onus of proof. However, the approach taken is considered to be appropriate as it would require a person to provide evidence to prove their ability to rely on the 'reasonable excuse' rather than the prosecuting entity being required to lead evidence as to why it is not a reasonable excuse, which would likely not be able to be obtained and could frustrate a proceeding.

If the offences in the Bill did not provide an ability for an individual or entity to provide a reasonable excuse, this would create strict liability offences for failing to comply with a request for information from the Victims' Commissioner or the Board. Applying strict liability in relation to these types of matters is considered to be unnecessarily strict and would penalise individuals or entities for failing to comply in circumstances that are reasonably justifiable, such as that the provision of information in responding to the request may jeopardise a proceeding or endanger a person's life or physical safety. Therefore, based on the reasons outlined above, any infringement of fundamental legislative principles is considered to be justified.

**Legislation provides appropriate protection against self-incrimination – *Legislative Standards Act 1992, section 4(3)(f)***

Clauses 29(6), 51(5) and 86(6) of the Bill provide that where the Victims' Commissioner or the Board make a request for information from an individual, it is not a reasonable excuse for the individual to fail to comply with the request on the basis that complying might tend to incriminate the individual or expose the individual to a penalty.

Clause 100 of the Bill provides that where an individual gives information in compliance with a request under sections 29, 51 or 86 of the Bill, the evidence of the information, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding. However, the protection does not apply to a proceeding about the false or misleading nature of the information or anything in which the false or misleading nature of the information is relevant evidence.

As it is critical that the Victims' Commissioner can receive confidential information to assist them to identify and review systemic issues impacting on victims and deal with complaints about alleged contraventions of the Charter, it is considered essential that it is able to access any information that is relevant to the function, even where the information might tend to incriminate a person or expose the person to a penalty. Similarly, given the Board's main function to identify and review matters impacting on the reporting, investigation and prosecution of sexual offences, it is essential that the Board is able to obtain information even where it might tend to incriminate an individual or expose them to a penalty.

The need to obtain this type of sensitive and protected information that may incriminate an individual is considered to be appropriately justified and the Bill is considered to appropriately protect the rights of an individual through including an evidentiary immunity where a person discloses information to the Victims' Commissioner or the Board which may incriminate them or expose them to a penalty. In addition, the Bill contains confidentiality provisions which require persons who receive information to maintain confidentiality unless authorised to disclose the confidential information under the Bill. Therefore, the Bill is not considered to infringe on fundamental legislative principles relating to a person's right to protection from self-incrimination.

***Legislation does not confer immunity from proceeding or prosecution without adequate justification - Legislative Standards Act 1992, section 4(3)(h)***

Clause 98 of the Bill provides immunity for civil liability for the Minister, the Victims' Commissioner and board members. The protection from civil liability is limited to where a person is liable for an act done, or an omission made, honestly and without negligence under the Act. Board members who are also chief executives or nominees who are officers of a government department are already provided protection from liability under the *Public Sector Act 2022*.

The conferral of immunity is justified as:

- immunity from prosecution is appropriate if it is conferred on persons carrying out statutory functions, as is the case in this instance; and
- the immunity is appropriately limited in scope, as it does not attach to acts done or omissions made which are reckless, unreasonable or excessive, but attaches only to acts done or omissions made honestly and without negligence.

## **Consultation**

During the development of the Bill, DJAG conducted targeted consultation through an exposure draft of the Bill and consultation papers on the models proposed to support the establishment of the Victims' Commissioner and the Board.

These consultation materials and information sessions were provided to government agencies, statutory bodies and targeted non-government stakeholders, including stakeholders from the legal sector; domestic, family and sexual violence and other victim support services; and victim advocacy sector stakeholders. All stakeholders were invited to provide comment. Briefings were also provided to targeted non-government stakeholders to further inform stakeholders on key parts of the proposed models, obtain verbal feedback and to facilitate more informed written feedback.

DJAG has considered the feedback received as part of the consultation process and incorporated feedback, where appropriate, into the Bill.

## **Consistency with legislation of other jurisdictions**

Victims' Commissioners have been established in other states and territories since 2006. The Northern Territory and Tasmania are the only other jurisdictions that do not have a victims' commissioner. Most victims' commissioners are independent statutory appointments (Victoria, New South Wales, South Australia (SA) and the Australian Capital Territory (ACT)).

However, there is some divergence in each jurisdiction in relation to the constitution, functions and powers of the role of the Victims' Commissioner.

For example, all victims' commissioners advocate for the promotion and protection of victims' rights through systemic inquiry and advisory functions together with a victim complaint handling function. However, the key differences between each model include:

- whether the victims' commissioner's role is responsible for direct service provision in the form of financial assistance schemes and victim support schemes (for example, providing practical assistance, such as preparing victim impact statements or counselling services); and
- the extent of powers of the victims' commissioner to enforce the Charter (for example, the power to seek documents, make recommendations, intervene in proceedings and table reports in the Legislative Assembly).

In comparing functions to that proposed in the Bill, SA's Commissioner for Victims' Rights has functions and powers to marshal available government resources so they can be applied for the benefit of victims in the most efficient and effective way.

In the ACT, the Victims of Crime Commissioner has a role in administering the victims' services scheme and the financial assistance scheme and advocating for the interests of victims at an individual and systemic reform level, including the power to attend any criminal proceeding unless the Court directs otherwise. These functions and powers in SA and the ACT have a strong focus on representing and advancing individual rights and interests rather than a strategic role in examining the systemic issues that impact on victims of crime.

The Victims' Commissioner model proposed in the Bill aligns most closely with Victoria's Victims of Crime Commissioner. Victoria's Commissioner is established under the *Victims of Crime Commissioner Act 2015* (Vic). Its functions include to: carry out inquiries on systemic victim of crime matters and report to the Attorney-General on such matters; provide advice to the Attorney-General and government departments and agencies regarding improvements to the justice system to meet the needs of victims of crime; and to receive and deal with complaints about compliance with Charter principles.

# Notes on provisions

## Chapter 1 Preliminary

### Part 1 Introduction

*Clause 1* states that this Act may be cited as the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

*Clause 2* states that the Act will commence on a day to be fixed by proclamation.

*Clause 3* states that the main purposes of this Act are to:

- establish the Victims' Commissioner to promote and protect victims' rights;
- declare a charter of rights for affected victims; and
- establish the Sexual Violence Review Board to identify and review systemic issues in relation to the reporting, investigation and prosecution of sexual offences.

The definition of *affected victim* is contained in clause 38 of the Bill.

*Clause 4* states that this Act binds all persons, including the State. However, nothing in this Act makes the State liable to be prosecuted for an offence.

### Part 2 Interpretation

*Clause 5* states that the dictionary in Schedule 2 defines particular words used in this Act.

*Clause 6* defines the meaning of *victim* to be:

- A person who has suffered harm:
  - because a criminal offence is committed against the person;
  - because the person is a family member or dependant of another person who suffers harm because a criminal offence is committed against the other person;
  - as a direct result of intervening to help another person who suffers harm or dies because a criminal offence is committed against the other person;
  - because the person is a witness of a criminal offence committed against another person;
- A person who is a family member or dependant of another person, if the other person dies because a criminal offence is committed against the other person;
- A person who has suffered harm because the person would, if an unborn child had been born alive, have been a family member of the child. This applies where the person suffers harm because a criminal offence is committed against the person while the person is pregnant and as a result of the commission of the criminal offence, the person sustains a bodily injury that results in the destruction of the life of the person's unborn child or the person dies, resulting in the destruction of life of the person's unborn child; or

- A person not captured in one of the above definitions of a victim under clause 6 of the Bill who suffers harm:
  - because domestic violence is committed against the person;
  - because the person is a family member or dependant of a person who suffers harm because domestic violence is committed against the person; or
  - as a direct result of intervening to help a person who suffers harm because domestic violence is committed against the person.

A person who commits a criminal offence or domestic violence against a person as mentioned in section 6(1)(a) or 6(5)(a) is not a victim under sections 6(1)(b), 6(1)(c), 6(1)(d), 6(2), 6(4), 6(5)(b) or 6(5)(c).

Clause 6 also prescribes that a person suffers *harm* if, because of a criminal offence or domestic violence committed against the person, the:

- person suffers physical, psychological or emotional harm, such as a bodily injury, grief, distress or trauma;
- person's property is taken, destroyed or damaged; or
- person suffers financial or economic loss.

## **Chapter 2      Victims' Commissioner**

### **Part 1      Establishment and appointment**

#### **Division 1      Establishment**

*Clause 7* states that there is to be a Victims' Commissioner.

*Clause 8* states that the Victims' Commissioner represents the State and has the status, privileges and immunities of the State.

*Clause 9* states that the functions of the Victims' Commissioner are:

- to identify and review systemic issues relating to victims;
- to conduct research into matters affecting victims, including particular cohorts of victims;
- to consult in relation to matters relating to victims, including a person's experience as a victim and their experience in the criminal justice system;
- to deal with complaints about alleged contraventions of the victims charter;
- to publish information in relation to the criminal justice system;
- to promote the victims charter and rights of victims and to advocate on behalf of victims by making recommendations and providing advice, training, information or other help to government and non-government entities;
- to provide advice to the Minister on issues affecting victims and the promotion of victims' rights, including making recommendations about improvements to government policy, practices, procedures and systems to support the rights of victims;

- to monitor the implementation of recommendations made under this Act; and
- to perform any other function given to the Victims' Commissioner under this Act or another Act.

*Clause 10* states that the Victims' Commissioner has the power to do all things necessary or convenient to be done in performing the Victims' Commissioner's functions under this Act or another Act. As part of the Victims' Commissioner's powers, the Victims' Commissioner may engage appropriately qualified persons to give advice to the Victims' Commissioner relevant to their functions.

*Clause 11* provides several requirements for the Victims' Commissioner when performing their functions, being:

- acting independently and in the public interest; and
- having specific regard to the following:
  - the vulnerability of sexual violence or domestic violence victims;
  - the vulnerability of Aboriginal and Torres Strait Islander victims;
  - victims who have characteristics that make them particularly vulnerable to harm, such as women, children, victims from culturally and linguistically diverse backgrounds, victims with a disability, victims who are lesbian, gay, bisexual, transgender or intersex and elderly victims.

*Clause 11* also states that the Victims' Commissioner is not subject to direction by any person, including the Minister, about the way in which the Victims' Commissioner's functions are to be performed.

For the purpose of clause 11, *sexual violence* means an act or omission constituting a sexual offence.

*Clause 12* provides for the Victims' Commissioner to ensure that they do not duplicate the performance of a function of an entity under this Act or another Act, such as the *Coroners Act 2003*, the *Director of Public Prosecutions Act 1984*, the *Police Service Administration Act 1990* or the *Penalties and Sentences Act 1992*. The Victims' Commissioner will need to ensure that they perform their functions in a way that does not duplicate the functions of persons, agencies or departments who hold responsibilities under the listed Acts.

Examples of such persons, agencies and departments include the Sexual Violence Review Board, the Victim Services Coordinator, the Queensland Sentencing Advisory Council, the Domestic and Family Violence Death Review Board, the Queensland Human Rights Commissioner, the Mental Health Commissioner and the Mental Health Court.

It is not intended that the prescribed Acts are an exhaustive list or that the Victims' Commissioner is authorised to replicate a function of another body where an Act is not listed. It is intended that the Victims' Commissioner will avoid any potential duplication with the functions and powers of other government or non-government entities, to the greatest extent possible.

*Clause 13* states that the Victims' Commissioner is not a statutory body for the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1982*. The

Victims' Commissioner as a statutory authority is intended to have full control over the exercise of its functions and powers in seeking to achieve its objective to promote and protect victims' rights. It is anticipated that the department will provide corporate services to the Victims' Commissioner, including the management of any financial and performance management obligations under the *Financial Accountability Act 2009*.

## **Division 2      Appointment**

*Clause 14* prescribes the requirements for the appointment of the Victims' Commissioner. The Victims' Commissioner must be appointed by the Governor in Council on recommendation of the Minister.

The Minister may recommend a person for appointment as the Victims' Commissioner only if the Minister is satisfied:

- the person is eligible for appointment; and
- the person is appropriately qualified to work with victims and to perform the Victims' Commissioner's functions under this Act effectively and efficiently.

A person is not eligible for appointment as the Victims' Commissioner if the person is disqualified from becoming the Victims' Commissioner under section 15 of the Act.

*Clause 15* states that a person is disqualified from becoming or continuing as the Victims' Commissioner if:

- the person has a conviction, other than a spent conviction, for an indictable offence;
- the person is an insolvent under administration;
- the person is disqualified from managing corporations because of Part 2D.6 of the *Corporations Act 2001* (Cth); or
- the person does not consent to the Minister requesting a report about the person's criminal history under section 23 of this Act.

*Clause 16* states that the Victims' Commissioner holds office for the term stated in the Victims' Commissioner's instrument of appointment. The Victims' Commissioner must not be appointed for a term of more than 5 years. However, the Commissioner may be reappointed.

*Clause 17* states that the Victims' Commissioner:

- is to be paid the remuneration and allowances decided by the Governor in Council;
- holds office on terms and conditions, not provided for by this Act, decided by the Governor in Council; and
- is appointed under this Act and not under the *Public Sector Act 2022*.

*Clause 18* provides for the preservation of rights of a public service officer who is appointed as the Victims' Commissioner. Where the public service officer is appointed, the person keeps all rights accrued or accruing to the person as a public service officer as if service as the Victims' Commissioner were a continuation of service as a public service officer. At the end of the person's term of office or resignation as the Victims' Commissioner, the person's service as the Victims' Commissioner is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.



*Clause 19* states that the office of the Victims' Commissioner becomes vacant if the Victims' Commissioner:

- completes a term of offence and is not reappointed;
- is disqualified from continuing in office under section 15 of this Act;
- resigns by notice under section 20 of this Act; or
- is removed from office under section 21 of this Act.

*Clause 20* provides for the Victims' Commissioner's ability to resign from the office of the Victims' Commissioner, by giving the Minister a signed letter of resignation. The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter, the later day.

*Clause 21* provides that the Governor in Council may remove a person from the office of the Victims' Commissioner on the recommendation of the Minister. The Minister may recommend the Victims' Commissioner's removal only if the Minister is satisfied that the Victims' Commissioner:

- is guilty of misconduct of a type that could warrant dismissal from the public service if the Victims' Commissioner were an officer of the public service;
- is incapable of performing the functions of the Victims' Commissioner because of a physical or mental incapacity or for some other reason; or
- has neglected or incompetently performed the duties of the Victims' Commissioner.

This clause does not otherwise limit section 25 of the *Acts Interpretation Act 1954*.

*Clause 22* allows the Minister to appoint a person to act in the office of the Victims' Commissioner during a vacancy in the office of the Victims' Commissioner or a period when the Victims' Commissioner is absent from duty or cannot, for another reason, perform the functions of the office. This clause requires that a person cannot be appointed to act as the Victims' Commissioner unless, at the time of the appointment, the person is eligible for appointment under section 14 of the Act.

### **Division 3 Criminal history**

*Clause 23* addresses the processes to obtain a written report about a person's criminal history to determine their eligibility for appointment as the Victims' Commissioner or to be the acting Victims' Commissioner. Where a person consents to a criminal history check for the purpose of the person's appointment as the Victims' Commissioner or acting Victims' Commissioner, the Minister may ask the Police Commissioner for a report about a person's criminal history and a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history. However, the Minister may make the request only if the person has given the Minister written consent for the request.

The Police Commissioner must comply with the request in relation to information in the Police Commissioner's possession or to which the Police Commissioner has access.

Before using information obtained under this section, the Minister must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information.

*Clause 24* imposes obligations on the Victims' Commissioner if they are charged with or convicted of an indictable offence. The Victims' Commissioner must, immediately after the person is charged or convicted, give notice of the charge or conviction to the Minister under this section, unless the person has a reasonable excuse. The maximum penalty for failing to comply with the requirement is 100 penalty units.

The notice must include:

- the existence of the charge or conviction; and
- for a charge:
  - details adequate to identify the alleged offence; and
  - when the offence was alleged to have been committed; and
- for a conviction:
  - when the offence was committed;
  - details adequate to identify the offence; and
  - the sentence imposed on the person.

## **Part 2 Office of the Victims' Commissioner**

*Clause 25* provides for the establishment of an office called the Office of the Victims' Commissioner. The Office consists of the Victims' Commissioner and the staff of the Office. The Office's function is to help the Victims' Commissioner perform its functions.

*Clause 26* states that the Victims' Commissioner controls the Office of the Victims' Commissioner. However, nothing prevents the attachment of the Office to the department to ensure the Office has the administrative support services required to perform its functions effectively and efficiently.

*Clause 27* provides that the Victims' Commissioner may employ the staff the Victims' Commissioner considers necessary to perform their functions. The staff of the Office are employed under the *Public Sector Act 2022*. A staff member of the Office is not subject to direction by any person other than the Victims' Commissioner or a person authorised by the Victims' Commissioner, about the way in which the Office's functions are to be performed.

*Clause 28* provides for the Victims' Commissioner to consult with, employ, and remunerate a person for medical, legal, accounting or other professional services to support it in the performance of its functions.

## **Part 3 Access to information**

*Clause 29* states that the Victims' Commissioner, in exercising its function to identify and review systemic issues impacting victims, may, by notice, ask the entity to give to them information, including confidential information, held by the entity or to which the entity has access. The notice must state the information required by the Victims' Commissioner, the reasons why the information is required, the purposes for which the information will be used and a reasonable period for the entity to comply with the notice.

The entity must comply with the notice unless the entity has a reasonable excuse. The maximum penalty for failing to comply with the requirement to provide information is

100 penalty units. Clause 99 of the Bill provides that a person is not liable, civilly or criminally or under an administrative process, for giving the information to the Victims' Commissioner, where the person seeking to comply with the request is acting honestly on reasonable grounds and without negligence.

A reasonable excuse includes where complying with the notice would:

- require the entity to disclose information that is the subject of legal professional privilege;
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law;
- prejudice a prosecution or another matter before a court or tribunal;
- would endanger a person's life or physical safety; or
- may lead to the identification of an informant or a person who is a notifier under section 186 of the *Child Protection Act 1999*.

It is important to note that a prescribed entity is not prohibited from providing information where a reasonable excuse may apply. However, the discretion is given to the prescribed entity to not comply with the request for information, or part of the request, because the prescribed entity has a reasonable excuse. Under clause 32(3) of the Bill, any privilege that the prescribed entity may be able to claim in relation to the information under another Act or law is not affected only because the information may be, or is, disclosed to the Victims' Commissioner under this Part of the Act.

If the prescribed entity is an individual, it is not a reasonable excuse for the individual to fail to comply with the notice on the basis that complying with the notice might tend to incriminate the individual or expose the individual to a penalty. However, where a person provides the information, the person will be provided with evidentiary immunity under clause 100 of the Bill. Clause 100 of the Bill states that evidence of the information, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty, in a proceeding.

If a prescribed entity does not comply with the notice, the entity must, as soon as practicable, give the Victims' Commissioner a notice stating the reasons for not complying with the notice.

As outlined in Schedule 2 of the Act, a *prescribed entity* for the purposes of the Act means any of the following:

- the chief executive of a public sector entity under the *Public Sector Act 2022*;
- the Police Commissioner;
- the Director of Public Prosecutions; or
- an entity funded by the Commonwealth or the State that provides services to victims as its primary function.

*Clause 30* provides that where the Victims' Commissioner asks the Director of Public Prosecutions or the Police Commissioner for information about a person who has been charged with or convicted of an offence under section 29, the Director of Public Prosecutions or the Police Commissioner is authorised to give the Victims' Commissioner a copy or summary of evidentiary material about the offence despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

This section applies despite section 24A of the *Director of Public Prosecutions Act 1984* and section 10.1 of the *Police Service Administration Act 1990*.

As outlined in Schedule 2 of the Act, for the purposes of the Act, *evidentiary material* about an offence means material compiled in the course of the investigation or prosecution of the offence, including, for example, the following:

- a summary of the circumstances of the alleged offence prepared by a police officer, such as a bench charge sheet or a QP9;
- a witness statement;
- an indictment;
- a recording within the meaning of section 21AY of the *Evidence Act 1977*;
- a section 93A criminal statement or a section 93A transcript within the meaning of the Schedule 3 of the *Evidence Act 1977*;
- a recorded statement, or a transcript of a recorded statement, within the meaning of section 103A of the *Evidence Act 1977*;
- a report by an expert about a person alleged to have committed the offence;
- a statement of other information provided by a victim, such as a victim impact statement; or
- any reasons for decision in relation to an action taken during an investigation or prosecution of an offence, or whether a person is charged with an offence.

*Clause 31* provides that the Victims' Commissioner may disclose or use information, including confidential information, obtained under Chapter 2, Part 3 of this Act only for identifying and reviewing a systemic issue under section 9(a) of this Act. This section does not limit the confidentiality requirement prescribed in section 95 of the Act.

*Clause 32* provides for how the requirements to disclose information to the Victims' Commissioner interact with the requirements contained in other laws.

Clause 32(1) provides that Chapter 2, Part 3 of this Act does not limit a power or obligation under another Act or law to give information.

Clause 32(2) provides that sections 29 and 30 apply to information despite any other law that would otherwise prohibit or restrict the giving of the information. Examples include the confidentiality requirements in section 142 of the *Hospital and Health Boards Act 2011*, section 778 of the *Mental Health Act 2016* and section 288 of the *Youth Justice Act 1992*.

Clause 32(3) provides that if a person may claim privilege in relation to the information under another Act or law, the privilege is not affected only because the information may be, or is, disclosed under Chapter 2, Part 3 of this Act.

*Clause 33* provides for the Victims' Commissioner to enter into an arrangement with a government entity for the purposes of sharing or exchanging information held by the Victims' Commissioner or government entity or to which the Victims' Commissioner or the government entity has access.

The arrangement may relate only to information that assists the Victims' Commissioner's functions in relation to identifying and reviewing systemic issues impacting on victims (section 9(a)) or their research function (section 9(b)). The arrangement must not provide for sharing or exchanging information that is protected information. *Protected information* is defined in Schedule 2 of the Bill to mean information that is:

- a person's criminal history;
- information which must not be disclosed under Chapter 6, Part 6, Division 2, Subdivision 1 of the *Child Protection Act 1999*;
- confidential information within the meaning of section 24A of the *Director of Public Prosecutions Act 1984*;
- sensitive evidence within the meaning of section 590AF of the Criminal Code;
- a recording within the meaning of section 21AY of the *Evidence Act 1977*;
- a section 93A criminal statement or a section 93A transcript within the meaning of Schedule 3 of the *Evidence Act 1977*;
- a recorded statement, or a transcript of a recorded statement, within the meaning of section 103A of the *Evidence Act 1977*; or
- subject to an order of a court or tribunal that prohibits sharing or exchanging the information.

## **Part 4 Reporting**

*Clause 34* requires the Victims' Commissioner to provide an annual report on the performance of their functions in the preceding financial year as soon as practicable after the end of each financial year but no later than 31 October.

The report must include, for the reporting period:

- details of the activities of the Victims' Commissioner;
- any recommendations made by the Victims' Commissioner under this Act including:
  - a recommendation about changes to government policy;
  - a recommendation that a policy or procedure be created, amended or reviewed as a result of the performance of the Victims' Commissioner's functions;
- an evaluation of any action taken in response to a recommendation, whether the recommendation was made before or during the reporting period;
- the number of each of the following:
  - complaints made or referred to the Victims' Commissioner;
  - complaints resolved by the Victims' Commissioner;

- complaints received by the Victims' Commissioner that have not been resolved by the Victims' Commissioner, other than complaints the Victims' Commissioner has refused to deal with;
- complaints the Victims' Commissioner has refused to deal with; and
- other information the Victims' Commissioner considers appropriate.

The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

*Clause 35* provides that the Victims' Commissioner may prepare a report about a matter relevant to the performance of the Victims' Commissioner's functions under this Act. The Victims' Commissioner may include a recommendation to another entity about the matter in the report.

As soon as practicable after preparing the report, the Victims' Commissioner must give the report to the Minister and make a recommendation about whether the report should be tabled in the Legislative Assembly. The Victims' Commissioner may recommend that the Minister table the report only if section 36 of this Act has been complied with in relation to the report.

If the Victims' Commissioner recommends that the report should not be tabled, the report must be accompanied by a statement of reasons for that recommendation. Despite a recommendation to not table the report, the Minister may table the report in the Legislative Assembly if the Minister is satisfied the public interest in tabling the report outweighs any other considerations and section 36 has been complied with in relation to the report.

If the Victims' Commissioner recommends that the report should be tabled and the Minister is satisfied that tabling the report is in the public interest, the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report. In deciding whether tabling the report is in the public interest, the following matters must not be taken into account:

- causing embarrassment to, or a loss of confidence in, the Minister or the department; or
- the possibility that the information may be misunderstood or misinterpreted by a person.

The Victims' Commissioner may publish the report to the public only if the Minister tables the report.

*Clause 36* requires that a report under Chapter 2, Part 4 must not include information that:

- would prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law;
- would prejudice a prosecution or another matter before a court or tribunal; or
- is confidential information.

Also, the Victims' Commissioner must not include in a report under this part any information adverse to an entity identifiable from the report, unless the entity has been given a reasonable opportunity to make a submission about the information.

If the entity gives the Victims' Commissioner a written submission in response to any adverse information, the Victims' Commissioner must ensure the entity's submission is fairly stated in the report.

## **Part 5 Other matters**

*Clause 37* provides that the Victims' Commissioner may decide the extent of, and terms of reference for, each review of a systemic issue conducted by the Victims' Commissioner under section 9(a) of the Act.

The Victims' Commissioner may publish the terms of reference for the review if the Commissioner considers publication would not have an adverse effect on another review, investigation or proceeding under this Act or another law. An example being where the Queensland Family and Child Commission or the Queensland Human Rights Commissioner are undertaking a similar review or investigation into a particular matter impacting on victims.

## **Chapter 3 Charter of victims' rights**

### **Part 1 Preliminary**

*Clause 38* defines the meaning of *affected victim* and *personal harm* for the purposes of Chapter 3 of the Act. An *affected victim* is:

- a person who suffers personal harm:
  - because a relevant offence is committed against the person;
  - because the person is a family member or dependent of another person who suffers personal harm or dies because a relevant offence is committed against that person; or
  - as a direct result of intervening to help another person who suffers personal harm or dies because of a relevant offence committed against the other person.
- a person not mentioned above where they suffer personal harm:
  - because domestic violence is committed against the person;
  - because the person is a family member or dependent of a person against whom domestic violence has been committed;
  - as a direct result of helping a person against whom domestic violence has been committed against the person; or
- a person who has suffered harm because the person would, if an unborn child had been born alive, have been a family member of the child. This applies where the person suffers harm because a criminal offence is committed against the person while a person is pregnant and as a result of the commission of the criminal offence, the person sustains a bodily injury that results in the destruction of the life of a person's unborn child or the person dies, resulting in the destruction of life of the person's unborn child.

A person who commits a relevant offence or domestic violence against a person as mentioned in this section 38(1)(a) or 38(4)(a) is not an affected victim of the relevant offence under section 38(1)(b), 38(1)(c), 38(3), 38(4)(b) or 38(4)(c).

A person suffers *personal harm* if, because of a relevant offence or domestic violence committed against the person, the person suffers physical, psychological or emotional harm. Examples include bodily injury, grief, distress or trauma.

*Clause 39* states that the meaning of a *relevant offence* is an act or omission constituting any of the following offences:

- an offence against the person of someone;
- a domestic violence offence within the meaning of the *Criminal Code*, section 1;
- an offence against the *Domestic and Family Violence Protection Act 2012*, sections 177(2), 178(2) or 179(2);
- an offence of attempting to commit, or conspiring to commit, an offence mentioned in one of the abovementioned categories.

For deciding whether an act or omission constitutes a relevant offence:

- any justification, excuse or defence a person may have for doing an act or making the omission is to be disregarded; and
- 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.

A reference to a justification, excuse or defence does not include:

- a matter mentioned in the *Criminal Code*, section 31(1)(a) or 31(1)(b); or
- an authorisation to do an act or make an omission that is provided for under the Act.

*Clause 40* states that the meaning of *prescribed person* is any of the following persons:

- a government entity;
- a non-government entity;
- an officer, member or employee of a government entity or non-government entity.

However, a person is not a *prescribed person*, if, or to the extent, the person is dealing with an affected victim in the person's capacity as a legal representative of a person accused of committing a relevant offence or domestic violence against the victim.

## **Part 2 Victims' charter**

*Clause 41* states that the *Charter of Victims' Rights* (Charter) is set out in Schedule 1 of this Act. As far as practicable and appropriate, the Charter is to govern the conduct of prescribed persons in dealing with affected victims.

*Clause 42* states that the purposes of the Charter are to:

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



*Clause 43* provides that the rights stated in the Charter:

- are not enforceable by any proceeding for the enforcement of a right or obligation, regardless of whether the right or obligation is:
  - substantive or procedural or
  - direct or indirect; and
- do not affect the validity, or give grounds for review, of anything done or not done, or a decision made or not made, in contravention of them; and
- do not affect the operation of any other law, including, for example:
  - the *Criminal Practice Rules 1999* and the rules of evidence in criminal proceedings; and
  - Chapter 62, Division 3 of the *Criminal Code*; and
- do not affect an obligation applying to a prescribed person to maintain confidentiality about particular information under any Act or law.

This clause does not prevent disciplinary action being taken against a prescribed person who contravenes processes for implementing the rights stated in the Charter that have been adopted by the government entity or non-government entity responsible for the prescribed person's conduct.

*Clause 44* states that if a prescribed person is dealing with a person who the prescribed person is aware, or ought reasonably to be aware, is an affected victim and to the extent rights stated in the Charter apply to the prescribed person in dealing with the affected victim, the prescribed person must not, in dealing with the affected victim, engage in conduct that is inconsistent with the rights stated in the Charter.

### **Part 3      Complaints for contraventions of victims' charter**

*Clause 45* states that, where an affected victim believes a prescribed person has, in relation to the affected victim, engaged in conduct that is inconsistent with the Charter, an affected victim may make a complaint to:

- if the prescribed person is a government entity — the government entity;
- if the prescribed person is a non-government entity — the non-government entity;
- 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
- the Victims' Commissioner.

The following persons may also make a complaint to the Victims' Commissioner on behalf of an affected victim:

- a person acting with the consent of the affected victim; or
- an agent of the affected victim.

*Clause 46* provides that where a complaint is made to a government entity or non-government entity, the entity must:

- give the complainant information about the process that will be used for resolving the complaint; and
- take all reasonable steps to resolve the complaint as soon as reasonably practicable.

The clause also provides that the entity may comply with the requirement to take all reasonable steps to resolve the complaint by:

- referring the complaint to the following:
  - the Victims Commissioner;
  - for a government entity – another government entity; or
  - for a non-government entity – the entity that gives the non-government entity funding to provide services to help affected victims; and
- giving the other entity timely and reasonable assistance to resolve the complaint.

*Clause 47* states that a complaint made or referred to the Victims' Commissioner must be made in writing, state the complainant's name and contact details and include enough details to indicate the alleged contravention to which the complaint relates. If the Victims' Commissioner is satisfied the complainant needs help to put the complaint in writing, the Victims' Commissioner must give reasonable help to put the complaint in writing.

*Clause 48* provides that where a complaint has been made or referred to the Victims' Commissioner, the Victims Commissioner may deal with or refuse to deal with the complaint. The Victims' Commissioner may also, after deciding to deal with the complaint, refuse to continue to deal with the complaint. However, the Victims' Commissioner may refuse to deal with or continue the complaint only if the Victims' Commissioner is satisfied:

- there is a more appropriate course of action available under another law to deal with the subject of the complaint;
- the subject of the complaint is being, or has been, appropriately dealt with by the commissioner or another entity;
- the requirements under section 47 have not been met; or
- the complaint is frivolous or vexatious.

This clause also provides that the Victims' Commissioner must advise the complainant of its decision to deal with, refuse to deal with or refuse to continue to deal with the complaint.

*Clause 49* provides that the Victims' Commissioner may make preliminary inquiries about a complaint made or referred to the Victims' Commissioner to decide how to deal with the complaint under Chapter 3, Part 3 of the Act.

*Clause 50* provides that for dealing with a complaint, the Victims' Commissioner may ask the complainant to give the Victims' Commissioner information about the complaint.

*Clause 51* provides that for dealing with a complaint, the Victims' Commissioner may, by notice, ask the entity to give them information, including confidential information, about the complaint within the reasonable period stated in the notice. The notice must state the purpose

for making the request and a reasonable period for complying with the request. Failing to comply with a requirement is an offence with a maximum penalty of 100 penalty units.

The relevant entity must comply with the notice unless the entity has a reasonable excuse. It is a reasonable excuse for a relevant entity to fail to comply with the notice because complying with the notice:

- would require the entity to disclose information that is the subject of legal professional privilege;
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law;
- would prejudice a prosecution or another matter before a court or tribunal;
- would endanger a person's life or physical safety; or
- may lead to the identification of an informant or a person who is a notifier under section 186 of the *Child Protection Act 1999*.

However, if the relevant entity is an individual, it is not a reasonable excuse for the individual to fail to comply with the notice on the basis that complying with the notice might tend to incriminate the individual or expose the individual to a penalty. Section 100 of the Act provides evidentiary immunity for individuals complying with an information request. If a relevant entity does not comply with the notice, the entity must, as soon as practicable, give the Victims' Commissioner notice stating the reasons for not complying with the notice.

The definition of *relevant entity* for a complaint means the prescribed person or prescribed entity who is the subject of the complaint.

*Clause 52* provides that if the Victims' Commissioner decides to deal with a complaint, the Victims' Commissioner may take any reasonable steps the Victims' Commissioner considers appropriate to resolve the complaint. Without limiting the Victims' Commissioner's powers to resolve a complaint, some examples of the actions the Victims' Commissioner may take include:

- asking the complainant or prescribed person to give the Victims' Commissioner information relevant to the complaint;
- making enquiries of, and discussing the complaint with, the complainant and the prescribed person;
- asking the prescribed person to make submissions to the Victims' Commissioner in writing in response to the complaint;
- giving the complainant a copy of the prescribed person's written submissions; or
- making recommendations to a prescribed person in relation to dealing with affected victims.

*Clause 53* states that if the Victims' Commissioner considers a complaint has been resolved, the Victims' Commissioner must, as soon as practicable after the complaint is resolved, advise the complainant and must give a prescribed person a notice stating:

- the outcome of the resolution of the complaint; and
- that the Victims' Commissioner has finished dealing with the complaint.

*Clause 54* states that where the Victims' Commissioner has taken reasonable steps to resolve the complaint and believes the complaint cannot be resolved, the Victims' Commissioner must prepare a report about the complaint as soon as possible after they have taken all reasonable steps to deal with the complaint.

The report must include the substance of the complaint and the actions taken to resolve the complaint. The report may include details of the steps the Victims' Commissioner considers the prescribed person should take to ensure the prescribed person's acts and decisions comply with the Charter.

However, the Victims' Commissioner must not include in the report any information adverse to the prescribed person, unless the person has been given a reasonable opportunity to make a submission about the information. If the prescribed person gives the Victims' Commissioner a written submission in response to any adverse information, the Victims' Commissioner must ensure the person's submission is fairly stated in the report.

The Victims' Commissioner must give a copy of the report to the complainant and the prescribed person. The report is not admissible in any proceeding and a person cannot be compelled to produce the report or to give evidence about, the report or its contents in any proceeding. However, the report may be admitted or produced, or evidence about the report or its contents is given, in a proceeding with the consent of the Victims' Commissioner and the person to whom the report relates.

*Clause 55* provides the Victims' Commissioner with a power to publish information about a complaint that the Victims' Commissioner has finished dealing with. The publication may include the substance of the complaint and may draw on information about the complaint contained in the report under Chapter 3, Part 3 of this Act. However, the publication must not include personal information about an individual unless the information has previously been published, or given for the purpose of publication, by the individual.

## **Part 4 Other matters**

*Clause 56* states that the Victims' Commissioner and a prescribed person may enter into an arrangement about:

- the types of complaints the Victims' Commissioner will refer to the person because the complaints would be more appropriately dealt with by the person; and
- the types of matters the prescribed person will refer to the Victims' Commissioner because the matter relates to an alleged contravention of the Charter.

If an arrangement provides for a referral under this section, the arrangement must also provide for how the referral must be made.

*Clause 57* provides that the Commissioner may refer a complaint or part of a complaint to a government entity or non-government entity if the Commissioner is satisfied the complaint would be more appropriately dealt with by the entity. The entity must deal with the complaint under section 46 of this Act. However, the entity may not refer the complaint back to the Victims' Commissioner. If the Victims' Commissioner refers a complaint, the Victims' Commissioner must advise the complainant that the complaint has been referred to the prescribed person.

*Clause 58* states that if the Victims' Commissioner asks the complainant for information under section 50 or advises the complainant in relation to dealing with, refusing to deal with, or referring the complaint under sections 48, 52 or 57 of the Act, where the Victims' Commissioner does not advise the complainant in writing, the Victims' Commissioner must ensure that a record is kept of the advice to the complainant.

*Clause 59* states that where a complaint is made to a government entity or an officer, member or employee of a government entity, the government entity must include the following information in its annual report for a financial year:

- the total number of complaints received by the government entity in the financial year;
- the number of complaints made in relation to each general right and right relating to the criminal justice system under the Charter;
- the number of complaints referred to another government entity in the financial year;
- how each complaint was dealt with by the government entity; and
- any other information the government entity considers appropriate about each complaint.

In complying with this requirement to include information in the annual report, the government entity must ensure the report does not include confidential information.

*Clause 60* states that the Victims' Commissioner may enter into an arrangement with a prescribed person for the purposes of sharing or exchanging information held by the Victims' Commissioner or prescribed person, or to which the Victims' Commissioner or the prescribed person has access. The arrangement may relate only to information that assists the Victims' Commissioner and the prescribed person in dealing with a complaint under Chapter 3 of this Act.

The arrangement must not provide for the sharing or exchanging of *protected information* as defined in Schedule 2 of the Bill to mean:

- a person's criminal history;
- information which must not be disclosed under the *Child Protection Act 1999*, chapter 6, part 6, division 2, subdivision 1;
- confidential information within the meaning of the *Director of Public Prosecutions Act 1984*, section 24A;
- sensitive evidence within the meaning of the Criminal Code, section 590AF;
- a recording within the meaning of the *Evidence Act 1977*, section 21AY;
- a section 93A criminal statement or a section 93A transcript within the meaning of the *Evidence Act 1977*, schedule 3;
- a recorded statement, or a transcript of a recorded statement, within the meaning of the *Evidence Act 1977*, section 103A; or
- subject to an order of a court or tribunal that prohibits sharing or exchanging the information.

## **Chapter 4 Sexual Violence Review Board**

### **Part 1 Establishment, membership and board proceedings**

#### **Division 1 Establishment**

*Clause 61* provides for the establishment of the Sexual Violence Review Board.

*Clause 62* states that the Board's main function is to identify and review systemic issues in relation to the reporting, investigation and prosecution of sexual offences. Without limiting its main function, the Board also has the following functions:

- to review government policy, practices, procedures and systems to identify systemic issues;
- to review and analyse data and information held by government entities and non-government entities;
- to make recommendations to the Minister, government entities and non-government entities about improvements to government policy, policies, practices, procedures and systems arising out of a review;
- to monitor the implementation of recommendations;

Some examples of the matters that the Board may consider include:

- the progress of an investigation of a sexual offence and whether further investigation or prosecution of a person accused of committing the offence has been affected by an act or omission during the investigation;
- each major decision, and the reasons for the decision, relating to:
  - the charges brought against a person accused of committing a sexual offence; and
  - not bringing charges against the accused; and
- each major decision, and the reasons for the decision, relating to the preparation and conduct of the prosecution of a person accused of committing a sexual offence.

The Board also has any other functions and powers given to it under this Act or another Act.

*Clause 63* provides that the Board has the power to do all things necessary or convenient to be done in performing the Board's functions under this Act or another Act. The Board's powers include the ability to engage appropriately qualified persons to give advice to the Board relevant to the Board's functions.

*Clause 64* requires that the Board must act independently and in the public interest. The Board is not subject to direction by any person, including the Minister, about the way in which the Board is to perform its functions.

*Clause 65* provides for the Board to ensure that they do not duplicate a function of another entity under this Act or another Act, such as the *Coroners Act 2003*, the *Director of Public*

*Prosecutions Act 1984* and the *Penalties and Sentences Act 1992*. The Board will need to have specific regard to not duplicate the functions of persons, agencies or departments who hold responsibilities under the listed Acts.

Some examples of other persons in this Act or another Act that the Board will need to ensure that it does not replicate the functions of include the Victims' Commissioner, the Victim Services Coordinator, the Queensland Sentencing Advisory Council, the Domestic and Family Violence Death Review Board, the Queensland Human Rights Commissioner, the Mental Health Commissioner and the Mental Health Court.

Clause 65 notes that, to avoid duplication, the board may coordinate the conduct of a review relating to the reporting, investigation and prosecution of sexual offences with a person performing a function under the Acts mentioned in this clause.

It is not intended that the prescribed Acts are considered to be an exhaustive list or provide an opportunity for the Board to replicate a function of another body where an Act is not listed. The intention is to provide that the Board will avoid any forms of duplication with the functions and powers of other government or non-government entities, to the greatest extent possible.

*Clause 66* provides that the Board is not a statutory body under the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1982*.

## **Division 2      Membership**

*Clause 67* states that the Board consists of:

- the Chairperson;
- the Police Commissioner or a police officer nominated by the Police Commissioner;
- the Director of Public Prosecutions or officer appointed to assist the direction under the *Director of Public Prosecutions Act 1984* nominated by the Director; and
- not more than 6 other members appointed by the Minister under section 69 of the Act.

*Clause 68* states that the Victims' Commissioner is the Chairperson of the Board. The Chairperson is responsible for leading the Board, and directing its activities, to ensure it appropriately performs its functions. A person will cease to be the Chairperson if the person ceases to hold office as the Victims' Commissioner under this Act.

*Clause 69* requires the Minister to appoint the following members (each an **appointed member**) as members of the Board:

- 1 public sector employee who is appropriately qualified in forensic services or clinical forensic medicine;
- 1 public sector employee who is appropriately qualified in matters relating to the court system; and
- not more than 4 other members who are eligible for appointment under section 69(4) of this Act.

A person may be appointed as a member of the Board only if the Minister is satisfied:

- the person is eligible for appointment to the Board; and
- the person is appropriately qualified to ensure the Board performs its functions under this Act effectively and efficiently; and
- that a person mentioned in section 69(1)(c) of the Act, meets one of the following criteria:
  - the person has professional expertise in the field of sexual offence matters;
  - the person has experience in providing support services to victims of sexual violence; or
  - the person has experience as a victim of sexual violence.

A person is not eligible for appointment as a member of the Board if the person is disqualified from becoming a member under section 70 of the Act.

In determining the composition of the Board, the Minister must ensure the Board's membership:

- includes at least 1 member who has experience as a victim of sexual violence;
- includes at least 1 member who is an Aboriginal person or a Torres Strait Islander person; and
- reflects the social, cultural and linguistic diversity of the Queensland community.

In relation to the appointment of a public sector officer with qualifications in forensic services, *forensic services* is defined to mean 'the application of scientific methods of testing and analysis, and scientific interpretation, for either of the following purposes:

- the investigation or prevention of crime;
- the provision of expert evidence to inform decisions and findings relevant to the administration of criminal justice'.

*Clause 70* states that a person is disqualified from becoming or continuing as an appointed member if the person:

- has a conviction, other than a spent conviction, for an indictable offence; or
- is an insolvent under administration; or
- is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
- does not consent to the Minister requesting a report about the person's criminal history under section 77 of the Act; or
- is a member of the Legislative Assembly.



*Clause 71* provides for the Minister to appoint an appointed member, being a member appointed under clause 69(1)(c) to be the Deputy Chairperson. The Deputy Chairperson is to act as the Chairperson during a vacancy in the office of the Chairperson and during all periods when the Chairperson is absent from duty or for another reason cannot perform the duties of the office.

A vacancy arises in the office of the Deputy Chairperson if the person holding the office resigns office by signed notice to the Minister or ceases to be a member of the Board. However, a person may resign from the office of the Deputy Chairperson and continue to be a member of the Board.

*Clause 72* states that an appointed person is appointed for the term, of not more than 4 years, stated in the member's instrument of appointment. An appointed member may be reappointed.

*Clause 73* provides for a member to be paid the remuneration and allowances decided by the Minister. A member who is a prescribed person under the *Public Sector Act 2022*, section 267 is not entitled to be paid remuneration for holding office as a member. For matters not provided for by this Act, a member holds office on the terms and conditions decided by the Minister.

*Clause 74* states that the office of an appointed member becomes vacant if the member:

- completes a term of office and is not reappointed;
- is disqualified from continuing in office under section 70 of the Act;
- is absent from 3 consecutive meetings of the Board without the Board's permission and without reasonable excuse;
- resigns by notice under section 75 of this Act; or
- is removed from office under section 76 of this Act.

*Clause 75* states that an appointed member may resign the member's office by giving the Minister a signed letter of resignation. The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter, the later day.

*Clause 76* states that the Minister may, by signed notice given to an appointed member, remove the member from office if the Minister is satisfied the member:

- is guilty of misconduct of a type that could warrant dismissal from the public service if the member were an officer of the public service;
- is incapable of ensuring that the Board performs its functions under this Act because of a physical or mental incapacity or for some other reason; or
- has neglected, or incompetently performed, the duties of the member.

This clause does not limit the Minister's power under section 25 of the *Acts Interpretation Act 1954*.

### **Division 3 Criminal history reports**

*Clause 77* provides the processes to obtain a written report about a person's criminal history to determine their eligibility for appointment as a member of the Board.

The Minister may ask the Police Commissioner for a written report about a person's criminal history and a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history. However, the Minister may make the request only if the person has given the Minister written consent for the request.

The Police Commissioner must comply with the request in relation to information in the Police Commissioner's possession or to which the Police Commissioner has access.

Before using information obtained under this section, the Minister must disclose the information to the person and allow the person a reasonable opportunity to make representations to the Minister about the information.

*Clause 78* imposes obligations on a person who is a board member and is charged with or convicted of an indictable offence. The person must, immediately after the person is charged or convicted, give notice of the charge or conviction to the Minister under this section, unless the person has a reasonable excuse. The maximum penalty for failing to comply with the requirement is 100 penalty units.

The notice must include:

- the existence of the charge or conviction; and
- for a charge:
  - details adequate to identify the alleged offence; and
  - when the offence was alleged to have been committed; and
- for a conviction:
  - when the offence was committed;
  - details adequate to identify the offence; and
  - the sentence imposed on the person.

## **Division 4      Proceedings of the board**

*Clause 79* states that the Chairperson may call a board meeting at a time and place decided by the Chairperson. The Board must meet at least 4 times each year and must also meet when the Chairperson is asked to do so by at least 3 other members.

*Clause 80* states that a quorum for a meeting is at least half of the board members.

*Clause 81* states that the Chairperson is to preside at all meetings at which the Chairperson is present. If the Chairperson is not present at a meeting, the Deputy Chairperson is to preside. If neither the Chairperson nor the Deputy Chairperson is present at the meeting, the board member chosen by the members present is to preside.

*Clause 82* provides that, subject to the requirements in Chapter 4, Part 1, Division 4 of this Act, the Board may conduct business in a way that the Board considers appropriate.

The Board may hold meetings, or allow board members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. A board member who takes part in a meeting this way is taken to be present at the meeting.

A question at a meeting is to be decided by a majority of the votes of the board members present at the meeting. If the votes are equal, the board member presiding has a casting vote. A resolution is a valid resolution of the Board, even though it is not passed at a meeting of the Board if at least half of the board members give written agreement to the resolution and notice of the resolution is given under procedures approved by the Board.

The Board may invite persons other than board members to attend a meeting to advise or inform the Board about any matter.

*Clause 83* states that the Board must keep minutes of its meetings and a record of its decisions and resolutions. If the Board makes a decision or resolution that relates to a Board's function under this Act, the minutes must include details of how each member voted. For example, the minutes must include details of how each member voted when making a decision about reviewing a systemic issue or making a resolution about the terms of reference for a review.

*Clause 84* provides that if a board member has a direct or indirect interest in a matter being considered, or about to be considered, at a meeting and the interest could conflict with the proper performance of the board member's duties in relation to the consideration of the matter, the board member must disclose the nature of the interest at a meeting, as soon as practicable after the relevant facts come to the board member's knowledge.

Particulars of the disclosure must be recorded by the Board in a register of interests kept for the purpose. Unless the Board otherwise directs, the board member must not be present when the Board considers the matter, or take part in a decision of the Board about the matter. The board member must not be present when the Board is considering whether to give a direction to the board member under section 84(4).

A contravention of the requirement by a board member to disclose a conflict of interest does not invalidate a decision of the Board. However, if the Board becomes aware the board member contravened the requirements to disclose a conflict of interest, the Board must reconsider a decision made by the Board in which the member took part in contravention of these requirements.

*Clause 85* states that a board member may attend a meeting of the Board by proxy. The proxy holder:

- may participate in the meeting, but not vote, on the board member's behalf;
- is not entitled to preside at the meeting only because the person is the proxy holder for the Chairperson or deputy Chairperson; and
- is not counted for the purpose of deciding whether a quorum is present under section 80 of this Act.

## **Part 2      Access to information**

*Clause 86* states that if the Chairperson of the Board considers that a prescribed entity has information necessary for identifying and reviewing matters relating to the reporting, investigation and prosecution of sexual offences, the Chairperson may, by notice, ask the entity

to give to the Chairperson information, including confidential information, held by the entity or to which the entity has access.

The notice must state the information required by the Chairperson, the reasons why the information is required, the purposes for which the information will be used and a reasonable period for the entity to comply with the notice.

The entity must comply with the notice unless the entity has a reasonable excuse. The maximum penalty for failing to comply with the requirement to give information is 100 penalty units. Clause 99 of the Bill provides that a person is not liable, civilly or criminally or under an administrative process, for giving the information to the Chairperson, where the person seeking to comply with the request is acting honestly on reasonable grounds and without negligence.

It is a reasonable excuse for a prescribed entity to fail to comply with the notice where complying with the notice:

- would require the entity to disclose information that is the subject of legal professional privilege;
- would prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law;
- would prejudice a prosecution or another matter before a court or tribunal;
- would endanger a person's life or physical safety; or
- may lead to the identification of an informant or a person who is a notifier under section 186 of the *Child Protection Act 1999*.

If the prescribed entity is an individual, it is not a reasonable excuse for the individual to fail to comply with the notice on the basis that complying with the notice might tend to incriminate the individual or expose the individual to a penalty. However, where a person provides the information, they will be provided with evidentiary immunity under clause 100 of the Bill. Clause 100 of the Bill states that where the evidence of the information, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty, in a proceeding.

If a prescribed entity does not comply with the notice, the entity must, as soon as practicable, give the Chairperson a notice stating the reasons for not complying with the notice.

A *prescribed entity* means any of the following:

- the chief executive of a public sector entity under the *Public Sector Act 2022*;
- the Police Commissioner;
- the Director of Public Prosecutions; or
- an entity funded by the Commonwealth or the State that provides services to victims as its primary function.

*Clause 87* provides that where the Chairperson of the Board asks the Director of Public Prosecutions or the Police Commissioner for information about a person who has been charged with or convicted of an offence, the Director of Public Prosecutions or the Police Commissioner

is authorised to give the Victims' Commissioner a copy or summary of evidentiary material about the offence despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

This section applies despite section 24A of the *Director of Public Prosecutions Act 1984* and section 10.1 of the *Police Service Administration Act 1990*.

As outlined in Schedule 2 of the Act, *evidentiary material* for the purposes of the Act means material compiled in the course of the investigation or prosecution of the offence, including, for example, the following:

- a summary of the circumstances of the alleged offence prepared by a police officer, such as a bench charge sheet or a QP9;
- a witness statement;
- an indictment;
- a recording within the meaning of section 21AY of the *Evidence Act 1977*;
- a section 93A criminal statement or a section 93A transcript within the meaning of the Schedule 3 of the *Evidence Act 1977*;
- a recorded statement, or a transcript of a recorded statement, within the meaning of section 103A of the *Evidence Act 1977*;
- a report by an expert about a person alleged to have committed the offence;
- a statement of other information provided by a victim, such as a victim impact statement; and
- any reasons for decision in relation to an action taking during an investigation or prosecution of an offence or whether a person is charged with an offence.

*Clause 88* provides that the Chairperson may use or disclose information, including confidential information, obtained under Chapter 4, Part 2 only for identifying and reviewing a systemic issue under section 62(1) of this Act. This section does not limit the confidentiality requirement prescribed in section 95 of this Act.

*Clause 89* outlines how the requirements to disclose information to the Chairperson interact with the requirements contained in other laws.

Clause 89(1) provides that Chapter 4, Part 2 of this Act does not limit a power or obligation under another Act or law to give information.

Clause 89(2) provides that sections 86 and 87 apply to information despite any other law that would otherwise prohibit or restrict the giving of the information. An example is the confidentiality requirements in section 142 of the *Hospital and Health Boards Act 2011*, section 778 of the *Mental Health Act 2016* and the section 288 of the *Youth Justice Act 1992*.

Clause 89(3) provides that if a person may claim privilege in relation to the information under another Act or law, the privilege is not affected only because the information may be, or is, disclosed under Chapter 4, Part 2.

*Clause 90* provides for the Chairperson to enter into an arrangement with a government entity for the purposes of sharing or exchanging information held by the Victims' Commissioner or

government entity or to which the Victims' Commissioner or the government entity has access. The arrangement may relate only to information that assists the Board's function and must not provide for sharing or exchanging information that is protected information. *Protected information* is defined in Schedule 2 of the Bill as information that is:

- a person's criminal history; or
- information which must not be disclosed under Chapter 6, Part 6, Division 2, Subdivision 1 of the *Child Protection Act 1999*;
- confidential information within the meaning of section 24A of the *Director of Public Prosecutions Act 1984*;
- sensitive evidence within the meaning of section 590AF of the Criminal Code;
- a recording within the meaning of section 21AY of the *Evidence Act 1977*;
- a section 93A criminal statement or a section 93A transcript within the meaning of Schedule 3 of the *Evidence Act 1977*;
- a recorded statement, or a transcript of a recorded statement, within the meaning of section 103A of the *Evidence Act 1977*; or
- subject to an order of a court or tribunal that prohibits sharing or exchanging the information.

### **Part 3      Reporting**

*Clause 91* requires the Board, as soon as practicable after the end of each financial year but not later than 31 October, to give the Minister a report on the performance of the Board's operations during the preceding financial year.

The report must include, for the reporting period, details of the activities of the Board, any recommendations made by the Board, details of conflicts of interest disclosed by members and actions taken by the Board to address any conflicts of interest. The report may also include an evaluation of any action taken in response to a recommendation by the Minister, a government entity or non-government entity during the reporting period, whether the recommendation was made before or during the reporting period. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

*Clause 92* provides for the Board to prepare a report about the outcome of a review or another matter arising from the performance of the Board's functions under this Act. The Board may include a recommendation made to an entity that is relevant to the review or matter in the report.

As soon as practicable after preparing the report, the Board must give the report to the Minister and make a recommendation about whether the report should be tabled in the Legislative Assembly. The Board may recommend the Minister table the report only if section 93 has been complied with in relation to the report. If the Board recommends that the report should not be tabled, the report must be accompanied by a statement of reasons for that recommendation.

Despite a recommendation not to table the report, the Minister may table the report in the Legislative Assembly if the Minister is satisfied the public interest in tabling the report outweighs any other considerations and section 93 has been complied with in relation to the report.

If the Board recommends that the report should be tabled and the Minister is satisfied that tabling the report is in the public interest, the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report. In deciding whether tabling the report is in the public interest, the following matters must not be taken into account:

- causing embarrassment to, or loss of confidence in, the Minister or the department;
- the possibility that the information may be misunderstood or misinterpreted by a person.

*Clause 93* requires that a report under Chapter 4, Part 3 of this Act must not include information that:

- would prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; or
- would prejudice a prosecution or another matter before a court or tribunal; or
- is confidential information.

The Board must not include in a report under Chapter 4, Part 3 of this Act any information adverse to an entity identifiable from the report, unless the entity has been given a reasonable opportunity to make a submission about the information. If the entity gives the Board a written submission in response to adverse information, the Board must ensure the entity's submission is fairly stated in the report.

## **Part 4 Other matters**

*Clause 94* requires the Board to decide the extent of, and terms of reference for, each review conducted by the Board under section 62. The Board may publish the terms of reference for the review if the Board considers publication would not have an adverse effect on the review or any other review, investigation or proceeding under this Act or another Act.

## **Chapter 5 General**

### **Part 1 Confidentiality and protection**

*Clause 95* requires any person who is, or has been, the Minister or a member of the Minister's staff, the Victims' Commissioner, a member of the Board, a staff member of the Office of the Victims' Commissioner, a person engaged, consulted or employed by the Victims' Commissioner, a person engaged by the Board or a person mentioned in section 82(7) of the Act, to preserve the confidentiality of information that the person has acquired or has access to in their relevant capacity.

The person must not disclose the confidential information to anyone else, or use the information, other than under this section. The maximum penalty for failing to comply is 200 penalty units.

A person may disclosure or use the confidential information:

- to the extent the disclosure or use is necessary to perform the person's functions under or relating to this Act; or

- if the disclosure or use is required or permitted under this Act or another law;
- with the written consent of the person to whom the information relates;
- in compliance with a lawful process requiring the production of documents to, or giving of evidence before, a court or tribunal;
- if the disclosure or use:
  - does not identify the person to whom the information relates;
  - does not allow the identity of the person to be reasonably ascertained; or
- if the information is, or has been, lawfully accessible to the public.

*Clause 96* states that a person who is given confidential information by a person, under sections 31(1), 88(1) or 95(3) of this Act must not disclose the confidential information to anyone else, or use the information, other than under this section. The maximum penalty for an offence against this section of the Act is 200 penalty units.

The receiver may disclose or use the confidential information to the extent the disclosure or use is otherwise required or permitted under this Act or another law. *Disclose*, as defined for Chapter 5, Part 1, includes giving access to the information.

*Clause 97* places requirements on the Minister or a public service employee performing functions under or in relation to the administration of Chapter 2, Part 1, Division 3 or Chapter 4, Part 1, Division 3 to protect the confidentiality of the criminal history information that they have acquired or have access to.

The person must not disclose the criminal history information to anyone else, or use the information, other than for the purposes of this section. The maximum penalty of failing to comply is 200 penalty units.

However, the person may disclose or use the criminal history information:

- to the extent the disclosure or use is:
  - necessary to perform the persons' functions or relating to this Act; or
  - otherwise required or permitted under this Act or another law;
- with the written consent of the person to whom the information relates;
- in compliance with a lawful process requiring the production of documents to, or giving of evidence before, a court or tribunal; or
- if the information is, or has been, lawfully accessible to the public.

A person who possesses a document containing criminal history information must ensure the document is destroyed as soon as practicable after it is no longer needed for the purposes for which it was given. This section applies despite the *Public Records Act 2002*.

*Criminal history information* under this section means information contained in a report and description of circumstances given under sections 23 or 77 or a notice given under sections 24 or 78 of this Act.



*Clause 98* states that an official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. If this section prevents civil liability attaching to an official, the liability attaches instead to the State. An *official* for this section means the Minister, the Victims' Commissioner or a member of the Board.

For protection from civil liability in relation to prescribed persons under section 267 of the *Public Sector Act 2022*, refer to section 269 of the *Public Sector Act 2022*.

*Clause 99* provides protection from liability where a person, acting honestly and without negligence, gives information in compliance with the requirements of sections 29, 51 or 86 of the Act.

Where a person, acting honestly on reasonable grounds and without negligence, the person is not liable, civilly, criminally or under an administrative process, for giving the information. Also, merely because the person gives the information, the person cannot be held to have breached any code of professional etiquette or ethics or departed from acceptable standards of professional conduct.

An example of where liability for giving information may apply include in a proceeding for defamation; the person has a defence of absolute privilege for publishing the information. A further example is if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice; the person does not contravene the Act, oath or rule of law or practice by giving the information and is not liable to disciplinary action for giving the information.

*Clause 100* provides an evidentiary immunity for individuals complying with information requests under sections 29, 51 or 86 of this Act. The clause states that evidence of the information provided, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty in a proceeding. However, this protection does not apply to a proceeding about the false or misleading nature of the information or anything in which the false or misleading nature of the information is relevant evidence.

## **Part 2      Other provisions**

*Clause 101* states that the Victims' Commissioner and the Board may delegate their functions and powers under this Act or another Act to an appropriately qualified public service officer.

*Clause 102* provides the Victims' Commissioner may approve forms for use under this Act, other than in relation to Chapter 4 of the Act.

*Clause 103* provides the Governor in Council with a power to make regulations under this Act.

## **Chapter 6      Amendment of legislation**

### **Part 1            Amendment of this Act**

*Clause 104* states that Chapter 6, Part 1 amends this Act.

*Clause 105* provides for the amendment of the long title of the Act.

## **Part 2 Amendment of Evidence Act 1977**

*Clause 106* states that Chapter 6, Part 2 of the Act amends the *Evidence Act 1977*.

*Clause 107* amends section 21AZB (Unauthorised possession of, or dealing with, recording) of the *Evidence Act 1977* to authorise a person to possess, supply, offer to supply, play, copy, erase, or permit a person to play, copy or erase a recording, where the person is required or permitted to have possession or do a thing for the purpose of assisting the Victims' Commissioner or Board to identify and review a systemic issue.

*Clause 108* amends section 93AA (Unauthorised possession of, or dealing in, s 93A criminal statement or section 93A transcripts) of the *Evidence Act 1977* to authorise a person to possess, supply, offer to supply, copy or permit another person to copy a section 93A criminal statement or section 93A transcript, where the person is required or permitted to do the thing for the purpose of assisting the Victims' Commissioner or the Board to identify and review a systemic issue.

*Clause 109* amends section 103Q (Unauthorised possession of, or dealing in, recorded statements or transcripts of recorded statements) of the *Evidence Act 1977* to authorise a person to possess, supply, offer to supply, play, copy, erase, or permit a person to play, copy or erase a recorded statement, where the person is required or permitted to have possession or do a thing for the purpose of assisting the Victims' Commissioner or Board to identify and review a systemic issue.

## **Part 3 Amendment of Integrity Act 2009**

*Clause 110* provides that Chapter 6, Part 3 amends the *Integrity Act 2009*.

*Clause 111* provides for the Victims' Commissioner to be a statutory office holder for the purposes of section 40E of the *Integrity Act 2009*.

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

*Clause 112* states that Chapter 6, Part 4 amends the *Penalties and Sentences Act 1992*. These amendments to the *Penalties and Sentences Act 1992* arise due to the transfer of the Charter from the *Victims of Crime Assistance Act 2009* to the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

*Clause 113* makes a consequential amendment to section 172A (Distribution of reports) of the *Penalties and Sentences Act 1992* to provide that the Court must, at a reasonable time before a review under sections 171 or 172 of that Act is to take place, cause a copy of a report ordered by it under section 176 of that Act to be provided to any *affected victim* within the meaning of section 38 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

*Clause 114* makes a consequential amendment to section 172C (Review hearing) of the *Penalties and Sentences Act 1992* to provide that during a review under sections 171 or 172 of the *Penalties and Sentences Act 1992*, the court must have regard to the rights stated in the Charter under the *Victims Commissioner and Sexual Violence Review Board Act 2024*.

*Clause 115* makes a consequential amendment to section 179I (Definitions for part) of the *Penalties and Sentences Act 1992* to prescribe the definition of victim for the purpose of victim impact statements under that Act.

*Clause 116* makes a consequential amendment to section 179J (Application of part) of the *Penalties and Sentences Act 1992* to replace the current reference to crime under the *Victims of Crime Assistance Act 2009* with *relevant offence* under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

*Clause 117* makes a consequential amendment to section 179K (Giving details of impact of crime on victim during sentence) of the *Penalties and Sentences Act 1992* to replace a reference to the Charter under the *Victims of Crime Assistance Act 2009* to the Charter under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

## **Part 5 Amendment of Public Sector Act 2022**

*Clause 118* states that Chapter 6, Part 5 amends the *Public Sector Act 2022*.

*Clause 119* amends Schedule 1 (Public service entities under section 9(b)) of the *Public Sector Act 2022* to prescribe the Office of the Victims' Commissioner as a *public service entity*.

## **Part 6 Amendment of Victims of Crime Assistance Act 2009**

*Clause 120* states that Chapter 6, Part 6 amends the *Victims of Crime Assistance Act 2009*.

*Clause 121* amends the long title of the *Victims of Crime Assistance Act 2009* to remove the reference to the declaration of the Charter. The Charter will now be declared through this Act.

*Clause 122* inserts a new heading for Chapter 1, Part 1 of the *Victims of Crime Assistance Act 2009* following the amendments made to that Act to remove the provisions relating to the Charter.

*Clause 123* amends section 3 (Purposes of Act) of the *Victims of Crime Assistance Act 2009* to remove the references to the Charter from the purposes of that Act. Matters relating to the Charter will now be addressed in this Act.

*Clause 124* inserts a new heading for Chapter 1, Part 2 of the *Victims of Crime Assistance Act 2009* following the amendments made to that Act to remove the provisions relating to the Charter.

*Clauses 125 to 127* omits the heading and parts of the *Victims of Crime Assistance Act 2009* which refer to the Charter. Matters relating to the Charter are now captured in Chapter 3 and Schedule 1 of this Act.

*Clause 128* amends section 139 (Functions of victim services coordinator) of the *Victims of Crime Assistance Act 2009* to reflect the proposed changes to the role of the Victim Services Coordinator.

The existing roles of the Victim Services Coordinator to develop educational and other programs to promote awareness of the needs of victims and of the rights stated in the Charter, to help government and non-government entities comply with the Charter and to deal with complaints about alleged contraventions of the Charter will transfer to the Victims' Commissioner.

*Clause 129* provides for a new Chapter 11 in the *Victims of Crime Assistance Act 2009* to support the transfer of the Charter to the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

New section 224 into the *Victim of Crime Assistance Act 2009* to provide key definitions relating to the transitional provisions in new Chapter 11 of the Act.

New section 225 of the *Victims of Crime Assistance Act 2009* applies to a complaint that was made to a government entity or non-government entity under former section 19(2)(a), (b) or (c) and immediately before commencement, the complaint was not resolved. On commencement, the complaint is taken to be a complaint made under section 45(2)(a), 45(2)(b) or 45(2)(c) of this Act and may be dealt with and resolved under Chapter 3, Part 3 of this Act.

New section 226 of the *Victims of Crime Assistance Act 2009* states that if a complaint was made to the Victim Services Coordinator under former sections 19(2)(d) or 20(3)(a) and immediately before the commencement the complaint was not resolved, the complaint is taken to be a complaint made or referred to the Victims' Commissioner and may be dealt with under Chapter 3, Part 3 of this Act. The Victim Service Coordinator must refer the complaint, and any information relating to the complaint, to the Victims' Commissioner as soon as practicable.

*Clause 130* omits Schedule 1AA (Charter of victims' rights) of the *Victims of Crime Assistance Act 2009* as it contained the Charter. The Charter will now be prescribed in Schedule 1 of this Act.

*Clause 131* amends the dictionary of the *Victims of Crime Assistance Act 2009* as a result of the transfer of the Charter to this Act.

## **Schedule 1 Charter of victims' rights**

### **Part 1 Rights of victims of crime**

#### **Division 1 General rights**

Schedule 1, Part 1, Division 1 of the Act provides that the general rights of an *affected victim* include:

- an affected victim will be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs;
- the personal information of an affected victim, including victim's address and telephone number, will not be disclosed unless authorised by law;
- an affected 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**

Schedule 1, Part 1, Division 2 of the Bill provides that the rights of an *affected victim* in relation to the criminal justice system include:

- an affected victim will be informed about the progress of the investigation of a relevant offence, unless informing the victim may jeopardise the investigation. If the investigation may be jeopardised, the victim will be informed accordingly;
- an affected 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 relevant offence, including decisions about any of the following matters:
  - the charges brought against the accused;
  - not bringing charges, or substantially changing the charges, against the accused;
  - accepting a plea of guilty to a lesser or different charge;
- an affected victim will be informed of the following matters:
  - the name of a person charged with an offence in relation to the relevant offence;
  - the issue of a warrant for the arrest of a person accused of committing the relevant offence;
  - 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;
  - details of any diversionary programs available to an accused, including the sentence imposed and the outcome of an appeal.
- an affected 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;
- if an affected 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;

- during a court proceeding, the affected victim will be protected from unnecessary contact with, or violence or intimidation by, the accused, defence witnesses and family members and supporters of the accused;
- an affected 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 relevant offence; and
- the property of an affected victim held by the State for an investigation or as evidence will be returned to the victim as soon as possible.

## **Division 3      Complaints**

Schedule 1, Part 1, Division 3 of the Bill prescribes that an affected victim may make a complaint about a contravention of a right under the Charter and will be given information about the procedure for making a complaint, under Chapter 3 of the Act.

## **Part 2      Rights of eligible persons**

Schedule 1, Part 2 of the Bill prescribes the rights of eligible persons which includes that:

- an eligible person in relation to a prisoner under the *Corrective Services Act 2006* or a child detained under the *Youth Justice Act 1992* will be kept informed of the following matters:
  - the prisoner's period of imprisonment or child's period of detention;
  - the transfer of the prisoner or child to another facility;
  - the escape of a prisoner or child from custody or whether the prisoner or child is unlawfully at large;
- 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 prisoner or child.

## **Schedule 2      Dictionary**

Schedule 2 of the Bill defines the terms used in the Act.