

Victims of Crime Assistance and Other Legislation Amendment Bill 2023

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice, Minister for the Prevention of Domestic and Family Violence and Leader of the House, make this statement of compatibility with respect to the Victims of Crime Assistance and Other Legislation Amendment Bill 2023 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The *Victims of Crime Assistance Act 2009* (VOCAA) establishes the Financial Assistance Scheme (FAS), which is intended to assist victims recovering from acts of violence by providing financial assistance. The FAS is established in Chapter 3 of the VOCAA and outlines that primary victims, secondary victims, parent secondary victims, witness secondary victims and related victims may apply for financial assistance from the State. A primary victim is also able to apply for a one-off special assistance payment, which is intended to symbolically recognise injuries suffered by the victim.

Under the VOCAA, the State may recover assistance granted for an act of violence from a person who is convicted of a relevant offence for the act (section 107, VOCAA). The State may only recover for assistance that is actually paid to a victim and only after the person convicted of the offence has exhausted all appeal rights.

Recent separate inquiries undertaken by the Women's Safety and Justice Taskforce, the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence and the Parliamentary Legal Affairs and Safety Committee inquiry into support provided to victims of crime have made several recommendations to increase the levels of support provided to victims of crime, including financial supports provided to victims of acts of violence.

Further financial support for victims of acts of violence has been identified as a critical priority as the financial pressures placed on victims in recovering from acts of violence has dramatically increased as high inflation raises the costs of goods and services needed by victims of crime. As the increase in medical costs, funeral costs and other services utilised by victims of crime continues, it is critical that the thresholds of financial support are increased to allow an increased level of financial support to be provided to victims of acts of violence.

In addition to the increases in the costs of services and supports, the total maximum amount of assistance for primary and other types of victims eligible for assistance under the FAS, except funeral assistance, has not increased since the commencement of the VOCAA in 2009.

As a result, the purpose of the Bill is to increase assistance provided to victims of crime to better support the victim in recovering from an act of violence.

The Bill will achieve this objective by amending the VOCAA to:

- increase the upper limits for financial assistance payments and special assistance payments available to victims;
- increase the upper limits for payable funeral expenses and distress payments; and
- re-categorise domestic violence as a Category B act of violence for the purpose of special assistance payments.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019* (HR Act))

The human right relevant to the Bill is the right to property (section 24).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13, HR Act)

(a) the nature of the right

The right to property (section 24, HR Act) protects a person from having their property taken arbitrarily. Property includes real and personal property, such as land, chattels and money. The right has an internal limitation, in that a person may be deprived of their property if the deprivation is not arbitrary. Arbitrariness is defined in a human rights context as conduct that is capricious, unpredictable or unjust, or unreasonably interferes with the right in the sense of not being proportionate to the aim. Therefore, any limitation on this aspect of the right to property must be proportionate and not capricious, unpredictable, unjust or unreasonable.

The Bill amends the VOCAA to increase the maximum amounts of financial assistance and special assistance payable to victims of crime. The amendments will subsequently increase the maximum amount the State may recover from a person under the VOCAA. This may limit an offender's right to property where they are liable to pay a greater amount of money to the State as it seeks to recover financial assistance under the increased maximum amounts (if the act of violence was committed after commencement).

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to property imposed by the amendments is to continue to hold offenders financially accountable for acts of violence, where appropriate. Increasing assistance provided to victims to support the victim in recovering from an act of violence, may subsequently increase the amount that the State may recover from a person who has been convicted of the relevant act of violence and limit that person's right to property. The purpose of the amendments is consistent with a free and democratic society based on human dignity, equality and freedom in that it provides increased assistance to victims who have suffered due to an act of violence.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves its purpose, in that it allows the State to recover an amount from the offender in circumstances where relevant money is paid to victims of crime that have suffered due to an act of violence. The increased amount that may be recovered from the offender is linked to the increased amount payable by the State to the victim as a result of the act of violence by the offender (if the act was committed after commencement – for acts committed prior to commencement, the State will be able to recover up to the previous maximum amounts for financial assistance and special assistance). It follows that where the State is required to pay the victim because of the offender's act of violence, the State should be able to recover the amount paid from the offender.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments.

VOCAA includes safeguards on the ability of the State to recover. The State can only recover from a person who has been convicted of an act of violence that is related to a financial assistance and/or special assistance payment, and only after the person has exhausted all avenues for appeal of the conviction. The State may only recover the amount of financial assistance that has been paid to the victim. For special assistance, the State may only recover the amount that is relevant to the category of violence for which the offender has been convicted, regardless of the category of payment received by the victim.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As stated above, the purpose of the amendments is to provide increased assistance to support victims to recover from an act of violence. The limitation on property rights that will result from enactment of the amendment is justified as it is not considered to be an arbitrary deprivation of property, in that it is not capricious, unpredictable, unjust or unreasonable. Any

impact from the amendment on the limitation on an offender's right to property is considered to be proportional to the effect of the offender's act of violence on the victim.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Bill is compatible with human rights under the HR Act because it limits the right to property only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence
Leader of the House

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