Parliamentary Committees

Victims of Crime Assistance and Other Legislation Amendment Bill 2016

Report No. 49, 55th Parliament
Legal Affairs and Community Safety Committee

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Legal Affairs and Community Safety Committee

Chair	Mr Duncan Pegg MP, Member for Stretton (from 14 February 2017) Mr Mark Furner MP, Member for Ferny Grove (to 14 February 2017)
Deputy Chair	Mr Michael Crandon MP, Member for Coomera
Members	Ms Nikki Boyd, Member for Pine Rivers Mr Don Brown MP, Member for Capalaba Mr Jon Krause MP, Member for Beaudesert Mrs Jann Stuckey MP, Member for Currumbin
Committee Staff	Ms Emily Booth, Acting Research Director Ms Kelli Longworth, Principal Research Officer Mr Gregory Thomson, Principal Research Officer Ms Carolyn Heffernan, Committee Support Officer Ms Janette Van Den Berg, A/Committee Support Officer
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Marissa Kerr, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Lorraine Bowden, Senior Committee Support Officer
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6641
Fax	+61 7 3553 6699
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Acknowledgements

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Contents

Abbreviations

Act	*Victims of Crime Assistance Act 2009*
Agency	National Injury Insurance Agency
Attorney-General	Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP
Bill	Victims of Crime Assistance and Other Legislation Amendment Bill 2016
BRISSC	Brisbane Rape and Incest Survivors Support Centre
CASV	Centre Against Sexual Violence Inc.
Charter	Charter of Victims' Rights
committee	Legal Affairs and Community Safety Committee
Criminal Code	*Criminal Code Act 1899*
department	Department of Justice and Attorney-General
DFV	Domestic and family violence
DFVP Act	*Domestic and Family Violence Protection Act 2012*
DFV Report	*Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* Report
DVAC	Service Against Sexual Violence, Domestic Violence Action Centre
Evidence Act	*Evidence Act 1977*
FLPs	Fundamental legislative principles
GCCASV	Gold Coast Centre Against Sexual Violence Inc.
Justices Act	*Justices Act 1886*
MAI Act	*Motor Accident Insurance Act 1994*
NIIS	National Injury Insurance Scheme
PS Act	*Penalties and Sentences Act 1992*
Review	The statutory review of the *Victims of Crime Assistance Act 2009*, which commenced in October 2013
Review Report	Final Report on the review of the *Victims of Crime Assistance Act 2009*
SACP	Sexual assault counselling privilege
Special Taskforce	Special Taskforce on Domestic and Family Violence in Queensland
SPER	State Penalties Enforcement Register
VAQ	Victim Assist Queensland
VSC	Victim Services Coordinator
WLS	Women's Legal Service
Zig Zag	Zig Zag Young Women's Resource Centre Inc.

Chair's foreword

This Report details the examination by the Legal Affairs and Community Safety Committee of the Victims of Crime Assistance and Other Legislation Amendment Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament in accordance with section 4 of the *Legislative Standards Act 1991*.

The committee recommends that the Bill be passed.

On behalf of the committee, I thank those who lodged written submissions on this Bill and participated in the committee's briefing and hearing. I also thank the Department of Justice and Attorney-General, Parliamentary Library and Research Service, and Committee Office staff for the support they have provided the committee during this inquiry.

I would also like to thank the former Chair of the committee, Mr Mark Furner MP, Member for Ferny Grove, for his contribution to the committee's examination of the Bill.

I commend this report to the House.

Duncan Pegg MP

Chair

Recommendations

Recommendation 1 **5**

The committee recommends that the Victims of Crime Assistance and Other Legislation Amendment Bill 2016 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills
- Corrective Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

The Victims of Crime Assistance and Other Legislation Amendment Bill 2016 (the Bill) was introduced by the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP (Attorney-General), on 1 December 2016. The Bill was referred to the committee for detailed consideration, with the committee to report by 27 February 2017.

The committee invited submissions from the public and from identified stakeholders, to be received by 16 January 2017. Seven submissions were received (see Appendix A for a list of submitters).[2]

The Department of Justice and Attorney-General (the department) provided the committee with a written briefing on the Bill on 9 January 2017. The committee received an oral briefing from the department on 25 January 2017.

The committee held a public hearing on the Bill in Brisbane on 25 January 2017.

See Appendix B for a list of witnesses who participated in the committee's public briefing and hearing.

The committee received written advice from the department on issues raised in submissions on 3 February 2017. This advice also included the department's response to specific committee questions on certain aspects of the Bill.

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 View submissions at: http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/VOCAB2016

1.3 Policy objectives of the Bill

In her explanatory speech, the Attorney-General stated that the Bill '…*will advance the way in which victims of crime are treated in Queensland*'.[3]

The policy objectives of the Bill are to:

- implement the recommendations of the Final Report on the review of the *Victims of Crime Assistance Act 2009* (Review Report) and ensure the *Victims of Crime Assistance Act 2009* (Act) continues to provide an effective response to assist victims of crime
- introduce a sexual assault counselling privilege, and
- give victims of a sexual offence, who are to give evidence in a criminal proceeding against the accused, automatic status as a special witness.[4]

1.4 Background

1.4.1 Victims of Crime Assistance Act 2009

The Act commenced in December 2009, replacing the previous criminal compensation schemes that existed under the *Criminal Offence Victims Act 1995* and the *Criminal Code Act 1899* (Criminal Code).[5]

The Act has four key components:

- *the fundamental principles of justice, which underpin the treatment of victims by Government agencies (chapter 2);*
- *the financial assistance scheme (chapter 3);*
- *recovering money from offenders convicted of an act of violence (chapter 3, part 16); and*
- *the role of the Victim Services Coordinator, who is responsible for promoting the interests of victims and assisting agencies to implement the principles (chapter 4)*.[6]

1.4.2 Victims of Crime Assistance Scheme

The financial assistance scheme in the Act was introduced to provide a victim focused process:

> *It aims to provide victims with assistance to help them recover from the act of violence in a timely manner, rather than receiving a lump sum payment after a lengthy court process.*
>
> *The statutory financial assistance scheme complements other relevant services for victims of violent crime that are available. If a victim can obtain assistance through insurance or other services, they are to do so instead of seeking assistance through the financial assistance scheme.*[7]

The Act established Victim Assist Queensland (VAQ) to administer the financial assistance scheme and to improve access to services and support for victims of violent crime. Under the Act:

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3 Queensland Parliament, Record of Proceedings, 1 December 2016, p 4858.

4 Explanatory notes, p 1.

5 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 3.

6 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 3.

7 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 3.

> *…a scheme manager is appointed to administer the financial assistance scheme and a Victim Services Coordinator (VSC) is responsible for promoting and protecting the interests and needs of victims. Government assessors, who are VAQ staff, are also appointed under the VOCA Act to assess applications for financial assistance*.[8]

According to the department: 'Since 2009 to 12 December 2016, VAQ has provided approximately $74 million in financial assistance to victims of crime through the financial assistance scheme'.[9]

1.4.3 Statutory review of the Victims of Crime Assistance Act 2009

Section 144 of the Act requires a review of the provisions of the Act to be undertaken within five years of its commencement. The department conducted a review of the Act, which commenced in October 2013 (Review).[10] The terms of reference for the Review, which directly relate to each of the four components in the Act, is reproduced in Appendix C.

The Review Report stated that:

> *A reference group for the review consisting of relevant government and non-government organisations was established to provide expert advice to the review team… In addition, a consultation paper was released to the public for comment for a period of six weeks and workshops were held with stakeholders from across the State to discuss issues and options for reform*.[11]

Overall, the Review found that:

> *…the financial assistance scheme works well and plays an important role in assisting victims of violent crime to recover from acts of violence. In comparison to the previous victim criminal compensation scheme, the VOCA Act has provided direct and timely financial assistance to a wider range of victims*.[12]

Despite this, it identified '…improvements to ensure the Act continues to provide an effective response to assist victims of crime'.[13]

The Review Report contained 15 recommendations for amendments to the Act and other legislation that would:

- *make the application process for financial assistance easier for victims;*
- *enhance the rights of victims and how they are treated;*
- *simplify the amounts of financial assistance paid to victims, including an increase to the maximum amounts for some categories of financial assistance;*
- *expand the scope of the financial assistance scheme to ensure all victims of domestic and family violence are able to access the scheme;*

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8 Explanatory notes, p 1.

9 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 1.

10 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 3.

11 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 3.

12 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, pp 3-4.

13 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 4.

- *improve the decision making process by allowing VAQ greater flexibility and access to information; as well as including certain requirements on applicants when other financial assistance may be available;*
- *clearly define the time limit for when actions for the recovery of financial assistance from an offender may be initiated; and*
- *expand the role of the Victim Services Coordinator to help victims resolve complaints*.[14]

The Review Report's 15 recommendations are reproduced in Appendix D.

The Review Report advised that:

> *The report's 15 recommendations will build on the current statutory framework and ensure victims are able to access financial assistance and support when needed and that responses to assist victims are appropriate.*
>
> *The recommendations will address the main issues raised during the review - that the financial assistance application is too complex and evidentiary requirements too burdensome for victims who have just suffered a traumatic event in their lives. The recommendations will also improve timeliness of decision making when assessing applications for financial assistance and ensure that victims of violent acts be treated with respect and dignity.*
>
> *The Queensland Government has accepted all 15 review recommendations*.[15]

1.4.4 Special Taskforce on Domestic and Family Violence

The Special Taskforce on Domestic and Family Violence (Special Taskforce) was established on 10 September 2014.[16] It was requested to examine Queensland's domestic and family violence (DFV) support systems and make recommendations on how the system could be improved and future incidents of domestic violence could be prevented.[17]

The Special Taskforce provided its report, '*Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*' (DFV Report) to the Premier on 28 February 2015.[18] The DFV Report made 140 recommendations.[19]

1.5 Consultation

According to the explanatory notes, the department conducted extensive consultation and engagement with the community and key government and non-government stakeholders, which informed the Review Report recommendations that are proposed to be implemented by the Bill.[20]

The explanatory notes state that the Special Taskforce undertook extensive consultations in preparing the Review Report:

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14 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 4

15 Department of Justice and Attorney-General, *Final Report on the review of the* Victims of Crime Assistance Act 2009, December 2015, p 4.

16 Queensland Government, End Domestic and Family Violence, https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/special-taskforce

17 Ibid.

18 Queensland Government, End Domestic and Family Violence, https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report

19 Ibid.

20 Explanatory notes, p 18.

> *The consultation process included meeting with a range of different groups of victims, service providers and community leaders. This consultation informed the Taskforce recommendations that are being implemented through this Bill*.[21]

On 8 March 2016, the Attorney-General released a consultation paper on the proposed sexual assault counselling privilege model.[22]

On 11 October 2016, a consultation draft of the Bill was released for targeted consultation.[23] See Appendix E for a list of:

- those consulted on the consultation draft of the Bill, and
- the key non-government victims of crime, sexual assault, DFV and legal stakeholders consulted on the draft of the Bill.

The explanatory notes state that:

> *The majority of stakeholders generally supported the amendments in the Bill. Stakeholders' comments were considered and, where appropriate, amendments were made to the Bill during the drafting process*.[24]

1.6 Outcome of committee considerations

Standing Order 132(1)(a) requires that the committee after examining the Bill determine whether to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Victims of Crime Assistance and Other Legislation Amendment Bill 2016 be passed.

[21] Explanatory notes, p 18.
[22] Explanatory notes, p 18.
[23] Explanatory notes, p 18.
[24] Explanatory notes, p 19.

2 Examination of the Bill

The committee's examination of the Bill is discussed in this section.

2.1 Victims of Crime Assistance Scheme

The department advised that the Bill:

> *…implements the recommendations of the review report and makes other amendments to the VOCA Act to address other technical and operational issues identified during the review of the Act, including to: enhance the rights of victims of domestic and family violence (DFV) and how they are treated; ensure vulnerable victims are not disadvantaged from receiving the help they need by allowing certain relief from the procedural requirements of the VOCA Act; streamline VAQ processes; and improve operational efficiency*.[25]

The explanatory notes state that:

> *The Bill also makes amendments to the VOCA Act as a result of the recent establishment of a National Injury Insurance Scheme (NIIS) for work-related accidents and motor vehicle accidents occurring in Queensland to clarify the relationship between the NIIS and victims' financial assistance scheme*.[26]

2.1.1 Making the application process easier for victims

The Bill proposes to amend the Act to remove the requirements that:

- an application for financial assistance be verified by statutory declaration, and
- the victim provide a medical certificate with their application for financial assistance.[27]

The amendments implement recommendations 2 and 3 of the Review Report respectively.

The explanatory notes advise that:

> *This reduces the burden on victims when making an application for assistance by providing a more flexible approach that allows government assessors, appointed under the VOCA Act, to later obtain the necessary evidence needed in relation to a victim's injury. These changes will be supported by administrative policies and checks to confirm the victim's identity and prevent fraud*.[28]

The department clarified aspects of the application process:

> *The application form for financial assistance will still require the applicant to declare the information provided in the application is true and correct. The application form will also include a warning to the applicant that providing false or misleading information is an offence and may adversely affect the outcome of their application. Once an application is received by VAQ, the assessor will work with the victim to obtain necessary information about the injury and treatment needs of the victim, including obtaining information from hospital records (with the victim's consent) or police reports*.[29]

[25] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 1.
[26] Explanatory notes, p 2.
[27] Clauses 42 and 44 of the Bill.
[28] Explanatory notes, p 5.
[29] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 3.

With respect to identity requirements, the department advised that the applicant will be required to confirm their identity prior to any payment being made: 'VAQ will liaise with appropriate government agencies and officers in the development of the policy and procedure'.[30]

2.1.2 Simplifying the amounts of financial assistance paid and increasing some maximum amounts

2.1.2.1 Types of victim and assistance

The Act distinguishes between four types of victim, which are set out below; the details for 'related victims' reflect the proposals in the Bill:

- A 'primary victim' of an act of violence is a person who died or is injured as a direct result of the crime and/or domestic violence (with a $75,000 assistance limit)
- A 'parent secondary victim' of an act of violence is a parent of a child injured as a direct result of the crime and/or domestic violence who is injured as a direct result of becoming aware of the crime and/or domestic violence (with a $50,000 assistance limit)
- A 'witness secondary victim' of an act of violence is a person who is injured as a direct result of witnessing the act of violence (for a serious act of violence there is a $50,000 assistance limit or for a less serious act of violence there is a $10,000 assistance limit), and
- A 'related victim' of an act of violence is a person who is a close family member, or a dependant of a primary victim who died as a direct result of the act of violence (with a $50,000 assistance limit).[31]

Under the Act, victims may receive assistance (within their assistance limit) for: counselling, medical expenses, incidental travel, damage to clothing (primary victims only), report expenses and other expenses, in exceptional circumstances (such as, relocation costs and security costs).[32]

See Appendix F for the department's table on assistance limits for each category of assistance for each victim type, which will apply under the changes made by the Bill. [33]

2.1.2.2 Increasing maximum amount of funeral assistance

The Bill proposes to amend the Act to increase the maximum amount of funeral assistance payable to an eligible victim from $6,000 to $8,000.[34]

The amendment, which implements recommendation 1 of the Review Report, is made '…to reflect the increased cost of funerals and to provide a higher level of assistance to victims who have prematurely lost a loved one as a result of an act of violence'.[35]

The applicant must show evidence (for example, receipts or a quote) to receive the assistance.[36]

In response to the committee's request for clarification on who will be able to access the increased funeral assistance, the department stated that:

> ...*The Bill does not change eligibility for funeral assistance.*

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30 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 3.

31 Department of Justice and Attorney-General, correspondence dated 27 January 2017, attachment, p 1; the details for 'related victims' reflect the proposed amendment to s 48 of the *Victims of Crime Assistance Act 2009* in the Bill (Clause 38 of the Bill).

32 Department of Justice and Attorney-General, correspondence dated 27 January 2017, attachment, p 1.

33 Department of Justice and Attorney-General, correspondence dated 27 January 2017, attachment, p 5.

34 Clause 40 of the Bill.

35 Explanatory notes, p 5.

36 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 3.

> *Section 56 of the VOCA Act provides that any person who incurs, or is reasonably likely to incur, funeral expenses for the funeral of a primary victim of an act of violence may apply to VAQ for funeral assistance.*
>
> *Section 29 of the VOCA Act provides that a person incurs expenses if:*
>
> - *the person pays the expenses;*
> - *someone else pays the expenses on the person's behalf; or*
> - *the person receives an invoice for the payment of expenses .*
>
> *For example, a parent, family member or close friend may apply for funeral assistance. The person must provide evidence they incurred the funeral expenses.*
>
> *Under new section 203, inserted by the Bill, a person who incurs funeral expenses will be eligible for increased funeral assistance for an application decided after the commencement of the relevant provision in the Bill*.[37]

At the public briefing, the committee queried whether there had been consideration given to increasing any of the other forms of available assistance. The department advised that: 'Apart from the funeral assistance, the assistance limits were considered adequate.'[38]

2.1.2.3 Removing pools of assistance for secondary and related victims

Additionally, the Bill proposes to amend the Act to remove pools of assistance for secondary and related victims so each application for financial assistance is considered on its own merits.[39]

The amendment, which implements recommendation 4 of the Review Report, removes combined maximum pools of assistance for parent secondary victims, witness secondary victims and related victims.[40]

As advised by the department, the Act currently provides that:

> *…the maximum amounts payable to all related victims, all parent secondary victims and all witness secondary victims combined for the one act of violence is a pool of $100,000 for related victims and $50,000 for secondary victims. Pools of assistance are intended to cap the overall amount that could be claimed by a group of people for the one act of violence. VAQ must attempt to identify other potential victims who may not have applied for assistance prior to finalising the assessments of applications*.[41]

The department provided the following table, identifying the combined maximum pools of assistance and individual assistance limits as they currently apply.[42]

Victim type	Victim Assistance Limit	Combined Pool Limit
Parent Secondary victim	$50,000	$50,000
Witness Secondary victim – more serious act of violence	$50,000	$20,000 for loss of earnings
Related victim	$50,000	$100,000

[37] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 22-23.
[38] Transcript, public briefing, Department of Justice and Attorney-General, 25 January 2017, p 6.
[39] Clauses 35-39 and 52 of the Bill.
[40] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 3.
[41] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, pp 3-4.
[42] Department of Justice and Attorney-General, correspondence dated 27 January 2017, attachment, p 3.

The Bill proposes to remove the existing provisions that set the combined pool limits.[43]

According to the department, the amendments removing pools of assistance will:

> *…ease the complexity of the application process and will ensure that each secondary and related victim's application is considered on its own merits rather than being considered as part of a pool. The amendments also ensure that victims who do not immediately make an application for assistance (for example, a child) can still obtain assistance at a later date, without fear that the pool will be exhausted by the time their application for financial assistance is made*.[44]

2.1.2.4 Simplifying special assistance to primary victims

Under the Act, primary victims may be eligible for a one-off lump sum payment of special assistance of up to $10,000, to recognise the impact of the harm caused to the victim.[45] This special assistance is included within their assistance limit of $75,000.[46] The amount of special assistance payable depends on the category of the act of violence. Schedule 2 of the Act currently outlines a minimum and maximum amount of special assistance within four categories which are based on the seriousness of the act of violence.

To simplify payments, the Bill proposes to amend Schedule 2 of the Act by replacing the prescribed minimum and maximum amounts of special assistance in each of the four categories with one amount as follows:

- $10,000 for a category A act of violence (most serious)
- $3,500 for a category B act of violence
- $2,000 for a category C act of violence, and
- $1,000 for a category D act of violence (least serious).[47]

The department explained that:

> *Each category lists types of offences which fall within that category. The categories do not provide a definitive list of all criminal offences. VAQ compare the victim's injuries to the relevant category based on the type of violence the victim endured. The victim is eligible for special assistance regardless of whether the offender was charged or convicted of the offence.*
>
> *Also, when assessing a special assistance payment, VAQ may be able to categorise the offence into a higher category if any of the special circumstances exist that are set out in Schedule 2, section 1(3) and therefore grant the victim more assistance. For example, a victim with injuries from an offence described within a category D act of violence may fall within a category C payment if the victim has been a victim of a series of related crimes or series of related acts of domestic violence*.[48]

2.1.2.5 Including victims of child cruelty as eligible for special assistance

The amendment, which implements recommendation 5 of the Review Report, also inserts the offence of cruelty to children under 16 (section 364 of the Criminal Code) into Schedule 2, as a Category C act of violence:

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[43] Department of Justice and Attorney-General, correspondence dated 27 January 2017, attachment, p 3.
[44] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 4.
[45] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 4.
[46] Department of Justice and Attorney-General, correspondence dated 27 January 2017, attachment, p 2.
[47] Clause 95 of the Bill; Explanatory notes, p 5.
[48] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 23.

> *The offence of cruelty to children usually involves the failure to provide something necessary, and does not necessarily involve, for example, the application of force. This amendment ensures that victims of this offence are eligible to receive a payment of special assistance*.[49]

2.1.2.6 Issues raised in submissions

Centre Against Sexual Violence Inc. (CASV) submitted on the Bill's proposed simplification of special assistance to primary victims. It contended that, while a Category A act of violence would provide some special assistance relief to a rape victim/survivor, the financial impacts of sexual violence can be far reaching and often hidden:

> *If a survivor loses their capacity to engage in employment as a consequence of being raped, this can place enormous strain on the victim/survivor and their family far exceeding $10 000 if the family is dependent on that income. Consideration of special assistance geared towards individual circumstances and need may be more helpful in providing special assistance to sexual assault survivors rather than categories measured according to whether a sexual assault survivor was raped or not raped*.[50]

In response, the department advised that:

> *A primary victim of an act of violence may be eligible to receive assistance up to $75,000.*
>
> *Special assistance is a one-off lump sum payment to recognise the impact of the harm caused to the primary victim and is included within their assistance limit of $75,000.*
>
> *In addition to a special assistance payment, a primary victim may receive assistance for loss of earnings up to $20,000 likely to have earned as a direct result of the act of violence during a period of up to two years from the act of violence.*
>
> *Victims may also receive grants of assistance (within their assistance limit) for other expenses incurred by them as a result of the act of violence, including:*
>
> - *counselling;*
> - *medical expenses;*
> - *incidental travel;*
> - *damage to clothing;*
> - *report expenses; and*
> - *other expenses if exceptional circumstances exist (eg relocation costs, security costs to residence or business).*
>
> *Victims may also receive $500 for legal costs incurred by the victim in applying for financial assistance, which is in addition to the $75,000 assistance limit.*[51]

2.1.3 Expanding the scope of the financial assistance scheme

The Bill proposes to amend the Act to expand the definition of 'act of violence' to include domestic violence as defined by the *Domestic and Family Violence Protection Act 2012 (*DVFP Act).[52] The

[49] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 4.
[50] Submission 2, p 1.
[51] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 21-22.
[52] Clause 29 of Bill; Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 4.

proposed amendment implements recommendation 7 of the Review Report, along with recommendation 95 of the DFV Report.[53]

The amendment is intended '…to ensure all victims who have suffered injuries as a result of DFV are able to access financial assistance, including those who have suffered emotional or economic abuse'.[54] The explanatory notes specifically identify elder abuse as being captured by the proposed change.[55]

The department provided further detail, stating that the amended definition of 'act of violence' will:

> *…add an extra limb to the current definition to cover the possibility of domestic violence or a series of related acts of domestic violence committed in Queensland , which result in the death of, or injury to, the victim and that do not fall within the current definition of 'act of violence*'…[56]

The department identified consequential amendments to the Act, as a result of expanding the scheme to victims of DFV:

> *Clause 30 of the Bill amends the definition of 'injury' in section 27 of the VOCA Act to provide that the impact of the injury to a DFV victim is similar to the adverse impacts of a sexual assault on a person. The threshold for victims of DFV to prove their injuries will set at a more appropriate level, thereby easing the process for DFV victims to seek financial assistance for their injuries.*
>
> *Clause 54 of the Bill amends section 81 of the VOCA Act to expand the definition of 'special primary victim ' to include a victim of domestic violence. Clause 54 also allows a special primary victim to report the act of violence to a 'domestic violence service' (instead of a police officer) to be eligible for financial assistance. These amendments are designed to remove barriers which may prevent victims of DFV from gaining access to financial assistance to help them recover from the violence.*
>
> *Clause 95 of the Bill inserts DFV into schedule 2 of the VOCA Act, as a category D act of violence for the purposes of payments of special assistance. If the act of violence which caused the victim's injury is categorised as a more serious act of violence, the victim will be eligible for the higher category of special assistance (for example, if the act of DFV is an unlawful wounding the special assistance is paid under category C). This amendment will ensure that victims of DFV are eligible to receive a payment of special assistance if the act of violence is not able to be categorised in any of the other categories*.[57]

2.1.3.1 Issues raised in submissions

In addition to amending the definition of an 'act of violence', the Bill proposes to insert new definitions of 'crime', 'series of related crimes' and 'series of related acts of domestic violence'.[58]

Women's Legal Service (WLS) conveyed concerns about the proposed new definitions of 'series of related crimes' and 'series of related acts of domestic violence', arguing that they will discriminate

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53 Explanatory notes, p 5.

54 Explanatory notes, p 5.

55 Explanatory notes, p 5.

56 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 4; the current definition of 'act of violence' is a *'crime*' constituting a *'prescribed offence',* that is an offence committed against the person.

57 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, pp 4-5.

58 Clause 29 of the Bill proposes to insert new definitions of 'crime' (proposed s 25A), 'series of related crimes' (proposed s 25B) and 'series of related acts of domestic violence' (proposed s 25B) into the *Victims of Crime Assistance Act 2009*.

against victims of domestic violence who often suffer many incidents of violence over an extended period of time by the same perpetrator:

> *The current drafting means that despite multiple incidents being inflicted on a domestic violence victim, these will be regarded as 'single act of violence' (Section 25B (5) (a)) therefore lowering the potential compensation the domestic violence victim might be entitled. This is simply unfair and unjust*.[59]

In reply to WLS's recommendation that section 25B be redrafted so as to not discriminate against victims of domestic violence as against victims of other crimes, the department advised that:

> *The financial assistance scheme in the VOCA Act was introduced to provide a victim-focused process with an emphasis on providing the victim with assistance to help them recover from an act of violence, rather than receiving a lump sum payment. Financial assistance is not an award of damages or compensation.*
>
> *The concept of a 'series of related acts of domestic violence' is consistent with the concept of a 'series of related crimes'. The 'series' concept removes the need for victims to identify each individual act of domestic violence and prove a distinct injury for each act. A series of related acts of domestic violence which are connected in some way can be taken into account by an assessor as a single act, which may result in multiple injuries, for the purpose of deciding an application for assistance. This approach for acts of domestic and family violence recognises the often ongoing and protracted nature of such acts and that injuries from these acts may also occur over a period of time.*[60]

2.1.4 Allowing victims of domestic and family violence to provide a victim impact statement at sentencing

The explanatory notes advise that sections 15 to 15B of the Act provide for:

> *…how a victim of a prescribed offence can give details of the harm that the offence has had on the victim (whether or not in the form of a victim impact statement) to the prosecutor conducting a sentencing proceeding for the offender. If a person (the victim, or someone else authorised on their behalf) makes a victim impact statement, that person is generally permitted to read the victim impact statement aloud, or the person may ask the prosecutor to read it aloud for them*.[61]

The Bill proposes to amend the Act to omit chapter 2, part 2 (which includes these sections) and create new part 10B of the *Penalties and Sentences Act 1992* (PS Act) to provide for the process for making victim impact statements:

> *The review report suggested that any details about a victim's rights which are needed to guide the relevant agency, as opposed to advising the victim, should be placed in the appropriate legislation (recommendation 12 of the review report). The PS Act contains information on sentencing and is therefore a more appropriate Act to contain provisions about victim impact statements*.[62]

According to the explanatory notes, new part 10B of the PS Act builds on the omitted sections of the Act, to:

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[59] Submission 1, p 7.

[60] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 18-19.

[61] Explanatory notes, p 5.

[62] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 5; Clause 22 of the Bill omits chapter 2, part 2 of the *Victims of Crime Assistance Act 2009*; Clause 12 of the Bill creates new part 10B of the *Penalties and Sentences Act 1992.*

- *also allow victims of offences involving DFV, including breaches of domestic violence orders, police protection notices and release conditions under the…* [Domestic and Family Violence Protection Act 2012]*, to give details of the harm that the victim has suffered (whether or not in the form of a victim impact statement) as a result of the offence to the prosecutor so that the prosecutor can inform the sentencing court of the details; and*
- *permit a person to give the prosecutor a victim impact statement electronically (for example, by email)*.[63]

2.1.4.1 Issues raised in submissions

WLS generally supported the proposed amendment, but expressed concerns about victim impact statements in domestic violence breach proceedings being used against the victim in later court proceedings, such as family law proceedings:

> *For example, a victim may as part of their statement advise the court that an impact of the perpetrator's behaviour is to cause a schism in their relationship with their children. Such a statement, without any context could have serious consequences for the woman in a parenting dispute in the family law courts, as it could be used by the perpetrator as evidence that the mother does not have a close relationship with the child.*
>
> *We would always recommend therefore, that a victim obtain independent legal advice from a family lawyer before delivering her statement in court*.[64]

The department responded, stating that:

> *Requiring the victim of an offence to obtain independent legal advice from a family lawyer before providing a victim impact statement to a sentencing court may create a barrier for victims who wish to have their voice heard. The amendments in clause 12 are designed to encourage victim participation in the criminal justice system and to ensure that the victim is heard at the time of sentencing the offender*.[65]

According to the explanatory notes, proposed section 179K of the PS Act provides for how a victim can give the prosecutor for the offence details of the harm caused to the victim and how and when the prosecutor may communicate those details to the sentencing court.[66] Proposed subsection 4 provides that, in deciding what details are appropriate, the prosecutor may have regard to the victim's wishes.

WLS recommended that the Bill be amended so that the prosecution '…must have regard to the victim's wishes except for when this would be prejudicial to the victim, their legal proceedings or other legal proceedings'.[67]

In reply, the department advised that:

> *Changing the wording of subsection 179K(4) from 'may' to 'must' would not change the meaning of the provision. The prosecutor is responsible for conducting sentencing proceedings before a court in accordance with the rules of evidence and rules of procedure for the court. The prosecutor is to decide what information is appropriate to be given to the sentencing court.*
>
> *The Office of the Director of Public Prosecutions Director's Guidelines state that in deciding what details are not appropriate, the prosecutor may have regard to the victim's wishes. The following provisions also guide prosecutorial discretion:*

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63 Explanatory notes, pp 5-6.

64 Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 5-6.

65 Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 13-14.

66 Explanatory notes, p 23.

67 Submission 1, p 6.

- Penalties and Sentences Act 1992 *section 9(2)(c)(i) which states that a court, in sentencing an offender, must have regard to any physical, mental or emotional harm done to a victim, including harm to a victim mentioned in a victim impact statement.*
- Youth Justice Act 1992*…, section 150(1)(h), which states, that in sentencing a child a court must have regard to any impact of the offence on the victim, including harm to a victim mentioned in a victim impact statement.*[68]

2.1.5 Enhancing the rights of victims and how they are treated

The Bill proposes to enhance the rights of victims and how they are treated, by:

- *renaming and redrafting the current fundamental principles of justice for victims in the VOCA Act to create a new Charter of Victims' Rights…;*
- *ensuring the charter applies to all victims of DFV;*
- *ensuring the rights under the charter are consistent with other existing legislation;*
- *placing a proactive duty on agencies to provide information to victims if appropriate and practicable to do so;*
- *extending the charter to apply to non-government agencies that are funded to provide a service to victims to recover from a crime; and*
- *expanding the role of the VSC* [Victim Services Coordinator] *in the VOCA Act to help victims resolve complaints…*[69]

2.1.5.1 Charter of Victims' Rights

The Bill proposes to omit those provisions of the Act which provide for the fundamental principles of justice for victims:

> *The principles advance the interests of victims and inform victims of the way they should expect to be treated by government agencies. The review report found the principles to be overly legalistic and difficult to understand and recommended the principles be re-drafted using plain English and made more accessible and user friendly for victims*.[70]

In implementing recommendation 12 of the Review Report, the Bill replaces the fundamental principles of justice for victims with the Charter of Victims' Rights (Charter).[71]

According to the department, the Charter '…incorporates the principles from chapter 2, part 2 of the VOCA Act and is written in simple, easy to understand language'.[72] It also includes two additional rights to provide for:

- *property to be returned to a victim as soon as possible (right created in section 691,* Police Powers and Responsibilities Act 2000*); and*

[68] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 14-15.

[69] Explanatory notes, p 3; The Bill amends the *Victims of Crime Assistance Act 2009 Act* to replace the 'fundamental principles of justice for victims' with the new charter.

[70] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, pp 5-6; Clause 22 of the Bill omits chapter 2, part 2 of the *Victims of Crime Assistance Act 2009*, which provides for the fundamental principles of justice for victims.

[71] Clause 93 of the Bill inserts the Charter of Victims' Rights.

[72] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6.

- *a victim recorded on the Victims Register (eligible person) to be given the opportunity to make submissions to the Parole Board concerning the granting of parole to a violent or sexual offender (right created in section 188,* Corrective Services Act 2006…).[73]

The Charter is divided into two parts:

- Part 1 of the Charter relates to general rights of victims, rights relating to the criminal justice system and making complaints, and applies to victims as defined in amended section 5 of the Act (clause 19 of the Bill), and
- Part 2 of the Charter relates to offenders who have been sentenced to prison or detention, and applies to 'eligible persons'.[74]

Part 1 of the Charter proposes to:

> …*amend the definitions of 'victim' and 'crime' respectively and… provide*[s] *that part 1 of the Charter applies to all victims of DFV, including breaches of domestic violence orders, police protection notes and release conditions under the…* [Domestic and Family Violence Protection Act 2012].[75]

With respect to Part 2 of the Charter, the Bill proposes to insert a definition for 'eligible person' into schedule 3 (dictionary) of the Act:

> *An 'eligible person' in relation to an offender means a person included on the eligible persons register (also called a Victims' Register) kept under section 320(1) of the CS Act* [Corrective Services Act 2006] *or new section 282A of the* Youth Justice Act 1992...[76]

The department advised that the *Corrective Services Act 2006* establishes a Victims Register to inform eligible persons about important events in the sentences of adult prisoners who have offended against them:

> *Currently, victims receive information about child offenders under section 16 of the VOCA Act. Clause 98 inserts new part 8, division 7 into the YJ Act* [Youth Justice Act 1992] *to establish a formal Victims Register for the youth justice system, based on the corrective services model*.[77]

2.1.5.2 Proactive responsibility to provide information to victims

According to the explanatory notes, the Charter includes:

> …*the responsibility for agencies such as the Queensland Police Service (QPS), the Office of the Director of Public Prosecutions (ODPP) and Queensland Corrective Services (QCS) to proactively provide information about the Victims Registers, investigations and prosecutions without the victim having to ask for the information, when it is appropriate and practicable to do so (implementing recommendation 13 of the review report*).[78]

The department observed that:

> *The review report recommended the Charter include an onus on relevant agencies to proactively provide information to victims without the victim having to first ask for the*

[73] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6.
[74] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6.
[75] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6; Clauses 19 and 20 of the Bill.
[76] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6; Clause 96 of the Bill.
[77] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6.
[78] Explanatory notes, p 6; Clause 20 of the Bill.

> *information, so that victims are kept informed and able to access information available to them*.[79]

2.1.5.3 Applying the Charter to government funded non-government agencies

The explanatory notes advise that the Bill:

> *…extends the charter to apply to non-government entities (and employees of these entities) that receive funding from a Commonwealth, State or Territory government to provide services to victims of crime (implementing recommendation 14 of the review report*).[80]

The department noted that the Review Report recommended government funded non-government agencies should be '…required to comply with the Charter to provide a more consistent and coordinated approach to the provision of victim services in general'.[81]

2.1.5.4 Enhancing the role of the Victim Services Coordinator

The Bill proposes to amend provisions of the Act to allow the Victim Services Coordinator (VSC) to be more involved in the complaints process. The VSC will be able to help victims resolve complaints if the victim is dissatisfied with the response from an agency (implementing recommendation 15 of the Review Report).[82]

Additionally, the Bill proposes to amend the Act to provide:

- that a victim can make a complaint to:
  - if the prescribed person is a non-government entity - the non-government entity
  - if the prescribed person is a government entity - the government entity, or
  - if the prescribed person is either a government entity or non-government entity – the VSC[83]
- that a complaint may be made for the victim by another person acting with the victim's consent[84]
- for the process of how a government or non-government entity is to deal with a complaint (i.e. a government or non-government entity may refer the complaint to the VSC to help resolve the complaint), and[85]
- how the VSC is to deal with a complaint (i.e. the VSC may liaise with the relevant entity concerned and facilitate the resolution of the complaint or refer the complaint to the relevant entity).[86]

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79 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6.

80 Explanatory notes, p 6; Clause 20 of the Bill provides for a new definition of 'prescribed person' to expand the Charter to apply to non-government agencies funded by the Commonwealth or State to provide a service to help victims.

81 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 6.

82 Explanatory notes, p 6.

83 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 7; Clause 26 of the Bill.

84 Ibid.

85 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 7; Clause 27 of the Bill.

86 Ibid.

2.1.6 Improving decision-making

The Bill proposes to improve decision-making in the Act to:

- *allow VAQ to defer making a decision about an application in certain circumstances;*
- *allow VAQ greater flexibility and access to information;*
- *require applicants to provide certain information at particular times; and*
- *clarify the relationship between the victims of crime financial assistance scheme and other financial schemes where a victim may also receive financial payments for the same act of violence*.[87]

2.1.6.1 Allowing VAQ to defer making a decision about an application in certain circumstances

The Bill proposes to insert new sections into the Act that allow a government assessor to defer deciding an application for assistance where:

- the cause of the primary victim's death is unknown
- the scheme manager suspects the applicant has provided false or misleading information, or
- the victim is a previous offender who is disputing liability to repay a debt to the State.[88]

Additionally, the Bill proposes to amend the Act to allow a government assessor to defer deciding an application where '…the conduct of the primary victim has been alleged to have contributed to the offending behaviour which caused the injury'.[89]

The department stated that:

> *These amendments give VAQ greater flexibility in decision making and ensure that a decision by a Government assessor is not made prematurely before the determination of the above events which may impact on the final decision of the assessor*.[90]

2.1.6.2 Allowing VAQ greater flexibility and access to information

The explanatory notes state that the Bill amends the Act to:

> *…permit VAQ (government assessors and the scheme manager) greater access to confidential information relevant to making a decision about granting financial assistance or recovering paid financial assistance from convicted offenders*.[91]

According to the department, VAQ will have greater access to the following information when deciding an application for assistance:

- *from the State Penalties Enforcement Registry (SPER) - information about compensation amounts for a stated act of violence (clause 49), information about an unpaid amount ordered by a court to be paid to a person and the address of the offender for an unpaid amount (clause 77);*

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87 Explanatory notes, p 3.

88 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 7; Clause 57 of the Bill; The first and third dot points implement recommendation 6 of the Review Report.

89 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 7; Clause 59 of the Bill.

90 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 8.

91 Explanatory notes, p 6.

- *from the Queensland courts - information about a stated act of violence, including details of the injury suffered by the primary victim from the act of violence (clause 49);*
- *from the Department of Transport and Main Roads - the address of a person convicted of a relevant offence for a stated act of violence (clause 77); and*
- *from the Queensland Police Service (QPS) - a copy of any statement about the act of violence made by the person who allegedly committed the act, including a record of interview (clause 47) and copies of statements made by any person about the act of violence (not just a witness) (clause 48)*.[92]

The Bill clarifies that information which can be provided by the Queensland Police Service includes a recording from a body-worn camera.[93]

The Bill allows VAQ to use its expanded information-gathering powers in the following three circumstances:

- *when deciding an application, made by a victim, for an amendment of the grant of assistance (clause 69);*
- *when deciding whether or not to amend a grant of assistance because a victim has received, or is likely to receive, an uncounted relevant payment (clause 72); and*
- *when deciding to start action to recover a grant of assistance from an offender (clause 75)*.[94]

The department advised that the Bill includes adequate safeguards to ensure VAQ only accesses confidential information when reasonably necessary:

> *A person who is, or has been, involved in the administration of the VOCA Act, including a person who is, or has been, an official, may face a maximum penalty of 100 penalty units or two years imprisonment for unauthorised disclosure of information or access to documents...*
>
> *Provisions which currently require the consent of the victim before VAQ can access confidential information will continue to require the victim 's consent before that information can be accessed by VAQ for other circumstances. If a victim does not give the necessary consent, the decision on the applicant's application for assistance can be deferred*.[95]

The above proposed amendments will implement, in part, recommendation 9 of the Review Report.

2.1.6.3 Requiring applicants to provide certain information at particular times

Under the Act, an applicant applying to VAQ for assistance is asked to provide details on the application form of any other relevant payments they have applied for, or are eligible to apply for, in relation to the injury resulting from the act of violence.[96]

The department noted that, apart from the initial application, there is currently no legislative requirement for the applicant to advise VAQ of any relevant payment that they have received or will receive: 'Instead, VAQ relies on the goodwill of the applicant advising of any other relevant payments that they have received or may receive in the future'.[97]

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92 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 9.

93 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 9; Clauses 47 and 48 of the Bill.

94 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, pp 9-10.

95 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 10.

96 Section 140 of the *Victims of Crime Assistance Act 2009* provides that it is an offence to provide false or misleading information on the application form.

97 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 10.

The explanatory notes observe that the Bill:

> *…places a continuing obligation on victims, for a period of six years after financial assistance is granted, to inform the scheme manager of any relevant payment that the victim has received, or may receive*.[98]

The department provided the committee with further detail about the Bill's proposals, which require:

> *…an applicant to inform VAQ in writing or orally, if the applicant receives a relevant payment before the application for assistance is decided. The applicant has 28 days from receiving the relevant payment to notify VAQ, unless the applicant has a reasonable excuse. The maximum penalty for contravention… is 100 penalty units*.[99]

Under the Bill, the government assessor is required to impose a mandatory condition on each grant of assistance and interim grant of assistance respectively, that the applicant must give VAQ oral or written notice of any relevant payments received within 28 days after receiving the payment:

> *For a grant of assistance, the condition only applies for six years after the assistance is granted and for an interim grant of assistance, the condition applies only until the general application for assistance is decided*.[100]

If an applicant contravenes such a condition, the maximum penalty is 100 penalty units.[101]

The Bill proposes a process for VAQ to deal with a payment that has not been taken into account when determining the amount of financial assistance to be paid to a person (an uncounted relevant payment):

> *If the scheme manager reasonably suspects a person who applied for assistance has received, or is likely to receive an uncounted relevant payment, the scheme manager must give the person a notice proposing to amend their grant of assistance (amendment notice). The person is afforded the opportunity to make written or oral submissions to VAQ. If the person is found to have received, or is likely to receive, an uncounted relevant payment, the scheme manager must amend the grant of assistance by reducing the amount, taking into account the relevant payment. The person must refund to the State any amount of assistance paid to the person in excess*.[102]

2.1.6.4 Clarifying the relationship between the financial assistance scheme and other financial schemes where a victim may also receive financial payments from the same act of violence

Consistent with section 21(4) of the Act, the Bill seeks to ensure that the victims of crime financial assistance scheme is to be accessed by a person '…as a last resort and after a person has finalised claims that may be made under other compensation schemes'.[103]

Motor accident claims

According to the department, the Bill clarifies the relationship between the Act and the *Motor Accident Insurance Act 1994* (MAI Act):

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98 Explanatory notes, p 7; The proposed change partially implements Recommendation 9 of the Review Report.

99 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 10; Clause 88 of the Bill inserts new section 141A into the *Victims of Crime Assistance Act 2009.*

100 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 10; Clauses 61 and 65 of the Bill.

101 Clause 88 of the Bill.

102 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 10; Clause 72 of the Bill.

103 Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 8.

> *The Compulsory Third Party (CTP) insurance scheme in Queensland generally covers the same categories of assistance as the financial assistance scheme under the VOCA Act. This may result in overpayments or double payments which requires the State to recover money from a victim*.[104]

In implementing recommendation 8 of the Review Report, the Bill provides that:

> *…a government assessor must defer deciding an application for financial assistance if a person is entitled to make a motor accident claim under the… MAI Act… and either has made a claim and it has not been finally dealt with, or has not yet made a claim. The Bill will allow a government assessor to decide the application to the extent that it relates to counselling expenses*...[105]

Workers' compensation claims

The explanatory notes state that:

> *The Bill amends the VOCA Act to clarify that a victim of an act of violence who is also entitled to make a workers' compensation claim (WCC) for injuries suffered as a result of the act of violence must have that claim finally dealt with before an application can be made for financial assistance under the VOCA Act.*
>
> *The Bill also removes sections 35 and 36 from the VOCA Act, which allow a government assessor to make a decision about the payment of certain expenses to a victim even though a WCC has not been finalised. The omission of these provisions will avoid the potential for a double payment to be made and the need to seek recovery of the payment from the victim by VAQ.*[106]

National Injury Insurance Scheme

The Bill seeks to clarify the relationship between the Act and the National Injury Insurance Scheme (NIIS), which was established for motor vehicle and work-related accidents.[107]

The NIIS was established for:

- work-related accidents occurring in Queensland on or after 1 July 2016 as a result of the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016,* and
- motor vehicle accidents occurring in Queensland on or after 1 July 2016 as a result of the *National Injury Insurance Scheme (Queensland) Act 2016.*[108]

According to the department, there is a small degree of overlap between the assistance a victim may receive under the Act and the care, treatment and support payments that can be made, and the services that may be received under the NIIS for motor vehicle accidents: 'This may result in an overpayment or double payment to a victim, requiring the State to recover money from the victim'.[109]

[104] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 8; Clause 33 of the Bill.
[105] Explanatory notes, p 7.
[106] Explanatory notes, p 7.
[107] Clause 33 of the Bill.
[108] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 8.
[109] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 8.

The Bill:

- requires the government assessor to defer deciding the victim's application for financial assistance until the victim's application to the National Injury Insurance Agency (Agency) to participate in the NIIS is decided by the Agency[110]
- allows the government assessor, during the deferral, to decide all components of financial assistance which may be payable to the victim, except for medical expenses[111]
- allows the government assessor to take into account any care, treatment and support payments made to, or services received by, the victim in determining the final amount of assistance which may be granted to the victim.[112]

The department explained that eligibility to participate in the NIIS because of a work-related accident is decided as a part of the workers' compensation process:

> *Therefore, the Bill… makes minor amendments to section 33 of the VOCA Act to ensure that care, treatment and support payments made, or services provided, under the NIIS for work related accidents are taken into account by the government assessor when deciding a victim's application for assistance*.[113]

2.1.7 Allowing Victim Assist Queensland to provide confidential information for genuine research purposes

In implementing recommendation 10 of the Review Report, the Bill proposes to amend the Act to allow the scheme manager to disclose confidential information to a person undertaking genuine research.[114] The intention of the amendment is to: '…encourage research into victims of crime and, in turn, build an evidence base for policies and practices to improve outcomes for victims of crime'.[115]

The explanatory notes state that:

> *Before the scheme manager can disclose the information, the researcher must give the scheme manager a written undertaking that the confidentiality of the information, and the anonymity of the person to whom the information relates, will be preserved. Contravening the written undertaking is an offence (maximum penalty: 200 penalty units). The Bill clarifies that, if by contravening the undertaking the researcher also contravenes section 189 of the* Child Protection Act 1999 *(CP Act), the researcher may be prosecuted under either the VOCA Act or the CP Act, at the election of the prosecutor*.[116]

[110] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 8, Clause 33 of the Bill.

[111] The department advised that this is because the NIIS does not cover the cost of counselling expenses and non-medical expenses, such as loss of earnings and damage to clothing; Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 9; Clause 33 of the Bill.

[112] The department advised that this approach is consistent with the intention of the *Victims of Crime Assistance Act 2009* to be a financial assistance scheme of last resort and also consistent with the approach taken in the Bill to worker's compensation claims and CTP insurance claims; Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 9; Clause 58 of the Bill.

[113] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 9; Clause 31 of the Bill.

[114] Clause 87 of the Bill.

[115] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 11.

[116] Explanatory notes, p 8.

2.1.8 Limiting initiation of actions for recovery of financial assistance from an offender

According to the explanatory notes, the Act provides that the State may recover all or part of an amount of assistance paid to a victim for an act of violence, from an offender who has been convicted of a relevant offence for the act of violence.[117] There is currently no time limit within which action may be started by the State to recover the amount.[118]

The department observed that:

> *This is in comparison to other types of legal action which have a limitation period in legislation after which the legal action can no longer be pursued, for example, limitation periods created by the* Limitations of Actions Act 1974*.*[119]

In implementing recommendation 11 of the Review Report, the Bill proposes to amend the Act to provide that the State may only recover a grant of assistance from an offender if action to recover the assistance is started within six years after the later of the following days:

- the day the offender was convicted of the relevant offence, or
- the day the application for the grant of the financial assistance was made.[120]

At the public briefing, the committee sought further details from the department on the existing offender debt recovery process administered by VAQ. The written response provided by the department is reproduced in Appendix G.

2.1.8.1 Issues raised in submissions

Relating to the proposed implementation of recommendation 11 of the Review Report, WLS suggested that the Bill exempt victims of domestic violence, and others, in circumstances where their safety may be compromised:

> *Pursuing payment from the perpetrator may place the victim and/or their children in danger. We understand the current practice of Victims Services is to take these matters into consideration on a case by case basis when the victim alerts the agency to their safety concerns.*
>
> *However, without it clearly being stated in the legislation this is not well known, which can lead to anomalies and inconsistency of approach. Also, it can be a disincentive for victims to pursue compensation in the first place if they believe he will ultimately be pursued by the State for reimbursement and she will suffer as a result. A legislative amendment that clearly states an exemption exists in certain circumstances would address this issue, standardise current practice and promote accountability and transparency*.[121]

The department responded that:

> *The decision to pursue an offender to repay financial assistance to the State is discretionary for VAQ. The process starts when VAQ issues a notice of intended recovery to the offender under section 115.*
>
> *However, victims are first advised in the letter which acknowledges the receipt of their application for assistance that VAQ may seek to recover assistance from any convicted*

[117] Explanatory notes, p 8.
[118] Explanatory notes, p 8.
[119] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 11.
[120] Explanatory notes, p 8; Clause 73 of the Bill proposes to insert s 110A into the *Victims of Crime Assistance Act 2009*.
[121] Submission 1, p 8.

offender. Also, VAQ includes a similar advice to a victim in its notice of decision when a grant of assistance is approved.

In both cases, victims are encouraged to make contact with VAQ if they have any concerns about their safety should VAQ commence a debt recovery process.

If victims inform VAQ of concerns about their security, VAQ is able to assist victims through grants of assistance to improve their security. For example, VAQ has assisted victims relocating to States where they have family to provide support to them or assisted them improve their home security or change their name. This flexible approach to recovering assistance allows VAQ to decide each offender debt recovery approach in response to victims' individual needs. VAQ has also reported that, in some instances, victims of domestic violence support the scheme manager pursuing amounts of assistance from the offender.

The offender debt recovery provisions rely on the offender being convicted of a 'relevant offence'. A 'relevant offence', for an act of violence, means 'an offence arising out of substantially the same facts and circumstances as those constituting the act of violence'. This requirement limits VAQ's ability to recover assistance from an offender and would not include the recovery of assistance paid to a victim of domestic and family violence unless the perpetrator has been convicted of a related offence.[122]

2.1.9 Extending the time in which a person may apply for funeral expenses

Currently, the Act provides that an application for funeral assistance must be made within three years after the death of the victim.[123]

The Bill proposes to amend the Act to provide that the scheme manager may extend the time period for making an application, if the scheme manager considers it would be appropriate and desirable to do so, having regard to:

- *the applicant's age when the death of the victim occurred;*
- *whether the applicant has impaired capacity;*
- *the physical or psychological effect of the act of violence on the applicant;*
- *whether the delay in making the application undermines the possibility of a fair decision; and*
- *any other matter the scheme manger considers relevant*.[124]

If the scheme manager decides not to extend the time for making an application for funeral assistance, the decision is reviewable under the Act.[125]

2.1.10 Clarifying that 'exceptional circumstances expenses' of victims must be reasonable

The Bill proposes to amend the Act to clarify that 'exceptional circumstances expenses' must be 'reasonable':

> *This gives legislative effect to the Queensland Civil and Administrative Tribunal… decision of* Victim Assist Queensland v BN [2012] QCATA 254*, which found that reasonableness is implied*

[122] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 19-20.
[123] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 11.
[124] Explanatory notes, pp 8-9; Clause 45 of the Bill.
[125] Explanatory notes, p 9.

into the meaning of expenses for exceptional circumstances because of the purposes of the VOCA Act.[126]

2.1.11 Other amendments to the Act

Additional to the amendments outlined above, the explanatory notes identify that the Bill proposes to amend further provisions of the Act which relate to the victims of crime assistance scheme. In that regard, the Bill seeks to achieve its policy objectives by:

- *including the offence of cruelty to children (section 364 of the Criminal Code) as a category C offence in the VOCA Act, which is used to assess special assistance payable to an applicant;*
- *confirming that for the purposes of section 86 of the VOCA Act, when a government assessor is determining the amount of assistance under the VOCA Act, the government assessor is not to take into account other payments received by an applicant that are for matters to which the applicant will not be eligible to receive assistance for under the VOCA Act;*
- *clarifying* [sic] *an interim payment under section 98 of the VOCA Act may be granted in 'urgent' circumstances;*
- *clarifying the circumstances in which a person convicted of a fraud offence arising from their application for financial assistance under the VOCA Act cannot benefit from a fraudulent application;*
- *clarifying the time period in which a parent secondary victim is able to claim financial assistance for loss of earnings under the VOCA Act is two years from becoming aware of the act of violence, rather than two years from the date of the act of violence itself, to ensure fairness in decision-making;*
- *clarifying that a person 'aggrieved' by a decision to grant a victim financial assistance under section 124 of the VOCA Act is the applicant for financial assistance (for the purposes of requesting an internal review);*
- *allowing the scheme manager under the VOCA Act discretion to extend the timeframe in which to accept an application for internal review of a decision;*
- *ensuring the protection from civil liability for persons administering the VOCA Act is consistent with the provisions in the* Public Service Act 2008*;*
- *clarifying the time period in section 101 of the VOCA Act in which a person may apply to amend a grant of assistance is to commence from the date that the assistance was first granted and not from the date that the grant of assistance was last amended;*
- *ensuring the terminology used in section 51 of the VOCA Act is consistent with the* Guardianship and Administration Act 2000*;*
- *clarifying that advice by the victim that they do not want to make a submission to the scheme manager under section 88 of the VOCA Act falls within the meaning of a submission for that section; and*
- *removing redundant provisions in the VOCA Act that provide for a statutory review of the Act and a temporary regulation-making power*.[127]

[126] Explanatory notes, p 9; Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 12; Clauses 34, 36, 37 and 39 of the Bill.

[127] Explanatory notes, p 4.

2.1.12 Other issues raised in submissions

2.1.12.1 Section 21 of the Victims of Crime Assistance Act 2009

The Bill proposes to amend section 21 of the Act.[128]

In noting that section 21 establishes the parameters of eligibility for compensation under the Victim Assist Scheme, WLS stated that:

> *It would be helpful, if some reference is made to the exemptions that are contained:*
>
> - *in Section 81 that victims of domestic violence and sexual violence do not necessarily have to report to the police and*
> - *Section 82 that in determining whether reasonable assistance has been given to the police - issues of domestic and sexual violence are taken into account*.[129]

In reply, the department explained that:

> *Existing section 21 of the VOCA Act is a provision which provides a broad overview of the financial assistance scheme, including when a person may not be entitled to a payment of financial assistance (for example when the person has not given reasonable assistance in the arrest or prosecution of the person who allegedly committed the act.*
>
> *When assessing a person's entitlement under the VOCA Act, a government assessor must apply all relevant provisions of the VOCA Act, not just the provisions referred to in this submission. An assessor will be fully aware of the relevant provisions including those referred to in this submission*.[130]

2.1.12.2 Cross applications

WLS expressed concerns regarding how VAQ will make decisions about eligibility for assistance in circumstances where both parties to domestic violence proceedings have protection orders against each other:

> *As a tactic of abuse, perpetrators often use… the legal system to try to continue their power and control over their victim. It is quite common for perpetrators of violence to initiate applications for protection orders against their victims or to cross apply for an order after their victim has initiated an application.*
>
> *Victims Assist, in all likelihood will find themselves in a position of making determinations about eligibility to compensation when both parties have protection orders against each other.*
>
> *There should be some legislative guidelines guiding determinations in these instances. For example, will Victim Assist pay compensation to both parties on a cross application? Or will it only make a payout on one person? Or will they pay different levels of compensation dependent on the application before them that is being assessed? Will they consider the applications jointly or separately?*
>
> *Will they be making determinations about who is the most need of protection? Eg. Who is most fearful, who has been most injured, and who has had their life most impacted by the violence?*[131]

[128] Clause 28 of the Bill.
[129] Submission 1, p 7.
[130] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 15-16.
[131] Submission 1, p 6.

WLS continued, advising that section 4 of the DFVP Act currently requires the court to identify who is in the most need of protection when there are cross applications:

> *This can occur (generally if a lawyer is present and makes submissions) but does not always take place as a matter of course.*
>
> *The effectiveness of this legislation is dependent on magistrates exercising their power under Section 4 and making these determinations and noting this on the order so that this is not left to Victim Assist. However, if Victim Assist are going to be required to make these determinations then legislative guidelines would be required. If Victim Assist fail to make these determinations… it may be an added incentive for perpetrators of violence to cross apply for protection orders, to not consent or to seek their own orders against their victim*.[132]

In that regard, WLS recommended that: '…legislative guidelines be developed to assist Victim's Assists [sic] decision making in circumstances where there are domestic violence protection order cross applications'.*[133]*

The department responded, advising that:

> *Additional legislative guidelines for VAQ are not required in the case of domestic violence protection order cross-applications. The court process to determine applications for a protection order is separate to, and distinct from, the process for deciding applications for financial assistance.*
>
> *'Victims' are eligible for assistance under the VOCA Act. Generally, a person is a victim if they satisfy two tests: first, the victim has to be the victim of an 'act of violence' within the meaning of the VOCA Act (which will now include domestic violence, and in particular non-physical violence). Second, the victim must demonstrate that they have suffered an injury as a direct result of an act of violence.*
>
> *The test for whether a person has suffered an injury is not dependent on any court process, order, or conviction, such as a court making a protection order. Those factors may be relevant to demonstrate that domestic violence has occurred. VAQ must independently establish that an injury has occurred for which financial assistance is payable.*
>
> *The VOCA Act provides a structured process for considering and deciding each application individually on its merits. VAQ has access to information from various sources, including from the courts, to help it make determinations about whether or not an act of violence occurred. VAQ will then make a determination about the financial assistance needs of each victim to recover from the act of violence.*
>
> *Section 79 of the VOCA Act also provides that a person who committed or conspired to commit the act of violence is not entitled to assistance under the Act.*
>
> *Further, section 80 of the VOCA Act provides that a person claiming assistance as a primary victim is not entitled to assistance if their involvement in a criminal activity is the only reason or main reason the act of violence was committed against the person*.[134]

WLS also recommended that:

> *…the Chief Magistrate be briefed on the implications of this legislation and the importance of magistrates making determinations under Section 4 of the Domestic and Family Violence*

[132] Submission 1, p 7.

[133] Submission 1, p 7.

[134] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 16-17.

> *Protection Act 2012 and identifying the person who is in most need of protection on the face of the order.*[135]

The department stated that:

> *The protection order application process under the DFVP Act is separate and unrelated to an application for assistance under the VOCA Act.*
>
> *This matter raised in the submission is outside the scope of the Bill*.[136]

2.1.12.3 Legislative review

WLS recommended that '…the changes introduced by this bill be reviewed in 3 years in particular, considering any unintended consequences especially to the domestic violence application processes'.[137]

The department replied that it:

> …*will monitor the effects of the legislative reforms, in particular the impacts of the amendments to extend the financial assistance scheme to all victims of domestic and family violence*.[138]

2.1.13 Issues raised at the hearing

In response to committee questioning about the anticipated costs of implementing the proposals in the Bill, particularly in relation to domestic violence matters, the department stated that:

> *In relation to the implications for the Victims of Crime Assistance Act and VAQ in particular, the exact amount of these amendments and the implications is difficult to quantify. However, VAQ approves applications for victims of domestic violence now. Approximately one-fifth of their applications involve domestic violence. If there is an act of violence which might be an assault or a push or a threat, the victim would be eligible under the scheme at the moment. These amendments will ensure that all victims of domestic violence are eligible, for example, victims of purely emotional abuse or financial abuse or where there has been solely property damage. Where there has been an associated act of violence and assault, the victim would already be eligible under the scheme… It is difficult to quantify because we do not know how many other victims of domestic violence out there are solely victims of emotional abuse or financial abuse or just property. It is very hard to quantify for those reasons*…[139]

2.1.14 Proposed transitional arrangements related to the application of the financial assistance scheme

The committee sought clarification from the department on:

- whether existing applicants, whose applications are yet to be determined, would be subject to the amended scheme as proposed by the Bill, and
- whether victims who make future claims for assistance, which relate to acts of violence committed prior to the Bill taking effect as law, would be subject to the amended scheme as proposed by the Bill.

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[135] Submission 1, p 7.
[136] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 18.
[137] Submission 1, p 9.
[138] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 20-21.
[139] Transcript, public briefing, Department of Justice and Attorney-General, 25 January 2017, p 8.

The department's response is reproduced in Appendix H.[140]

2.2 Sexual assault counselling privilege

The Bill proposes to introduce a sexual assault counselling privilege (SACP). This type of privilege is also generally referred to as a sexual assault communications privilege.

2.2.1 Sexual violence and counselling

Referencing several sources, the explanatory notes advise that: 'There is a high prevalence of sexual violence in Australia, with more than one in five women having experienced sexual violence'.[141]

The explanatory notes continue, stating that:

> *A person's private, psychological and physical boundaries are invaded during a sexual assault and the harm inflicted on an individual can have long term impacts. Sexual assault counselling services play an integral role in assisting people to recover*.[142]

2.2.2 Existing law

Under existing Queensland law there is no SACP:

> *…it is possible for documents recording communications between a victim of a sexual assault and a counsellor to be accessed during legal proceedings by the other party to assist with preparation for trial and for use during cross-examination of witnesses*.[143]

2.2.3 Privilege and sexual assault cases

Privilege is '…essentially a right to resist disclosing information that would otherwise be required to be disclosed.'[144] 'Absolute privilege' means that a person cannot be made to disclose information, or made liable for certain offences (for example, defamation), no matter the circumstances.[145] 'Qualified privilege' means that the information can be disclosed, but only if a court orders it.[146]

The *Queensland Law Handbook*, published by the Caxton Legal Centre, explains that:

> *Persons who are victims of sexual offences often seek counselling or other assistance as part of their recovery process. Counsellors generally keep notes or records of these counselling sessions. In a number of instances, defence lawyers seek to obtain access to a complainant's counselling records by way of subpoena with a view to using them as a further source of information upon which to base questions to the complainant at the trial (e.g. in an effort to damage the complainant's credibility by disclosing evidence of drug taking, mental health issues, inconsistent statements or the quality of the complainant's memory of the offence).* [147]

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[140] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 24-26.
[141] Explanatory notes, p 2.
[142] Explanatory notes, p 2.
[143] Explanatory notes, p 2.
[144] Australian Law Reform Commission, '14. Privileges: Extension to Pre-Trial Matters and Client Legal Privilege', *Uniform Evidence Law (ALRC Report 102)*, 8 February 2006.
[145] LexisNexis, *Halsbury's Laws of Australia*, '(A) Introduction – Defence of absolute privilege', [145-1225], 3 February 2015.
[146] Australian Law Reform Commission, '14. Privileges: Extension to Pre-Trial Matters and Client Legal Privilege', *Uniform Evidence Law (ALRC Report 102)*, 8 February 2006.
[147] Caxton Legal Centre, *Queensland Law Handbook*, July 2016.

2.2.4 Other Australian jurisdictions

The explanatory notes observe that:

> *Since the late 1990s, all other Australian jurisdictions have introduced some form of statutory evidential privilege to limit the disclosure and use of sexual assault counselling communications during legal proceedings. These statutory protections seek to recognise the public interest in encouraging people who have been sexually assaulted to seek therapy to assist in their recovery and may also encourage them to report the crime to police.*[148]

See Appendix I for a table providing a brief summary of existing SACP legislation in Australian jurisdictions.

2.2.5 Findings of the Domestic and Family Violence Taskforce

Recommendation 130 of the DFV Report is that the Queensland Government introduce a SACP, based on the New South Wales legislative model, which '…provides an absolute privilege in preliminary proceedings and a qualified privilege in other proceedings'.[149]

2.2.6 Government's response to Special Taskforce recommendation

According to the explanatory notes:

> *In accepting this recommendation, the Queensland Government acknowledged the benefits of the NSW model as it seeks to ensure the appropriate balance in each case between the right to a fair trial and the public interest in preserving the confidentiality of counselling communications*.[150]

The department advised that:

> *On 8 March 2016, the Attorney-General released a Consultation Paper on the proposed SACP model to inform the basis of legislation to be introduced to establish the privilege in Queensland*.[151]

2.2.7 Proposed amendments

The Bill proposes to amend the *Evidence Act 1977* (Evidence Act) to establish a SACP.[152] Amendments are also proposed to the Criminal Code and the *Justices Act 1886* (Justices Act) to facilitate the operation of the SACP.[153]

2.2.8 Amendments to the Evidence Act 1977

2.2.8.1 Scope of the privilege

The explanatory notes advise that the SACP will apply to counselling involving a victim ('counselled person') of any offence of a sexual nature ('sexual assault offence') and will not be limited to counselling arising from the offence:

> *The SACP will apply to counselling communications the victim has had at any time with a counsellor. A protected counselling communication will include an oral or written communication made in confidence by the counselled person to a counsellor, by the counsellor*

[148] Explanatory notes, p 2.
[149] Explanatory notes, p 2
[150] Explanatory notes, p 2
[151] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 2.
[152] Part 2 of the Bill.
[153] Part 3 and Schedule 1 of the Bill, respectively.

> *to or about the counselled person to further the counselling process or a communication about the counselled person by a parent, carer or other support person made to facilitate communication between the counselled person and the counsellor or further the counselling process*.[154]

The SACP will include certain exclusions:

> *…evidence collected during a physical examination and communications made to or by a health practitioner about a physical examination of a victim of a sexual assault in the course of an investigation into an alleged sexual assault are excluded from the definition of 'protected counselling communication'. The principal purpose of these communications is not the therapeutic rehabilitation of the victim. However, communications made to or by a health practitioner that are not about the physical examination may amount to a protected counselling communication.*
>
> *It is also not intended that the SACP will impinge on investigations or evidence gathering by the police*.[155]

2.2.8.2 Requirements relating to counselling

According to the explanatory notes, in order to reflect the realities of sexual assault counselling (which is a self-regulated profession), as well as to accommodate the needs of people from Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities:

> *…a 'counsellor' will not need to have formal qualifications or training. However, counselling must be provided in the course of the counsellor's paid or voluntary employment. This will ensure that communications with a mere friend or confidant are not caught. Also, the definition does not cover a religious representative*.[156]

2.2.8.3 Absolute privilege

Consistent with the New South Wales model, an absolute privilege will apply:

> *…in a committal proceeding or a proceeding relating to bail, so that the accused will not be able to compel, subpoena, produce, disclose, inspect or copy a protected counselling communication in the proceeding*.[157]

According to the explanatory notes: 'An absolute privilege in these types of proceedings is not considered to impede a person's right to a fair trial but may mean certain issues cannot be clarified or dealt with until the trial'.[158]

2.2.8.4 Qualified privilege

A qualified privilege will apply:

> *…in other criminal proceedings, including trials and sentencing, and will also apply in a proceeding for a protection order under the DFVP Act. The qualified privilege means that a person cannot, without leave of the court, compel, subpoena, produce, disclose, inspect or copy a protection counselling communication. In deciding whether to grant leave, a court must be satisfied that:*

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[154] Explanatory notes, p 9.
[155] Explanatory notes, p 9.
[156] Explanatory notes, p 9.
[157] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 13.
[158] Explanatory notes, p 10.

- *the protected counselling communication has substantial probative value;*
- *there is no other evidence available; and*
- *the public interest in preserving the confidentiality and protecting the counselled person from harm is substantially outweighed by the public interest of allowing it into evidence*.[159]

The explanatory notes state that, when considering an application for leave, the court may consider:

> *…an oral or written statement provided by the victim outlining the harm they are likely to suffer if the application for leave is granted. 'Harm' is widely defined and is not limited to harm suffered as a direct result of the sexual assault*.[160]

In determining the 'public interest' test as part of the application for leave, the court must also have regard to a number of matters, including:

> *…the need to encourage victims of sexual assault offences to seek counselling, that disclosure of a protected counselling communication may damage the therapeutic relationship between the counsellor and the victim, and the extent to which the evidence is necessary to enable the accused person to make a full defence*.[161]

When the victim provides an oral statement about the harm they are likely to suffer if the application for leave is granted, and when a court is considering if a document or evidence is a protected counselling communication, the Bill provides that:

> *…the court must exclude from the court room any person who is not an essential person. An essential person includes for example a Crown law officer, the prosecutor and a person who is a support person for the witness. To maintain the victim's confidentiality, the definition of an essential person does not include members of the jury*.[162]

2.2.8.5 Other matters relating to privilege

According to the explanatory notes: 'In recognition of the personal nature of the counselling, the Bill provides that the victim, in certain circumstances, can waive the SACP'.[163]

The SACP may also be lost if the communication was made in the commission of an offence, such as fraud.[164]

The explanatory notes advise that, to preserve the integrity of the SACP, the Bill also provides that:

> *…a person cannot adduce evidence in a civil proceeding that arises from the act that gave rise to the criminal proceeding, unless the court hearing the criminal matter had given leave to access the evidence or the SACP has been waived or lost*.[165]

[159] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, pp 13-14.
[160] Explanatory notes, p 10.
[161] Explanatory notes, p 10.
[162] Explanatory notes, p 10.
[163] Explanatory notes, p 10.
[164] Explanatory notes, p 10.
[165] Explanatory notes, pp 10-11.

2.2.9 Amendments to the Criminal Code

The Bill proposes to amend the Criminal Code to provide that where the SACP applies to counselling communications, those communications will be exempt from the prosecution's disclosure obligations.[166]

According to the department, the Criminal Code generally provides that:

> *…it is a fundamental obligation on the prosecution to give an accused person full and early disclosure of all evidence the prosecution proposes to rely on in and all things in the possession of the prosecution, that would tend to help the case for the accused person*.[167]

The explanatory notes advise that:

> *Consistent with the purposes of the SACP, the Bill contains amendments to provide that the prosecution will not be under an obligation to disclose a protected counselling communication unless the court has given leave or the privilege is waived or lost under the Evidence Act provisions.*[168]

However, to ensure that the accused person is made fully aware of all relevant matters, the amendments will provide that where the prosecution considers it has a protected counselling communication, it must give notice to the accused person advising the following:

- *the nature and particulars of the document;*
- *that the counselled person has not consented to the production of the document; and*
- *that the accused person may apply to the court to have the document produced in certain proceedings*.[169]

The Bill also proposes to amend section 590AA of the Criminal Code: '…to clarify that a pre-trial direction or ruling may be given regarding a protected counselling communication under the provisions in the Evidence Act'.[170]

2.2.10 Amendments to the Justices Act 1886

The explanatory notes state that:

> *Consistent with the amendments to section 590AA of the Criminal Code, an amendment will be made to section 83A(5) of the* Justices Act 1886 *to make it clear that for a proceeding in the Magistrates Court, a pre-trial direction or ruling may be given regarding a protected counselling communication under the provisions in the Evidence Act*.[171]

2.2.11 Amendments to the Domestic and Family Violence Protection Act 2012

According to the explanatory notes, the Bill proposes to amend the DFVP Act to provide that:

> *…despite the general position that a court is not bound by the rules of evidence or any practices or procedures applying to courts of record, the SACP provisions in the Evidence Act apply to proceedings. This means that a person cannot, without leave of the court, compel, subpoena,*

[166] Clause 4 of the Bill.
[167] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 14.
[168] Explanatory notes, p 11.
[169] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 14.
[170] Explanatory notes, p 11; Clause 4 of the Bill.
[171] Explanatory notes, p 11; Schedule 1 of the Bill.

produce, adduce or otherwise use or otherwise disclose, inspect or copy a protected counselling communication in a proceeding under the DFVP Act.[172]

2.2.12 Issues raised in submissions

2.2.12.1 Unrepresented parties and inadvertent disclosures

WLS submitted that the Bill has been drafted on the assumption that both parties are legally represented or that there will be defence lawyers and prosecution lawyers:

> *In domestic violence matters, it is quite common for there to be unrepresented parties. This issue needs careful consideration in the legislation and the protocols and processes that should be developed to support the operation of the legislation. There could be significant harm inflicted on victims if self-represented parties who are perpetrators are able to have access to a victim's personal counselling records, which may detail the impact of his abuse on them*.[173]

WLS recommended that the Bill make it clear that unrepresented parties should not be entitled to see or inspect counselling notes.[174]

In response, the department advised that both the absolute and qualified privilege apply to a person:

> *This would cover any person, regardless of whether they are legally represented. A statement was included in the explanatory notes to clarify this position.*
>
> *In addition, the proposed section 14K requires that, if it appears to a court that a person has grounds to object to the production of a document or the adducing of evidence that is a protected counselling communication, the court must satisfy itself the person is aware of the provisions relating to the privilege and that they have had the opportunity to seek legal advice*.[175]

At the public hearing, Ms Lynch of WLS was queried about the department's views on unrepresented litigants:

> *The issue is that in sexual assault criminal matters, which is what this legislation is mainly based on, mostly the accused in those trials has representation. This legislation has been extended to the domestic violence protection order scheme. We support and applaud that. It is just that in domestic violence protection order applications it is quite common for parties to be unrepresented. That can mean that unrepresented perpetrators will be able to see, with leave of the court, the counselling notes. It puts the court in a conundrum in relation to a fair trial and both parties accessing evidence before the court. It is a conundrum for the legal system in how it responds to that, but it also causes trauma to the victim because there is no lawyer to buffer what is occurring. The unrepresented respondent perpetrator, with leave, can view those parts of the counselling notes that the court allows.*
>
> *All the time the court is weighing up a fair trial… Historically, the weight has always been behind access to the evidence before the court. Our concerns are that the legislation has really been based on where both parties are represented but it has been moved into a system where there are a lot of unrepresented parties, so there has to be quite a lot of thought about how that is going to work*…[176]

When queried whether proposed section 14K addressed her concerns, Ms Lynch advised that:

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[172] Explanatory notes, p 11; Schedule 1 of the Bill.
[173] Submission 1, p 2.
[174] Submission 1, p 2.
[175] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 1.
[176] Transcript, public hearing, 25 January 2017, p 2.

> *Our concern is about the magistrates' understanding in relation to that. If the victim is unrepresented as well—of course the victim could be unrepresented—how do they advocate for themselves in relation to section 14N of the sexual assault counselling notes privilege to which the magistrate is supposed to be alerted to provide that protection? There are a number of ways that it can fall down. Having that in a piece of legislation may be fine, but how is that going to operate in practice? We can see a number of flaws. We know the system does not work very well.*[177]

Ms Sarkozi of WLS, added that:

> *It is often a balancing act. The magistrates may or may not turn their mind to this particular section and how they interpret that. The other issue is: who is going to argue against the production of that material? In practice, it is often registrars making this call. They are issuing subpoenas, the material is being produced and then it is actually something that the court might say, 'Well, you have a look at it and tell me whether or not it falls under the privilege.' If it is the unrepresented respondent, they have already seen all of that material. It has already happened. The victim herself knows that the respondent is making that application. There is potentially significant harm that is brought just by that. There could be an amendment to this legislation saying that in the circumstances where it is an unrepresented respondent seeking leave of the court for the privilege documents Legal Aid provide a lawyer for that specific purpose*…[178]

Further, WLS raised concerns about how the court will be alerted to inadvertent disclosures of information that may be covered by the privilege in subpoenaed materials:

> *The processes or protocols should require the court registry to be very proactive in the management of subpoenaed materials, especially in situations involving unrepresented parties.*
>
> *Inadvertent disclosures may occur when a subpoena is issued to a generalist agency eg. Centrelink and within their files they have notes from a social worker that detail a sexual assault or rape. So, the subpoenaed party in this instance… is not an obvious counselling agency dealing with sexual assault but protected records are contained within the bulk of other documents*.[179]

WLS recommended that:

> *…court policies and processes be immediately developed to support the operation of the legislation and specifically to deal with unrepresented parties and prevent as much as possible inadvertent disclosures* [and]
>
> *…That this legislation be supported by a comprehensive state-wide education campaign for professionals including the police, specialised domestic violence and sexual assault counsellors, counselling agencies, lawyers, Registry staff, Magistrates and the judiciary.*[180]

Several submitters expressed similar sentiments. CASV identified the importance of adequate funding of sexual assault services, so they are informed and trained around the legislation: 'It could be a function of Victim Assist to inform service providers and users of their rights under any new legislation'.[181] Whilst, Gold Coast Centre Against Sexual Violence Inc (GCCASV) noted that increased

[177] Transcript, public hearing, 25 January 2017, p 2.
[178] Transcript, public hearing, 25 January 2017, p 2.
[179] Submission 1, p 2.
[180] Submission 1, pp 3 and 5.
[181] Submission 2, p 3.

funding to sexual assault and community legal services would be needed '…to cope with an anticipated increase in demand for victims seeking information about their rights in relation to this legislation'.[182]

Knowmore was pleased to see approved funding for a SACP legal assistance service:

> *It would seem to us, from our experience in working with survivors, that few would be able to adequately understand and pursue their rights to seek to protect the privacy of their sexual assault counselling records without specialist legal advice and, if necessary, representation before the Court to argue the issues and their interest. It is important that counsellors, counselling organisations and survivors… have ready access to free, independent and expert assistance to help them protect what are usually records of the utmost personal and private nature*.[183]

In response, the department noted that the government had, in the 2016-17 State Budget, allocated:

> *…funding of $2.2 million over four years… to establish a sexual assault counselling privilege legal assistance service so victims and counsellors can access legal assistance should they need to claim the privilege.*
>
> *This service will also develop and disseminate education material about the privilege to assist legal practitioners, key stakeholders including members of the Queensland Police Service, court services staff, sexual assault services, the education sector, health professionals and the public to ensure general awareness and an understanding of the privilege.*
>
> *In addition, supporting processes and procedures aimed at supporting the introduction of the privilege are being developed by the Department.*[184]

In response to committee questioning as to difficulties experienced in New South Wales in the application of its SACP model, the department expressed concern about the possibility of inadvertent disclosure of privileged materials, but noted that:

> *…rather than address that through the legislation the department is currently looking at whatever policies and procedures can be put in place in the court system to ensure that there is no inadvertent disclosure, whether that be a modified subpoena or a letter attached to current subpoenas. A position has not been formulated as yet, but the department is working on that*.[185]

2.2.12.2 Statements made to health practitioners

WLS stated that the Bill does not extend the SACP to health professionals conducting physical forensic examination of sexual assault and rape victims:

> *Women undergoing such an examination are often traumatised and in shock and in need of immediate crisis counselling intervention. Any statements made and written down by the health professional, in the context of counselling should be protected.*[186]

Accordingly, WLS recommended that:

> *…the privilege extend to and cover all statements made by victims to health practitioners that satisfy the legislative definition of 'counselling' during a physical forensic examination.*[187]

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[182] Submission 6, p 1.
[183] Submission 7, p 5.
[184] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 1-2.
[185] Transcript, public briefing, Department of Justice and Attorney-General, 25 January 2017, p 5.
[186] Submission 1, p 3, referring to proposed s 14A(2) of the *Evidence Act 1977* (Clause 7 of the Bill).
[187] Submission 1, p 3.

The department replied that:

> *The exception contained in section 14A(2), that applies to the definition of protected counselling communication provides that the sexual assault counselling privilege will not apply to a communication made to or by a health practitioner* ***about a physical examination*** *of a victim of a sexual assault in the course of an investigation into an alleged sexual assault. The principal purpose of these communications is not the therapeutic rehabilitation of the victim.*
>
> *However, communications made to or by a health practitioner that are not about the physical examination may amount to a protected counselling communication.*[188]

2.2.12.3 Scope of privilege

WLS contended that absolute privilege (proposed to apply to committal and bail proceedings) should be extended to cover sentencing:

> *We do not think it is just for the perpetrator's legal team to have the right to potentially view her* [the victim's] *counselling records at the time of sentence. We think that the best approach is for there to be an absolute privilege at the time of sentencing but with the ability for this to be waived, by the victim. Such an approach would provide the victim with automatic protection but the ability to allow their counselling records to be viewed, if they consent.*
>
> *Think about the impact on the victim of receiving a subpoena at this time. She has been the victim of traumatic sexual violence, has reported the incident to the police, had the matter prosecuted and a successful trial or guilty plea and the perpetrator still has the potential of access to her personal counselling records for the purpose of reducing his sentence on the basis of arguing that she was not as traumatised as she says she was by the violent incident...*[189]

Similarly, GCCASV submitted that absolute privilege be extended to cover sentencing hearings, but that victims be able to waive privilege.[190]

Domestic Violence Action Centre (DVAC) argued for an even greater extension of the proposed privilege, asserting that absolute privilege should provide complete protection for all victims of sexual offences:

> *This should apply to committal proceedings and proceedings relating to bail, including proceedings during the trial or sentencing. Without the introduction of an absolute privilege providing full and appropriate protection during all stages of the criminal justice proceedings, individuals may continue to be reluctant to report sexual violence and/or may not seek essential counselling as confidentiality cannot be assured. Specialist sexual assault counselling support for the individual may also be impacted as a result of the lack of confidentiality during legal proceedings. Additionally, the individual may experience further trauma knowing that the alleged offender can access their counselling communications during the proceedings. This is particularly important as many victims experience fear and anxiety in relation to the offender and court proceedings, and some even experience ongoing fear or control tactics from the offender to intimidate and manipulate court proceedings*.[191]

Similarly, Zig Zag Young Women's Resource Centre Inc. (Zig Zag) submitted it would prefer the introduction of absolute privilege for sexual assault counselling communications '…to provide

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188 Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 3-4.

189 Submission 1, pp 3-4, referring to proposed s 14E(a) of the *Evidence Act 1977* (Clause 7 of the Bill); the Bill proposes that qualified privilege apply to sentencing.

190 Submission 6, p 1.

191 Submission 3, p 3.

complete protection and peace of mind for all victims of sexual offences, as operates effectively in Tasmania'.[192]

In response, the department commented that:

> *In accordance with recommendation 130 of the…* [DFV Report]*, the sexual assault counselling privilege is based on the NSW legislative model contained in the Criminal Procedure Act 1986 (NSW). The Government accepted this recommendation. The NSW model does not extend the privilege to a sentence hearing.*
>
> *The absolute privilege will apply in preliminary criminal proceedings, namely, bail applications and committals. These proceedings are not trials and are directed more to the strength of the prosecution case, so it is not necessary for the defendant to be able to access a protected counselling communication. A sentence on the other hand may result at the end of a trial where the qualified privilege applied and the court had already given leave to a party to access a protected counselling communication.*
>
> *Alternatively, the sentence may involve a dispute about the nature or relevance of certain evidence where it may be necessary for a court to consider, in the interests of justice, if access to a protected counselling communication should be allowed*.[193]

Both DVAC and Zig Zag supported the expansion of the proposed SACP to:

> *…apply to all sexual offences as outlined in the* Queensland Criminal Code 1899*. Additionally, this communications privilege should apply to all sexual offences relating to a child, even if the complainant is now an adult. This includes the indecent treatment of a child under 16 years, carnal knowledge with or of children under 16 years, procuring sexual acts, and incest*.[194]

The department clarified that the definition of 'sexual assault offence' contained in proposed section 14B, extends to all offences of a sexual nature:

> *…including offences against the Criminal Code Chapter 32 (Rape and sexual assaults) and Chapter 22 (Offence against morality).*
>
> *The list of offences contained in chapter 22 includes indecent treatment of children under 16, carnal knowledge with or of children under 16, using internet etc. to procure children under 16, grooming children under 16, Incest, indecent acts and child exploitation material offences*.[195]

Further, both DVAC and Zig Zag considered that the proposed SACP should apply to all counselling communications between a victim of sexual assault and counsellor, irrespective of whether the counselling occurred before or after the sexual assault.[196] Zig Zag observed that:

> *Victims/survivors of sexual assault should feel confident to access counselling services knowing that information they choose to disclose will be kept confidential. Privacy is a fundamental principle of justice and victims of crime, specifically sexual offences, must be supported to have their rights to privacy maintained through the introduction of an* absolute *legal privilege of counselling communications*.[197]

In response, the department clarified that:

> *The privilege will be activated when a person who is or has at any time been the victim or alleged victim of a sexual offence is required to give evidence in a criminal proceeding. The*

[192] Submission 4, p 5.
[193] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 4-5.
[194] Submission 3, p 3; Zig Zag, submission 4, made a similar submission at p 5.
[195] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 9-10.
[196] Submission 3, p 3; submission 4, p 5.
[197] Submission 4, p 4.

> *proposed section 14A(3) provides that the privilege will apply to all counselling communications between a victim of sexual assault and counsellor irrespective of whether the counselling occurred before or after the sexual assault and regardless of whether the communication was made in connection with the sexual assault itself or not*.[198]

Further, Zig Zag stated that the proposed SACP should be extended to similar proceedings relating to domestic violence protection orders under the DFVP Act and other civil proceedings.[199]

The department responded, advising that:

> *The proposed section 14E provides that a qualified privilege will apply in other criminal proceedings and a proceeding for a protection order under the DFVP Act. The qualified privilege allows a party to seek leave of the court in order to compel, subpoena, produce, disclose, inspect or copy a protection counselling communication. The proposed amendment to that Act contained in Schedule 1, specifically provides that the sexual assault counselling privilege provisions apply to a proceeding under that Act.*
>
> *In addition, the proposed section 14P (Application of privilege in civil proceedings) provides that in a proceeding to which the privilege applies, a person cannot produce or adduce evidence in a civil proceeding that arises from the act that gave rise to the criminal proceeding unless leave has been granted for the purposes of the criminal proceeding or the privilege has been waived or lost*.[200]

2.2.12.4 Consequences for non-compliance

WLS argued that the Bill should include consequences for non-compliance with the legislative provisions, particularly where there is a failure to comply with the proposed SACP requirements:

> *This would send a very clear message that compliance is not only encouraged but required. Presently there is no* clear *process or approach for a breach of Section 14F. In our discussions with practitioners in New South Wales, the lack of consequences for noncompliance were identified as a shortcoming.*[201]

The department responded that:

> *The proposed section 14F provides that a person cannot compel, whether by subpoena or otherwise, produce or otherwise disclose, inspect or copy a protected counselling communication. The section does not contain a penalty or a consequence for non-compliance as the section itself explicitly states that the person cannot deal with the evidence without the leave of the court*.[202]

2.2.12.5 Waiver of privilege

In recognising the vulnerable nature of victims, WLS recommended:

> *That when waiving the privilege that clients be required to obtain independent legal advice and a legal adviser's certificate Is signed by the legal adviser as evidence of this.*

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[198] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 10, referring to proposed s 14A(3) of the *Evidence Act 1977* (Clause 7 of the Bill).

[199] Submission 4, p 5.

[200] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 10-11, referring to proposed sections 14E and 14P of the *Evidence Act 1977* (Clause 7 of the Bill).

[201] Submission 1, p 4; referring to proposed s 14F to be inserted into the *Evidence Act 1977* (Clause 7 of the Bill).

[202] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 5.

> *That section 14K (2) be altered* to *read that the court is satisfied the person is aware of the relevant provisions of this division and has received legal advice.*
>
> *The need for regulations and practice directions to support the privilege legislation.*[203]

The department advised that the Bill provides that:

> *…if a person consents to waive the privilege, the consent must be expressly stated, include a statement that the person has had the opportunity to seek legal advice and that the consent must be given in writing or, orally if the person cannot provide written consent due to a disability*.[204]

2.2.12.6 Leave of the court to access protected counselling communications

The Bill proposes to insert a new section into the Evidence Act, dealing with applications for leave:

> *New section 14G… provides that a party to the proceeding may apply for leave to access protected counselling communication and must provide a notice to each other party to the proceeding and the counsellor, stating the nature and particulars of the communication to which the application relates. The section also provides that the court cannot decide the application within 14 days after the notice has been given unless notice has previously been given or the counselled person consents to the disclosure or the court considers there are both* ***exceptional circumstances*** [emphasis added] *and it is in the public interest to waive compliance with the section*.[205]

In considering what constitutes 'exceptional circumstances', WLS submitted that the court should explicitly exclude '…that a trial is to commence shortly or within a few days of the application'.

CASV was concerned that problems may arise with:

> *…the granting of leave to access and use counselling documents. For example applications requesting permission to access counselling documents have the potential be used by the defence or the alleged perpetrator to dissuade or intimidate the victim/survivor. Currently our judicial system sees a very high rate of fallout at many steps along the judicial process for sexual assault. Every time there is an application, adjournment or other interruption the chances of a drop out in pursuing a case, increases*.[206]

Other than the prescribed requirements contained in the provision, the department did not consider it appropriate to limit the court's discretion with respect to consideration of 'exceptional circumstances' when deciding whether or not to allow a party to apply for leave to access a communication:

> *The proposed section 14G specifically provides that the court can only waive compliance in exceptional circumstances and only where it is in the public interest to do so.*
>
> *In addition, the proposed section 14H (Deciding whether to grant leave) sets out the test for granting leave concerning a protected counselling communication. The court must be satisfied of a variety of issues, such as:-*
>
> - *the protected counselling communication must have substantial probative value;*

[203] Submission 1, p 5, which proposes an amendment to proposed s 14K to be inserted into the *Evidence Act 1977* (Clause 7 of the Bill); proposed sections 14I and J deal with waiver of privilege by counselled persons.

[204] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 5; referring to proposed s 14I of the *Evidence Act 1977*.

[205] Explanatory notes, p 21.

[206] Submission 2, pp 2-3.

- *other documents or evidence concerning the matters to which the communication relates are not available; and*
- *the public interest in admitting the communication into evidence substantially outweighs the public interest in-*
  - *(i) preserving the confidentiality of the communication; and*
  - *(ii) protecting the counselled person.*[207]

The Bill provides that, when deciding whether to grant leave, the court may consider a written or oral statement by the counselled person outlining the harm the person is likely to suffer if the application is granted.[208]

WLS recommended that:

> *There should be mandatory consideration by the court of a victim's statement about harm and accordingly section 14 H(3) should be amended by changing the court 'may' consider to the court 'must' consider a written or oral statement made to the court.*[209]

In reply, the department advised that:

> *The use of 'may' in section 14H(3) provides the court with the ability to consider a statement provided by the counselled person. If there was a direct obligation on the court to consider a statement from a victim, this would necessarily require that the victim provide either a written or oral statement. In addition, section 14H(2) prescribes a variety of matters that a court must consider when deciding to grant leave, including, the need to encourage victims of sexual assault offences to seek counselling, the public interest in ensuring victims of sexual assault offences receive effective counselling, any likelihood of damage to the relationship between the counsellor and the counselled person that may arise due to the disclosure, and any other matters the court considers relevant*.[210]

2.2.12.7 Protected counselling communications

CASV considered that all forms of communication where a survivor has sought support in confidence from another person should be treated as privileged and should be subject to the same protection as a counsellor's notes:

> *For example, there are many informal avenues a victim/survivor may seek the support that is right for them to gain control of their lives from the impacts of a sexual assault trauma including but not limited to Aboriginal and Torres Strait Islander Elders, Clergy and other allied health professionals. Excluding these forms of support from privilege, places barriers to victims/survivors who rely on these support pathways to heal from the impacts of sexual violence*.[211]

In addition, CASV argued that it is essential for preliminary complaint evidence to be afforded privilege:

> *Counselling is often one of the first places that a victim/survivor makes a first disclosure, it is essential that this be subject to the privilege. Victim/survivor's* [sic] *must have control over how this information is adduced. To dismiss this information from privilege would yet again be taking away the rights of the victim/survivor to expect counselling communication to be privileged and that they be allowed to disclose in the manner and timing that best suits their*

[207] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, pp 5-6.
[208] Proposed s 14H(3) to be inserted into the *Evidence Act 1977* (Clause 7 of the Bill).
[209] Submission 1, p 5.
[210] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 7.
[211] Submission 2, p 2.

> *particular circumstance. Anything else will further undermine their rights to a therapeutic process that best suits them*.[212]

The department stated that:

> *The definition of a protected counselling communication is broad and is not limited to a counsellor's notes. Also, the definition of counsel is broad and will apply to any person who has undertaken training or relevant experience in relation to counselling a person and who provides the counselling in the course of their paid or voluntary employment.*
>
> *The privilege will apply to* preliminary complaint evidence *if the* preliminary complaint evidence *is a communication made or given in circumstances where the definition of a protected counselling communication is met*.[213]

In relation to the suggestion the Bill should be expanded to protect informal support provided to a victim, the department advised that:

> *To reflect the fact that counselling is a self-regulated profession the definition of counsellor provides that the counsellor will not be required to have formal qualifications or training, which is a broad definition to accommodate the needs of people from Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities where counselling may be provided in a cultural context.*
>
> *The definition excludes a religious representative as the nature of a clergy-penitent privilege would be of greater application and apply to a confessional or other similar communication between a person and the religious advisor and could encompass any criminal or potentially antisocial activity. This would extend beyond the scope of the sexual assault counselling privilege which is aimed only at the communications made by the victim of a sexual assault offence*.[214]

2.2.12.8 Retrospectivity

CASV stated that the proposed SACP amendments should be made retrospectively '…so that all survivors have access to the same justice process regardless of when the sexual assault occurred'.[215]

2.3 Special witnesses

Currently, section 21A of the Evidence Act enables a court to make a range of orders or directions to support vulnerable people ('special witnesses') when giving evidence.

2.3.1 Amendments related to special witnesses

The Bill proposes to amend the Evidence Act to include in the definition of 'special witness' a victim or alleged victim of a sexual offence who is to give evidence against the person that has committed, or is alleged to have committed, the offence:

> *Automatic recognition as a special witness will mean that a victim of a sexual assault does not need to satisfy the court that they fall under another element of the definition (for example that they would be likely to suffer severe emotional trauma if required to give evidence in the*

[212] Submission 2, p 2.
[213] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 8.
[214] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 9.
[215] Submission 2, p 4.

> *usual manner). The proposed amendment therefore seeks to minimise the impact of the criminal justice process on these vulnerable persons*.[216]

The explanatory notes advise that: 'Victims of sexual offences are automatically afforded special witness status in NSW, the Northern Territory, Victoria and Western Australia'.[217]

2.3.2 Issues raised in submissions

2.3.2.1 Sexual assault victims and special witness status

Brisbane Rape and Incest Survivors Support Centre (BRISSC) supported the proposed provisions and commented on the inadequacy of the existing law:

> *Given our experience working with survivors of sexual violence, we acknowledge the current special witness provisions do not accurately reflect how survivors can be impacted by trauma and intimidation. Allowing all survivors of sexual violence special witness provisions would better acknowledge the various ways trauma can manifest for survivors of sexual assault. It would also reduce perpetrator intimidation and lead to more witnesses being willing to testify.*
>
> *Survivors of sexual violence can experience unnecessary and prolonged trauma and severe intimidation when giving evidence about sexual assault in court. While signs of trauma are extensive and varied, the current special witness provisions strongly implies severe trauma can only present emotionally*. *Allowing special witness provisions only to those who are likely to suffer severe emotional trauma sets a precedent that survivors must display or experience trauma from sexual violence in a public, visible and emotional capacity. Some survivors will outwardly display signs of severe emotional trauma when giving evidence (or talking about) sexual assault; some survivors experience trauma when giving evidence without great displays of emotion. Acknowledging that all trauma is equal and all survivors of sexual violence may experience trauma at any time whilst giving evidence in court, and putting provisions in place to reduce the risk of trauma, will make survivors better witnesses*. [218]

CASV commented on the severe and lasting consequences of sexual assault on a victim:

> *One of the greatest impacts experienced, is the fear of being in the court room with the alleged perpetrator. Their trauma is likely to be triggered in this presence and they are less likely to give clear concise evidence whilst in the grips of trauma symptoms.*[219]

In that regard, CASV submitted that the proposed amendment is likely to:

> *…not further exacerbate some of these debilitating impacts of sexual violence and would consume one less area to devote precious therapeutic time. It would also encourage more victim/survivors to come forward and report sexual assault in the first place.*
>
> *Ultimately, it should be the survivor's choice as a 'Special Witness' to decide how they are most comfortable giving evidence. Therefore, they should be afforded multiple choices for how they provide this evidence including:*
>
> - *the use of a pre-recorded interview;*
> - *the use of a pre-recorded cross-examination and re-examination;*

[216] Department of Justice and Attorney-General, correspondence dated 9 January 2017, attachment, p 2; Part 3 of the Bill.
[217] Explanatory notes, p 19.
[218] Submission 5, p 3.
[219] Submission 2, p 3.

- *the survivor having a choice to give evidence in a room away from the courtroom using CCT;*
- *the survivor having the choice to have a support person with them when giving evidence;*
- *the use of partitioning screens or one-way glass if evidence is given in the courtroom;*
- *automatic closed court to the public;*
- *the judge and counsel removing their wigs and gowns when requested*…[220]

Further, in written correspondence to the committee, CASV recommended that the court support special witnesses in sexual assault cases by:

- *disallowing improper questions in cross-examinations;*
- *allowing expert evidence about the impacts of childhood sexual abuse; and*
- *allowing the automatic use of intermediaries and interpreters to assist vulnerable witnesses*.[221]

In addition to supporting the Bill's proposals regarding special witnesses, Zig Zag recommended the development of:

> …*appropriate and safe mechanisms to facilitate greater participation and inclusion of the victim in Court proceedings; with recognition for alternative options and choice to be made available to victims of sexual offences*.[222]

In reply, the department advised that:

> *A person who gives evidence in a trial against an accused who is charged with a sexual offence will automatically be recognised as a special witness.*
>
> *Under the current section 21A(2) of the Evidence Act 1977, where a special witness is to give evidence, the court is provided with a variety of options and may, of its own motion or upon application made by a party to the proceeding, make an order or direction that:*
>
> - *…the person charged or other party to the proceeding be excluded from the room in which the court is sitting while the special witness is giving evidence;*
> - *…the person charged or other party to the proceeding be obscured from view while the special witness is giving evidence;*
> - *while the special witness is giving evidence, all persons other than those specified by the court be excluded from the room;*
> - *the special witness be able to give evidence in another room;*
> - *the special witness have a support person with them while they give evidence;*
> - *a video-taped recording of the evidence of the special witness or any portion of it be made under such conditions as are specified in the order, and*
> - *any another order or direction the court considers appropriate*.

[220] Submission 2, p 3.
[221] Centre Against Sexual Violence Inc., correspondence dated 25 January 2017, attachment, p 3.
[222] Submission 4, p 8.

2.3.2.2 Recipients of special witness status

DVAC sought a commitment from government to: '…ensure all victims of sexual violence who are giving evidence in criminal proceedings are automatically provided with special witness protection status'.[223] GCCASV and BRISSC expressed similar views, with the latter also advocating for '…any victim/survivor of sexual assault to be automatically awarded 'special witness' status'.[224]

The department noted that the Bill provides that a victim of a 'sexual offence' will be included in the definition of a special witness.[225] 'Sexual offence' will include offences against the following provisions of the Criminal Code:

- the rape and sexual assault provisions, and
- the offences against morality provisions.[226]

DVAC recommended that status as a special witness:

> *…should not be limited to special witnesses residing in the metropolitan area and may require upgrades to regional Queensland Courts to ensure adequate video, audio and other information technology is available*.[227]

Zig Zag also supported this view, seeking funding for appropriate upgrades to all regional Queensland courts to ensure availability of closed-circuit television video technology to assist special witnesses when giving evidence in court.[228]

The department noted these views.[229]

2.3.2.3 Victim's consent

Whilst strongly supporting the proposed amendments, WLS suggested that it be subject to the victim's consent and that no inference can be drawn if the victims chooses or does not choose to use the protections:

> *For example, a woman may choose not to use the protection as she feels she wants to be able to see the perpetrator as she gives evidence. This does not mean she has not been traumatised or seriously impacted by the experience*.[230]

2.3.2.4 Retrospectivity

CASV argued that the proposed special witness amendments should be made retrospectively '…so that all survivors have access to the same justice process regardless of when the sexual assault occurred'.[231]

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[223] Submission 3, p 4.
[224] Submission 6, p 1; submission 5, p 2.
[225] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 13.
[226] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 13; Clause 8 of the Bill proposes to amend s 21A of the *Evidence Act 1977*; the rape and sexual assault provisions are contained in Chapter 32 of the Criminal Code; the offences against morality provisions are contained in Chapter 22 of the Criminal Code.
[227] Submission 3, p 4.
[228] Submission 4, p 7.
[229] Department of Justice and Attorney-General, correspondence dated 3 February 2017, attachment, p 13.
[230] Submission 1, p 5.
[231] Submission 2, p 4.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

In addition to addressing FLP issues below, this report also identifies four offence provisions included in the Bill, which are set out at Appendix J.

3.1.1 Rights and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992

Clauses 4, 7, 47, 48, 49, 50, 87 and 98 have the potential to raise the issue of whether the Bill has sufficient regard to the rights and liberties of individuals.

Clause 4

Clause 4 amends the Criminal Code by inserting new section 590APA (Protected counselling communications).

Section 590APA(1) provides that the prosecution is not, for a relevant proceeding, required to give to an accused person a copy of a document if the prosecution reasonably considers the document is protected counselling communication.

Clause 7

Clause 7 inserts new part 2, division 2A (Sexual assault counselling privilege) and sub-division 2 (Committal and bail proceedings) into the Evidence Act.

Pursuant to section 14D a person cannot do any of the following things in connection with a proceeding:

(a) compel, whether by subpoena or otherwise, another person to produce a protected counselling communication to a court;

(b) produce to a court, adduce evidence of or otherwise use, a protected counselling communication;

(c) otherwise disclose, inspect or copy a protected counselling communication.

Section 14F provides that a person cannot do the following things in relation to a proceeding, other than with the leave of the court hearing the proceeding:

(a) compel, whether by subpoena or otherwise, another person to produce a protected counselling communication to a court;

(b) produce to a court, adduce evidence of or otherwise use, a protected counselling communication;

(c) otherwise disclose, inspect or copy a protected counselling communication.

Pursuant to section 14G (Application for leave), a party to a proceeding may apply to the court for leave to access protected counselling communication. In doing so the party must provide a notice to each party to the proceeding and the counsellor concerned stating the nature and particulars of the communication to which the application relates. Section 14M(2) provides that the court may consider a document or evidence in order to decide whether it is protected counselling communication.

Potential FLP issues

At the committal and/or bail stage of a matter, an accused person may seek access to an accuser's counselling communications in order to test their credibility when the matter proceeds to trial. In removing the ability of the accused to be provided with potential evidence by way of counselling communications, clauses 4 and 7 potentially infringe section 4(2)(a) of the *Legislative Standards Act 1992* which provides that sufficient regard be had to the rights and liberties of individuals.

In seeking to justify the clause the explanatory notes advise:

> *Any impact on an accused person in preliminary proceedings (i.e. committal and bail proceedings) is considered justified having regard to the underlying purpose of the SACP, which recognises the public interest in encouraging people who have been sexually assaulted to seek therapy to assist in their recovery and may also encourage them to report the crime to police.*
>
> *In respect of other criminal proceedings, related civil proceedings and proceedings under the DFVP Act, a 'qualified privilege' applies. The 'qualified privilege' operates to allow the court to determine, in accordance with defined statutory criteria, whether or not information that contains a protected counselling communication should be accessed. Allowing the court to determine the issue is considered to strike an appropriate balance between the right of the accused to a fair trial with access to all relevant evidence and material, with the public interest in preserving the confidentiality of counselling communications and minimising harm to victims. In addition, the court is considered best placed to determine the value of the evidence.*[232]

The committee is aware that the Special Taskforce's DFV Report recommended the introduction of a SACP in Queensland, based on the New South Wales model.

Committee comment

Pursuant to clause 4, the prosecution must determine if privilege attaches to a counselling document in its possession. If it is of the view that the document is privileged it must not disclose the document and notify the other party (the accused). By way of section 14G the accused may seek confirmation from the court as to whether the document is privileged.

The committee notes that the court is specifically empowered to decide whether a document is privileged communication pursuant to section 14M. Given that a decision with respect to counselling communications will be left with the court, the committee considers the clause appropriate in the circumstances.

Sharing of confidential information

Several clauses in the Bill expand the power of VAQ to use information from other agencies by amending the Act. The agencies and amended clauses include the Queensland Police Service (clauses 47, 48 and 50), State Penalties Enforcement Register (SPER) (clauses 49 and 77), Queensland courts (clause 49) and the Department of Main Roads (clauses 72 and 77).

For example, clause 49 inserts new sections 67A (Obtaining information about act of violence from court) and section 67B (Obtaining information about relevant payments from SPER registrar) into the Act.

[232] Explanatory notes, pp 17-18.

Section 67A (1) provides that the 'government assessor may ask the registrar of a court for information about a stated act of violence, including details of the injury suffered by the primary victim of the act, for which an application for victim assistance has been made'.

Pursuant to section 67A(2), 'the registrar must give the government assessor the requested information if the registrar is reasonably satisfied the government assessor reasonably requires the information to decide the application*'.*

Section 67A(5) 'provides that the giving of information by the registrar under subsection (2) is authorised despite any other Act or law, including a law imposing an obligation to maintain confidentiality about the information*'.* Section 140 provides restrictions the disclosure or giving access to information or documents obtained under the Act.

Similarly, section 67B provides a similar requirement of SPER.

Section 67B(1) provides that 'the government assessor may ask the SPER registrar for information about compensation amounts for a stated act of violence in relation to which assistance is sought'*.* Pursuant to section 67B(2) the SPER registrar must comply with the request if the registrar is reasonably satisfied the government assessor reasonably requires the information to decide the application.

The explanatory notes advise that the information obtained from the agencies will be used in the following three circumstances:

- *when deciding an application, made by a victim, for an amendment of the grant of assistance under section 103 (clause 69);*
- *when deciding whether or not to amend a grant of assistance because a victim has received, or is likely to receive, an uncounted relevant payment (clause 72); and*
- *when deciding to start action to recover a grant of assistance from an offender (clause 75).*[233]

Clauses 87 and 98 also raise FLP issues with regard to confidentiality.

Clause 87

Clause 87 inserts new section 140A (Disclosure by scheme manager of information for research purposes) into the Act.

Section 140A(1) provides that the scheme manager may disclose confidential information to a person undertaking research if:

(a) the scheme manager is satisfied the research is genuine; and

(b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates.

Pursuant to section 87(2), should a person contravene an undertaking they can be fined a maximum penalty of 200 units. Should a person contravene the *Child Protection Act 1999* they may be prosecuted under section 189 (Prohibition of publication of information leading to identity of children) which carries a maximum penalty of 100 units or 2 years prison.

Clause 98

Clause 98 inserts new sections 282A to 282G into the *Youth Justice Act 1992.*

[233] Explanatory notes, p 17.

Pursuant to section 282A(1), the chief executive must keep a register of persons who are eligible to receive information (detainee information) under section 282F about a child detained in a detention centre who has been sentenced to detention for a violent offence or a sexual offence.

Section 282F(1) provides that the chief executive may, should they deem it appropriate, provide an eligible person in relation to a child detained in a detention centre the following information about the child:

(a) the transfer of the child:

(i) interstate or overseas under a scheme for the transfer of children detained under a sentence; or

(ii) to a corrective services facility;

(b) the length of the period of the child's detention;

(c) the day the child is eligible for, or due for, discharge or release, including under a supervised release order;

(d) any further cumulative periods of detention imposed on the child while the child is detained for the offence;

(e) the granting to the child of leave of absence under section 269;

(f) whether the child is unlawfully at large;

(g) the death of the child.

Pursuant to section 282G(2), a person who receives detainee information must not disclose the information received to another person other than under the provisions of subsection (3). The maximum penalty for failing to adhere to the provisions of 282G are 100 penalty units or 2 years imprisonment.

Potential FLP issues

In relation to confidential information, the former Scrutiny of Legislation Committee noted that:

> *…the right to privacy, the disclosure of private or confidential information, doctor-patient confidentiality, and privacy and confidentiality issues have generally been identified by the Scrutiny Committee as relevant to consideration of whether legislation has sufficient regard to individuals* [sic] *rights and liberties.*[234]

The committee notes that the aforementioned clauses will allow the VAQ and eligible persons, access to the confidential information of a victim and offender, in some cases without consent. This potentially infringes section 4(2)(a) of the *Legislative Standards Act 1992* which provides that sufficient regard be had to the rights and liberties of individuals.

In relation to clauses 47, 48, 49 and 50, the explanatory notes have acknowledged the potential FLP and provide the following justification:

> *Any potential infringement is justified on the basis that information about an act of violence, and any relevant payments that a victim has received or may receive, is essential to enable VAQ to decide an application for assistance. VAQ requires continued access to information-gathering provisions to continue to make decisions about whether the amount of assistance granted to a victim continues to be the appropriate amount.*

[234] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 113.

> *It is also essential that VAQ has access to information to recover assistance from an offender. The VOCA Act is based on obtaining the victim's consent where possible (see, for example, section 77 of the VOCA Act). However, a victim cannot consent to the release of information concerning an offender.*
>
> *Adequate safeguards are included in the Bill to ensure that VAQ only accesses confidential information when reasonably necessary, and places confidentiality obligations on 'relevant persons' involved in the administration of the VOCA Act (which includes government assessors and the scheme manager). Further, provisions which currently require the victim's consent before VAQ can access confidential information will continue to require the victim's consent before that information can be accessed. If a victim does not give the necessary consent, the decision on the applicant's application can be deferred.*[235]

The explanatory notes also address the disclosure provisions contained in clauses 87 and 98. The explanatory notes provide the following justification for clause 87:

> *Before the scheme manager can disclose the confidential information, the researcher must give the scheme manager a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates. Contravening the undertaking is an offence (maximum penalty: 200 penalty units).*
>
> *Any potential infringement is justified on the basis that providing confidential information is essential for the purpose of conducting research about victims. New section 140A will help to protect victims' personal information by imposing a penalty on researchers if they disclose confidential information to anyone else.*[236]

In relation to clause 98, the explanatory notes advise:

> *Any potential infringement is balanced against the concern for the safety and wellbeing for the child's victim and any person who has reason to fear for their life or physical safety. Where a person has applied to join the Victims Register because they fear for their life or physical safety, the child will have the opportunity to make a submission to the chief executive about why the person should not be registered as an eligible person.*
>
> *Appropriate safeguards are included in the Bill to protect against public dissemination and further disclosure of a detained child's personal information. New section 282B requires the applicant to the Victims Register and a nominee, if the applicant nominated a person to receive the detainee information for the applicant, to sign a declaration stating that the applicant or nominee will not disclose a detained child's personal information received by the applicant or nominee, other than as permitted under section 282G(3). New section 282E permits the chief executive to remove an eligible person's details or a nominee's details from the register if the eligible person or nominee discloses a detained child's personal information received under the division other than as permitted under section 282G(3).*[237]

[235] Explanatory notes, pp 13-17.
[236] Explanatory notes, pp 12-13.
[237] Explanatory notes, pp 16-17.

Committee comment

In considering the clauses discussed, the committee notes that the intention of the provisions is to strengthen protection for victims. Further, it considers significant safeguards are in place including penalties for those persons or organisations who contravene the provisions and release confidential information to unauthorised individuals or groups.

3.1.2 Administrative power - Section 4(3)(a) Legislative Standards Act 1992

Clauses 22, 45 and 57 have the potential to raise the issue of whether the rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Summary of provisions

Clauses 33 and 45 provide significant administrative decision making powers to a scheme manager. Similarly, clause 57 provides powers to government assessors.

Clause 33

Clause 33 inserts new parts 3A (new sections 36A to 36F) and 3B (new sections 36G to 36J) into the Act.

Pursuant to section 36D (Requirement to defer decision—motor accident claim not made), the section applies if a person (the applicant) applies for victim assistance in relation to an act of violence; and the applicant has not made a motor accident claim in relation to the motor vehicle accident.

Section 36D(3)(b) provides that a scheme manager can defer deciding an applicant's matter if the applicant has a reasonable excuse for not making a motor accident claim within the period set out in section 37(2) of the MAI Act. Depending on the circumstances, section 37(2) provides time periods of one month, three months or nine months.

Section 36D(4) provides that in deciding whether an applicant has a reasonable excuse under subsection (3)(b), the scheme manager must have regard to each of the following:

(a) the applicant's age at the time the act of violence occurred;

(b) whether the applicant has impaired capacity;

(c) whether the person who allegedly committed the act of violence was in a position of power, influence or trust in relation to the applicant;

(d) the physical or psychological effect of the act of violence on the applicant;

(e) any other matter the scheme manager considers relevant.

Section 36D(5) provides that if a scheme manager decides that an applicant does not have a reasonable excuse, the scheme manager must give the applicant a notice with the following information: the decision; the reasons for the decision and the internal review details for the decision.

Clause 45

Clause 45 amends section 58 (Time limit) of the Act. Section 58(2) provides that the scheme manager may, on application by a person, extend the time for the person to make an application for funeral expense assistance if the scheme manager considers it would be appropriate. In making a decision, the scheme manager must apply the same criteria and notification process as provided in sections 36D(4) and (5).

Clause 57

Clause 57 of the Bill inserts new sections 84A to 84C in to the Act. These sections provide the government assessor with additional discretion to defer deciding a victim's application in the following circumstances:

- the cause of death of the victim is unknown (new section 84A);
- an applicant has allegedly provided false or misleading information to VAQ and the scheme manager has forwarded the complaint to a police officer in relation to the allegation (new section 84B); and
- the victim is an offender who has previously been convicted of a relevant offence and the State is endeavouring to recover an amount of assistance from the victim because of the past offence (new section 84C).

Pursuant to all three sections (84A-84C) the government assessor must provide the decision; the reasons for the decision; and the internal review details for the decision.

Potential FLP issues

The powers afforded to the scheme manager and government assessor under sections 33, 45 and 57 are significant and potentially breach section 4(3)(a) of the *Legislative Standards Act 1992* which provides that administrative power should be sufficiently defined and subject to appropriate review.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The OQPC Notebook states:

> *Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision*.[238]

The former Scrutiny of Legislation Committee took issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.[239]

Further, legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states:

> *Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review*.[240]

The explanatory notes acknowledge the potential FLP breaches in relation to clauses 33, 45 and 57, and provide the following justifications:

> Clause 33
>
> *The scheme manager's discretion is exercised subject to clearly expressed statutory criteria. If the scheme manager makes a decision that the applicant does not have a reasonable excuse for*

[238] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

[239] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15; citing Scrutiny Committee Annual Report 1998-1999, para 3.10.

[240] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 18.

not making a motor accident claim, the scheme manager must give the victim internal review details for the decision. After the internal review process, the decision may be externally reviewed by QCAT.

Clause 45

The scheme manager's discretion is exercised subject to clearly expressed statutory criteria. The extension of the time for applying for funeral expense assistance will always operate beneficially for victims by removing the inflexibility of the time limits imposed by section 58. Because of this, only the scheme manager's decision not to extend the time in which to apply for funeral expense assistance is reviewable under section 124 of the VOCA Act.

Clause 57

Each time a government assessor decides to defer a victim's application under new section 84A to 84C, the government assessor must give the victim internal review details for the decision. After the internal review process, the decision may be externally reviewed by QCAT. Each new section also contains provisions which lift the deferral on the happening of a stated event (for example, if the cause of death of a primary victim is unknown, the deferral is lifted when a coroner makes a finding about the death of the primary victim).[241]

Committee comment

The committee considers that, on balance, clause(s) 33, 45, and 57 have sufficient regard to the rights and liberties of individuals in this instance.

In reaching this view, regard was had to the fact that the scheme manager and government assessor's powers are well defined. Each clause also has an internal review process and in relation to clauses 33 and 57, a decision is subject to external review by the Queensland Civil Administrative Tribunal.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

Explanatory notes were tabled with the introduction of the Bill. The committee considers the notes are fairly detailed and contain the information required by Part 4, and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

[241] Explanatory notes, pp 14-16.

Appendix A – List of Submissions

001	Women's Legal Service
002	Centre Against Sexual Violence Inc.
003	Domestic Violence Action Centre
004	Zig Zag Young Women's Resource Centre Inc.
005	Brisbane Rape and Incest Survivors Support Centre
006	Gold Coast Centre Against Sexual Violence Inc.
007	knowmore

Appendix B – Witnesses at public briefing and public hearing

Witnesses at public briefing – Brisbane - 25 January 2017

Department of Justice and Attorney-General

- Mrs Leanne Robertson, Acting Assistant Director-General
- Ms Susan Masotti, Acting Director, Strategic Policy
- Mr Brian McFadyen, Senior Legal Officer, Strategic Policy

Witnesses at public hearing – Brisbane - 25 January 2017

Women's Legal Service

- Ms Angela Lynch, Co-ordinator
- Ms Julie Sarkozi, Outreach Solicitor

Centre Against Sexual Violence

- Ms Katrina Weeks, Counsellor Young Women's Worker

Domestic Violence Action Centre, Service Against Sexual Violence

- Ms Andrea Edwards, Counselling Team Leader
- Ms Lauren Howlett, Sexual Violence Prevention Practitioner
- Ms Rebecca Shearman, Service Manager

knowmore

- Warren Strange, Executive Officer

Brisbane Rape and Incest Survivors Support Centre

- Ms Michelle Dang, Support, Group and Community Education Worker
- Ms Emily Cooper, Support, Group and Community Education Worker

Appendix C – Terms of reference for the Review of the *Victims of Crime Assistance Act 2009*

The review considered:

1. The effectiveness of the financial assistance scheme:
    a) whether it achieves its goal to assist victims to recover from acts of violence;
    b) whether the levels of financial assistance provided are appropriate and sustainable; and
    c) the interaction between the financial assistance scheme and other compensation schemes to determine which scheme is best placed to assist the victim .
2. The effectiveness of the State in recovering grants of assistance from convicted offenders and the consideration of alternate models.
3. Whether the fundamental principles of justice for victims of crime have been adequately implemented across relevant government agencies and whether they are appropriate to advance the interests of victims.
4. The legislated role of the Victim Services Coordinator and whether its functions are appropriate, effective and advance the interests of victims of crime and the services provided to them.
5. Whether there are any areas to improve partnerships or service delivery with non-government and private organisations and opportunities to reduce the regulatory burden on business and the community.

Appendix D – Recommendations arising from the Review of the *Victims of Crime Assistance Act 2009*

Recommendation 1: Amend the VOCA Act to increase the maximum amount of funeral assistance payable to an eligible victim from $6,000 to $8,000 to reflect the increased cost of funerals and to provide a higher level of assistance to victims who have prematurely lost a loved one as a result of an act of violence.

Recommendation 2: Amend the VOCA Act to remove the requirement for financial assistance applications to be verified by a statutory declaration to ease the burden on victims when first applying for financial assistance.

Recommendation 3: Amend the VOCA Act to remove the requirement for a medical certificate about the victim's injury to accompany the financial assistance application form to ease the burden on victims when first applying for financial assistance.

Recommendation 4: Amend the VOCA Act to remove pools of assistance for secondary and related victims so each application for financial assistance is considered on its own merits.

Recommendation 5: Amend the VOCA Act to prescribe the following fixed amounts for each category of special assistance to simplify payments:

- Category A - $10,000
- Category B - $3,500
- Category C - $2,000
- Category D - $1,000.

Recommendation 6: Amend the VOCA Act to allow the assessor to defer a decision about granting financial assistance to a later date where:

- the cause of death of the primary victim is unknown; or
- a person is disputing liability for payment of a debt under the VOCA Act.

Recommendation 7: Amend the VOCA Act to expand the definition of 'act of violence' in the VOCA Act to include an act of domestic and family violence to align with the definition under the *Domestic and Family Violence Protection Act 2012* so that all victims of domestic and family violence are able to seek financial assistance.

Recommendation 8: Amend the VOCA Act to require victims who are eligible to make a Compulsory Third Party (CTP) insurance claim to have that claim finalised prior to applying for financial assistance under the VOCA Act so that payments are not duplicated for injuries related to the one act of violence. However, these victims should still receive help under the VOCA Act to pay for and attend counselling sessions while waiting for their CTP insurance claim to be finalised.

Recommendation 9: Amend the VOCA Act to ensure Victim Assist Queensland has access to, or is informed about, all information relevant to making a decision about an application for financial assistance by:

- requiring an applicant to inform Victim Assist Queensland about any other payment received or that will be received in relation to the same act of violence, even after the application is finalised

- allowing Victim Assist Queensland to obtain information from Queensland Courts; Department of Transport and Main Roads; and State Penalties Enforcement Registry
- ensuring the ability of Victim Assist Queensland to obtain information under the VOCA Act applies even after an application for financial assistance has been finalised.

Recommendation 10: Amend the VOCA Act to allow Victim Assist Queensland to provide confidential personal information to a person for genuine research purposes.

Recommendation 11: Amend the VOCA Act so that recovery of financial assistance from an offender cannot be initiated after six years from when the person was convicted of the relevant offence or six years after an application for financial assistance was made under the VOCA Act to ensure more timely debt recovery action against offenders is taken and there is fairness and transparency in the process.

Recommendation 12: Amend the VOCA Act (and other legislation) to foster and encourage victims' rights and the ways victims are supported by:

- renaming the fundamental principles of justice to a *Charter of Victims' Rights* and redrafting the rights in plain English
- clarifying how rights contained in the renamed *Charter of Victims' Rights* are exercised by relevant agencies
- inserting additional rights into the renamed *Charter of Victims' Rights* to provide for:
  - returning property to a victim as soon as possible
  - victims on the Victims Register being given the opportunity to make submissions to the
  - Parole Board concerning the granting of parole to a violent or sexual offender.

Recommendation 13: Amend the VOCA Act to include in the renamed *Charter of Victims ' Rights* an onus on relevant agencies to proactively provide information to victims so that victims are able to access the information available to them.

Recommendation 14: Amend the VOCA Act to apply the *Charter of Victims' Rights* to Government funded non-government agencies that are funded to provide a service to assist victims recover from a crime so that the treatment of victims is consistent across both government and non-government services.

Recommendation 15: Amend the VOCA Act to authorise the Victim Services Coordinator to help victims resolve complaints where the victim is dissatisfied with the response from the agency.

Appendix E – Stakeholders consulted on the draft Bill

The explanatory notes provide the following list of those targeted stakeholders who were consulted on the consultation draft of the Bill:

> *…key non-government victims of crime, sexual assault, DFV and legal stakeholders; the Chief Justice of Queensland; President of the Court of Appeal; President of QCAT; Chief Judge of the District Court of Queensland; Chief Magistrate; Public Guardian; Queensland Family and Child Commissioner; Information Commissioner; Director of Public Prosecutions; Director of Child Protection Litigation; Motor Accident Insurance Commission; and National Injury Insurance Agency (Queensland)*.[242]

The explanatory notes list the following key non-government victims of crime, sexual assault, DFV and legal stakeholders consulted on the draft of the Bill:

> *Queensland Law Society; Bar Association of Queensland; Women's Legal Service; Queensland Indigenous Family Violence Legal Service; Legal Aid Queensland; Aboriginal & Torres Strait Islander Legal Services (Qld) Ltd; Sisters Inside Inc.; North Queensland Women's Legal Service Inc; Community Legal Centres Queensland; Queensland Council for Civil Liberties; Gold Coast Community Legal Centre & Advice Bureau Inc; Aboriginal & Torres Strait Islander Women's Legal Service NQ Inc; LGBTI Legal Service Inc.; Caxton Legal Centre Inc; Bravehearts Inc; Court Network Inc; DV Connect; Protect All Children Today Inc.; Queensland Homicide Victims' Support Group; Relationships Australia Queensland; Multicultural Development Association Ltd.; Working Alongside People with Intellectual and Learning Disabilities – Sexual Violence Prevention Association; Queensland Sexual Assault Network; Brisbane Youth Service; Living Well; Queensland Domestic Violence Service Network; Gold Coast Centre Against Sexual Violence Inc.; Domestic Violence Prevention Centre – Gold Coast Inc.; Queensland Centre for Domestic and Family Violence Research; Women's Health Services Alliance Queensland; Services and Practitioners for the Elimination of Abuse Queensland; Domestic Violence Court Assistance Network; Combined Women's Refuge Group (South East Queensland); Central Queensland Combined Women's Refuge Group; Domestic Violence Action Centre; Working Against Violence Support Service; Queensland Police Union of Employees; Immigrant Women's Support Service; Centacare Family & Relationships Services; Australian Association of Social Workers, Queensland Branch; Australian Medical Association, Queensland Branch; Australian Psychologists Society; Queensland Counsellors Association Inc.; and Ending Violence Against Women Queensland Inc*.[243]

[242] Explanatory notes, p 18.

[243] Explanatory notes, pp 18-19

Appendix F – Proposed assistance limits for each category and victim type

		Victim type					
		Primary victim	Parent Secondary victim	Witness Secondary victim- Serious act of violence	Witness Secondary victim- Less serious act of violence	Related victim	Not victim- Funeral Only
Composition of assistance	Assistance Limit	$75,000	$50,000	$50,000	$10,000	$50,000	
	Reasonable legal expenses	$500 – in addition to Assistance Limit	$500 – in addition to Assistance Limit	$500 – in addition to Assistance Limit		$500 – in addition to Assistance Limit	
	Counselling	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	
	Medical	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	
	Incidental travel	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	
	Report expenses	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit	
	Loss of earnings	$20,000, within Assistance Limit	$20,000 within Assistance Limit	$20,000 within Assistance Limit			
	Damage to clothing	Within Assistance Limit					
	Other expenses exceptional circumstances	Within Assistance Limit	Within Assistance Limit	Within Assistance Limit		Within Assistance Limit	
	Special assistance	Within Assistance Limit, based on Schedule 2					
	Distress					$10,000, within Assistance Limit	
	Funeral expenses		No funeral expenses for parent secondary (if child died, parent is a related victim)	$8,000 - per deceased victim, in addition to Assistance Limit	No funeral expenses for less serious (primary victim should only be injured, not deceased)	$8,000 - per deceased victim, within Assistance Limit	$8,000 – per deceased victim
	Death of primary victim - amount would have received from victim within 2 years					$20,000 within Assistance Limit	

Appendix G – Summary of existing offender debt recovery process

Victim Assist Queensland (VAQ) administers the Offender Debt Recovery Program (ODRP), under the VOCA Act.

Victims applying for financial assistance through VAQ are advised, during the application process, that the State may recover amounts paid to them, from offenders convicted of committing the act of violence for which assistance has been granted.

After financial assistance has been paid to a victim, the ODRP review suitability for the State to commence recovery activities. The ODRP reviews:

- Whether an offender has pleaded guilty or been found guilty of an act of violence, for which assistance was granted;
- If an offender has lodged an appeal of their conviction, the outcome of that appeal;
- Whether the Scheme Manager has used his/her discretion to not proceed with recovery action (e.g. as a result of concerns for the victim's safety).

Step 1 - providing notice to the convicted offender
If the ODRP is commencing debt recovery, the offender is sent a notice of intended recovery (recovery notice). This notice includes information about the offence and the amount that the State is intending to recover. The offender is provided with at least 14 days to dispute the notice. Offenders' grounds for dispute are limited to whether they were convicted of a relevant offence for which assistance was paid.

Step 2 - Dispute resolution
If an offender disputes the notice, the Scheme Manager considers the grounds of the dispute and then provides a notice of their decision. The offender may then apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the Scheme Manager's decision.

Step 3 - Establishing a debt to the State
If an offender does not dispute a recovery notice, or does not seek a QCAT review of the Scheme Manager's decision, the offender is issued with a liability notice. The liability notice confirms the amount that the offender is liable to pay the State and allows 28 days for payment. The liability notice establishes a debt payable to the State.

Step 4 - Referral to the State Penalties Enforcement Registry (SPER)
If the offender has not paid the State the whole amount owed within 28 days, the whole or remaining debt is referred to SPER25. Offenders are advised that they can discuss suitable payment arrangements with SPER that take into account their individual circumstances.

Information and Referral
The ODRP refers offenders to a number of non-government legal and support services throughout the debt recovery process to enable them to seek advice on their options in relation to a debt established under the VOCA Act.

Appendix H – Transitional arrangements for amendments to the Act

Clause 92 of the Bill inserts a new chapter 8 into the VOCA Act, which sets out the transitional arrangements for the VOCA Act amendments in the Bill. There are different transitional arrangements for different provisions depending on their effect. This means that some provisions will apply to applicants whose applications are yet to be determined while other provisions will not. There are generally three approaches to how the transitional arrangements will work.

Firstly, any amendments relating to a victim's eligibility for assistance will generally apply only to applications where the **act of violence occurred after commencement** of the relevant provision.

An example of this application is as follows:

- the amendments to expand the definition of act of violence to include domestic violence (to now cover non-physical domestic violence) will only apply to the act of domestic violence if it occurred after commencement (unless it forms part of a series of related acts of domestic violence where at least one of the acts of violence occurred after commencement) (see new section 199(2)). This means that if the act of non- physical domestic violence occurred before the commencement of the relevant provision, the victim is not eligible to apply for financial assistance. However, if there were a post-commencement act of non-physical domestic violence which is related to a pre-commencement non-physical act of domestic violence, then the previous act can be considered by VAQ when assessing amounts of assistance.

Secondly, any amendments relating to an amount of assistance to be paid will apply to **any decision made after commencement** of the relevant provision (including applications submitted before commencement).

Examples of this application are as follows:

- the amendments to remove the pools of assistance will apply to all applications decided after commencement of the relevant provisions (see new section 201). This includes applications submitted prior to commencement, which have not yet been determined. However, if a secondary victim or related victim (the *first victim)* made an application for assistance, and that application was decided before commencement of the relevant provisions, other victims (the *additional victims)* from the same act of violence will be constrained by the pool limits relative to their victim group which were established when the first victim made their application for assistance (see new section 202);

- the amendments requiring an applicant to keep VAQ informed about uncounted relevant payments apply to applications decided after commencement (see new section 211). This means that an assessor will place mandatory conditions, which require the victim to keep VAQ informed of any relevant payments that the victim receives, on each grant of interim or final assistance made after commencement of the Bill regardless of when the act of violence occurred;

- the amendments allowing for VAQ to defer deciding an application if the applicant or primary victim's conduct may be relevant will apply to an application decided on or after the commencement of the Bill (new section 209). This means that an assessor can use amended section 87 to defer deciding an application for an application received by VAQ before the commencement day but not yet decided; and

- the amendments to increase the amount of funeral assistance from $6,000 to $8,000 will apply to any application decided after commencement (new section 203).This means that a person who incurs funeral expenses will be entitled to the higher amount of assistance for any

application decided after commencement regardless of when the primary victim died or when the application for assistance was made;

- the increased amounts of special assistance will apply to an application decided after commencement (new section 219).This means that applicants for assistance will be entitled to the higher amounts of special assistance for any application decided after commencement regardless of when the act of violence occurred or when the application for assistance was made.

- Lastly, any amendments relating to VAQ performing functions under the VOCA Act will apply only to an **application for victim assistance made on or after the commencement** of the relevant provision (not before).

Examples of this application are as follows:

- new information-gathering powers under chapter 3, part 12, division 1 (such as expanded powers to obtain information from SPER, the courts and the police) and new deferral powers under new section 84A to 84C will only apply to applications for assistance made on or after commencement. This means that assessors will need to use old information-gathering powers and cannot use new deferral powers unless the application is made after commencement (see new section 207);

- the amendments to chapter 3, parts 3 (which is about clarifying that there is no entitlement to financial assistance until a victim's workers' compensation claim is finally decided) and parts 3A and 38 (which is about clarifying the relationship between the financial assistance scheme and the national injury insurance scheme) will only apply to an application for assistance made after commencement (see new section 200). This means that assessors will only be able to defer decisions under chapter 3, parts 3 to 38 for applications made on or after commencement.

- amendments relating to the making of complaints, the strengthened role of the victim services coordinator and the charter of victims' rights will apply from commencement of the relevant provisions (see new section 198). This means, for example, that a victim can only make a complaint about an alleged contravention of a right contained in the charter, if the conduct of a person amounting to the alleged contravention occurred on or after commencement. Complaints can still be made under the fundamental principles of justice until the charter comes into effect.

- There is one key exception to the above rules. The new provisions allowing the scheme manager to amend a grant of assistance without an application from a victim in new chapter 3, part 15, division 2 will apply to any grant of assistance, regardless of when it was made (new section 214). The scheme manager still only has six years after the grant of assistance (for an adult victim) or until the victim turns 24 (for a child victim) to amend the grant under section 106A.

Appendix I – Summary of existing SACP legislation in Australian jurisdictions

Jurisdiction	General scope	Qualified or absolute privilege
Australian Capital Territory ***Evidence (Miscellaneous Provisions) Act 1991*** **(s 54-67)** The protection is in the form of an immunity	The SACP covers counselling both before and after the offence. The counselling communication must be made in circumstances that give rise to a reasonable expectation of confidentiality (s 55(3))	Absolute Privilege (called 'immunity') – preliminary criminal proceedings (committals, bail applications) Qualified privilege (called 'general immunity') – trials and other proceedings
New South Wales ***Criminal Procedure Act 1986*** **(ss 295-306)**	The SACP covers 'protected confidences' (s 296) arising out of counselling both before and after the offence. The 'confider' can waive the privilege (s 300)	Absolute privilege - preliminary criminal proceeding (s 295(1) and s297) Qualified privilege – other criminal proceedings (ss 295(1) and 298)
Victoria ***Evidence (Miscellaneous Provisions) Act 1958*** **(ss 32AB-32G)**	The SACP covers ' confidential communications', which are 'protected evidence' under s 32C(1), whether they occur before or after the offence (s 32G)	Qualified privilege – attaches to all protected communications, with no distinction between preliminary and general proceedings (s 32) This means a defendant can always seek leave to have a document produced or evidence adduced
South Australia ***Evidence Act 1929*** **(ss 67D-67F)** The protection is called 'public interest immunity'	Communications made in a 'therapeutic context' have 'public interest immunity' from disclosure that cannot be waived by the counsellor or the victim (s 67E)	Absolute immunity – committal proceedings (s 67F(1)(a)) Qualified immunity - court can allow disclosure in other legal proceedings (s 67F(1)(b))
Tasmania ***Evidence Act 2001*** **(s 127B)**	A 'counselling communication' made before or after a sexual assault cannot be disclosed in any criminal proceeding without the victim's consent (s 127B(3))	Absolute privilege – applies to all proceedings The only way the evidence can be adduced is with the consent of the victim

Jurisdiction	General scope	Qualified or absolute privilege
Western Australia ***Evidence Act 1906*** **(ss 19A-19M)**	A 'protected communication' cannot be disclosed in legal proceedings without the consent of the court (s 19C). The disclosure must have a 'legitimate forensic purpose' (s 19E) and be in the 'public interest' (s 19G)	Qualified privilege – the court can give leave to allow the disclosure in any criminal proceeding
Northern Territory ***Evidence Act 1939*** **(Part 7)**	A 'confidential communication' is privileged and can only be produced as evidence with the leave of the court if it is satisfied that the evidence will be probative, and it is in the 'public interest' (ss 56D and 56E). Publication of the evidence can be suppressed (s 56G)	Absolute privilege – committal proceedings, and pre-hearing or pre-trial discovery etc. (s 56B(2)) Qualified privilege – confidential communications can be evidence in trials with the leave of the court (s 56B(2)(c))

Appendix J – Proposed new or amended offence provisions

Clause	Offence	Proposed maximum penalty
87	**Amendment of Victims of Crime Assistance Act 2009** **Insertion of new s140A information for research purposes** (1) The scheme manager may disclose confidential information to a person undertaking research if— (a) the scheme manager is satisfied the research is genuine; and (b) the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates. (2) The person must not contravene the undertaking. (3) If the person contravenes the undertaking and, by contravening it, also contravenes the *Child Protection Act 1999*, section 189, the person may be prosecuted under this section or the *Child Protection Act 1999*, section 189 at the election of the prosecution. (4) In this section— ***confidential information*** means information about a person.	200 penalty units
88	**Insertion of new ss141A Requirement to notify scheme manager about relevant payment** (1) This section applies to an applicant for assistance for an act of violence if, before the application is decided under section 89 or interim assistance is granted to the applicant under section 98, the applicant receives a relevant payment for the act of violence. (2) The applicant must give the scheme manager written or oral notice of the relevant payment within 28 days after receiving the payment, unless the applicant has a reasonable excuse.	100 penalty units
88	**Insertion of new ss 141B Requirement to comply with mandatory condition** An applicant to whom assistance or interim assistance is granted must not, without a reasonable excuse, contravene the condition imposed on the grant of the assistance under section 89(2) or 98(2).	100 penalty units

Clause	Offence	Proposed maximum penalty
98	**Amendment of Youth Justice Act 1992** **Insertion of new pt 8, div 7, s282G Confidentiality of detainee information** (1) This section applies to a person who receives detainee information. (2) The person must not disclose detainee information received by the person to another person other than under subsection (3). (3) The person may disclose detainee information— (a) for this Act; or (b) to discharge a function under another law or if the disclosure is otherwise authorised under another law; or (c) for a proceeding in a court, if the person is required to do so by order of the court or otherwise by law; or (d) if authorised by the child to whom the information relates; or (e) if reasonably necessary to obtain counselling, advice or other treatment.	100 penalty units or 2 years imprisonment