

# Review of the *Victims of Crime Assistance Act 2009*

Consultation Paper

October 2014

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## Minister's Foreword

For too long the criminal justice system has focused on the offender. The Queensland Government is committed to rebalancing the scales of justice with a focus on victims. It is important that victims are assisted to recover from the harm caused as a result of acts of violence against them.

The *Victims of Crime Assistance Act 2009* (the Act) plays a critical role in achieving this commitment by assisting victims of acts of violence financially and also by promoting their interests. The Act commenced in 2009 to provide victims with financial assistance and support to help them recover from an act of violence committed against them.



Thousands of applications for assistance are received by Victim Assist Queensland each year and over \$46M has been granted in assistance to victims since the commencement of the Act.

The Act has now been operating for almost five years. Under the Act a review must now be conducted to ensure it continues to achieve its objectives. The framework in the Act for providing assistance to victims is working well – in fact a number of other jurisdictions have looked to Queensland's model of assistance when updating their own victim assistance frameworks. However, it is important to ensure our scheme continues to work well for victims of crime.

The review builds on other reforms by the Government such as ensuring victims are allowed to read out their victim impact statements in court if they wish to and stronger criminal penalties for violent and sexual offences. In addition, the Government has invested nearly \$3M per year to fund organisations to provide services to victims of crime in the community.

The review presents Queenslanders with the opportunity to have their say about how we can provide victims of crime with the assistance they need to recover from an act of violence. The views of the community and stakeholders will be used by the review team to inform their recommendations. I will then consider these recommendations and table a report on the outcomes of the review in Parliament.

I look forward to your contributions on this very important topic.

**Jarrod Bleijie MP**

Attorney-General and Minister for Justice

# 1. Introduction

## 1.1 Background

The *Victims of Crime Assistance Act 2009* (the Act) commenced on 1 December 2009, replacing the repealed criminal injury compensation schemes under the *Criminal Offence Victims Act 1995* (COV Act) and the *Criminal Code Act 1899* (Criminal Code). This was in response to widespread criticism of the previous criminal injury compensation schemes being overly complex and costly, resulting in delays for victims in receiving compensation.

The current financial assistance scheme administered by Victim Assist Queensland (VAQ) was introduced to address these issues and to provide assistance directly to victims 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 purposes of the Act are to:

- declare the fundamental principles of justice to underlie the treatment of victims;
- implement the principles of justice and set out processes to make complaints about conduct inconsistent with the principles; and
- establish a financial assistance scheme for victims who have suffered from an act of violence.

The Act has four key components: the fundamental principles of justice (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 (chapter 4).

Section 144 of the Act requires a review of the appropriateness of the provisions to be completed within five years of its commencement.

## 1.2 Terms of reference

A review team within the Department of Justice and Attorney-General (DJAG) is undertaking the review of the Act. The terms of reference for the review have been developed based on the key components of the Act. Under its terms of reference, the review of the Act is to consider:

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; and
5. Identify 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.

### **1.3 Our approach to the review**

The review of the Act commenced in late 2013. A reference group of key government and non-government service providers to victims of crime has been established to provide advice to the review team on issues relevant to the review of the Act.

This consultation paper has been prepared based on issues identified by the review team, members of the reference group and VAQ. The purpose of this consultation paper is to seek the views of interested persons, agencies and organisations on the review of the Act. The feedback will be used by the review team to inform the development of recommendations to the Attorney-General so that he can table a report on the outcomes of the review in Parliament.

This consultation paper gives a brief summary of VAQ's achievements over the past five years and also a summary of the current financial assistance scheme. The paper includes 12 questions, including questions about:

- reducing the complexity of applying for financial assistance under the Act **(part 3)**;
- updating categories of financial assistance and streamlining the processes for deciding applications for financial assistance **(part 3)**;
- eligibility for victims of an act of violence related to the operation of a motor vehicle **(part 3)**;
- obtaining information to make decisions about financial assistance **(part 3)**;
- ceasing completely the repealed compensation scheme **(part 3)**;
- strengthening the fundamental principles of justice for victims **(part 4)**;
- who the fundamental principles of justice for victims should apply to **(part 4)**; and
- the role of the Victim Services Coordinator in implementing the fundamental principles of justice for victims and complaints **(part 5)**.

The full list of questions can be found at the end of the consultation paper.

One of the Queensland Government's priorities is to cut red tape. Cutting red tape is about making it easier for business and the community to understand and deal with Government. In the context of this review, cutting red tape is about considering how the current legislative framework for providing assistance and implementing the fundamental principles of justice can be streamlined, such as by allowing some issues currently dealt with in the legislation, to be addressed through more flexible policies and operational procedures. Different ways to reduce red tape are included in the consultation paper.

The issues in this paper and the discussion of possible actions or alternatives do not represent Queensland Government policy.

#### **1.4 How to have your say**

All comments or submissions must be made in writing. In providing comments or a submission please refer to the relevant question number and provide reasons and supporting details or data for your response. Please feel free to comment on other issues about the Act which are not raised in the consultation paper.

Please provide any comments or submissions by 5 December 2014:

- By email: [VOCAAReview@justice.qld.gov.au](mailto:VOCAAReview@justice.qld.gov.au)
- By post: VOCA Act Review  
Department of Justice and Attorney-General  
GPO Box 149  
Brisbane QLD 4001

#### **1.5 Privacy statement**

Any personal information in your comment or submission will be collected by the Department of Justice and Attorney-General (DJAG) for the purpose of undertaking the review under section 144 of the Act. DJAG may contact you for further consultation on the issues you raise, and your submission and/or comments may be provided to others with an interest in the review, for example, the Parliamentary Legal Affairs and Community Safety Committee.

Submissions provided to DJAG in relation to this consultation paper will be treated as public documents. This means that in all but exceptional cases, they may be published on the DJAG website, together with the name and suburb of each person making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. Please note however that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access to applications for submissions, including those marked confidential, will be determined in accordance with that Act.

## **2. Victim Assist Queensland: a snapshot**

On 1 December 2009, the Queensland Government established VAQ to improve access to services and support for victims of violent crime in Queensland and to administer the Act. Since 2009, VAQ has provided \$46M in financial assistance to victims of crime through the financial assistance scheme. Today, VAQ has 42 staff working across its four programs:

- a Financial Assistance Unit which assesses applications for financial assistance from victims of violent crime and pays claims for assistance;
- Victims LinkUp (the telephone and email gateway to VAQ services) which provides information and referrals to victims of violent crime as well as promoting services more broadly;
- a Victim Services Coordination Unit which administers the fundamental principles of justice for victims of crime, improves coordination of and access to services to better meet the needs of victims of violent crime in Queensland, and conducts research and training on the needs of victims of violent crime; and
- a DJAG Offender Debt Recovery Program which seeks to recover payments of financial assistance and criminal injury compensation from persons who committed the violence.

### **2.1 Funding non-government organisations to provide services to victims**

VAQ provides funding to non-government organisations to deliver services which help victims of violent crime in their recovery. Over \$2.2M is provided each year to these organisations and in March 2012 the Government announced additional funding of \$2M over four years from 2012 to 2016 to non-government organisations to further assist victims of crime in Queensland. Since 2009-10, one-off funding of up to \$100,000 per annum is provided to organisations to reduce service delivery gaps by increasing capacity to respond to the recovery needs of victims of crime in Queensland.

### **2.2 Collaboration**

VAQ recognises that linkages with Aboriginal and Torres Strait Islander people and remote and rural communities are critical given the overrepresentation of Aboriginal and Torres Strait Islander people as victims of crime and the need to ensure equitable access to assistance. VAQ officers in North and Far North Queensland respond to the cultural and geographical needs of Indigenous victims in these areas. These officers have been instrumental in promoting the financial assistance scheme to Aboriginal and Torres Strait Islander communities.

In 2012 VAQ introduced the Local Area Victim Coordination Program after extensive consultation with stakeholders. This responded to an identified need for victim services coordination and capacity building to ensure efficient use of resources and that victims were receiving the help they needed. Victim Services Officers (VSOs) work particularly with vulnerable victims of crime, for example, victims who have language barriers and victims with complex trauma needs, and their support agencies as they navigate the criminal justice system and apply for financial assistance. VSOs build capacity of local services through training and facilitating network opportunities, and have been successful in creating and maintaining court support stakeholder networks at the local level. There is a VSO located in the Ipswich, Cairns, Townsville and Rockhampton

courthouses. Since commencement of the program VSOs have provided assistance to 2617 victims.

### 2.3 Publications and research

Crime impacts on a range of people in the community and as such VAQ has developed a range of brochures, fact sheets and guides for the purpose of meeting individual needs and to provide victims with the information they need to navigate the criminal justice system. A *Guide to Making a Victim Impact Statement* and a *Guide for Victims of Crime* with information about services available, court proceedings and referral information, have been developed in addition to other materials tailored to meet the needs of Aboriginal and Torres Strait Islander people and young people.

VAQ also recognises the importance of research in informing its work and has completed two internal research projects: *Best Practice in Indigenous Healing models*, and *Youth Engagement*. These two projects have allowed VAQ to consider the unique challenges and needs of these two victim groups when delivering their services. VAQ is currently partnering with Griffith University to conduct research on *Sexual Victimization and Justice: Reconceptualising Theory, Research and Policy*. This project is in the early stages and will explore victims' experiences of accessing financial assistance and notions of justice.



### **3. Financial assistance scheme for victims**

#### **3.1 Who is a victim of crime and what assistance can they receive?**

Chapter 3 of the Act establishes a financial assistance scheme for victims of an act of violence. Under the Act, an act of violence is defined to be a crime or series of related crimes, whether committed by one or more people in Queensland, which directly resulted in the death of, or injury to, one or more people, irrespective of where the death or injury happened. No conviction for the act of violence is required, however, the act must have been reported to police unless there is a reasonable excuse.

There are four categories of victims under the Act:

- primary victim – a person who dies or is injured as a direct result of the act of violence;
- parent secondary victim – a person who is the parent of a child directly injured by the act of violence and is injured themselves as a result of becoming aware of the act;
- witness secondary victim – a person who is injured as a direct result of witnessing the act of violence; and
- related victim – a person who is a close family member, for example, a person's spouse, child, parent or sibling or a dependant of a primary victim who has died as a direct result of the act of violence.

The maximum amount payable to a primary victim is \$75,000 and the maximum amount payable to secondary and related victims is \$50,000. Secondary victims of a less serious offence are eligible for a maximum of \$10,000.

The Act details various categories of financial assistance for each group of victim and also sets out the maximum amount of assistance that can be claimed in each category and this is summarised in the appendix. Examples of the assistance include:

- primary, secondary and related victims are entitled to be paid the reasonable costs of counselling and medical treatment needed to treat the injury caused by the act of violence and to recover from witnessing violence or the loss of a relative who died as a result of an act of violence;
- primary victims can claim loss of earnings if the victim is unable to work because of the injury and a related victim can claim a dependency payment if a related victim would have received financial support from a primary victim if they had not died;
- primary, secondary and related victims can also claim exceptional circumstances expenses, for example, expenses incurred because the victim had to move because they were unable to stay at their residence or security upgrades to the property to ensure the safety of the victim; and
- primary victims can claim special assistance of up to \$10,000 as a lump sum payment intended to be a symbolic gesture from the State of the community's recognition of the injuries that a victim has suffered as a direct result of the act of violence. Similarly, related victims who have suffered distress caused by the primary victim's death are entitled to claim up to \$10,000 as a lump sum in recognition of the distress suffered by them.

Primary, secondary and related victims can claim interim assistance up to \$6,000 to assist them to recover from the act of violence in a timely manner. Interim assistance is granted to victims of crime when money is needed for emergency costs prior to the full grant being paid, such as for dental work. Any interim assistance paid is deducted from the total assessed amount. If the total amount is less than the interim amount, the victim will be asked to repay the difference.

The Act states that grants of assistance are not intended to reflect the level of compensation a victim may be entitled to if they sued the offender for the harm they have suffered or through other compensation schemes. Further, the Act provides that the purpose of the financial assistance scheme is to add to other services for victims of crime and where the victim can obtain assistance through another service, for example, insurance, they are to do so.

### **3.2 How are applications for financial assistance assessed?**

Under Chapter 3 of the Act, a victim must apply to VAQ for assistance within three years of the act of violence or the death of the victim or from the day a child victim turns 18. There is provision for the victim to apply for an extension of time to apply for assistance.

Government assessors are appointed under the Act to make decisions about granting assistance to victims. Once an application has been received by VAQ, an assessor is allocated to assess the claim for financial assistance. The assessor will determine the victim's eligibility for financial assistance and what amounts of assistance they are entitled to.

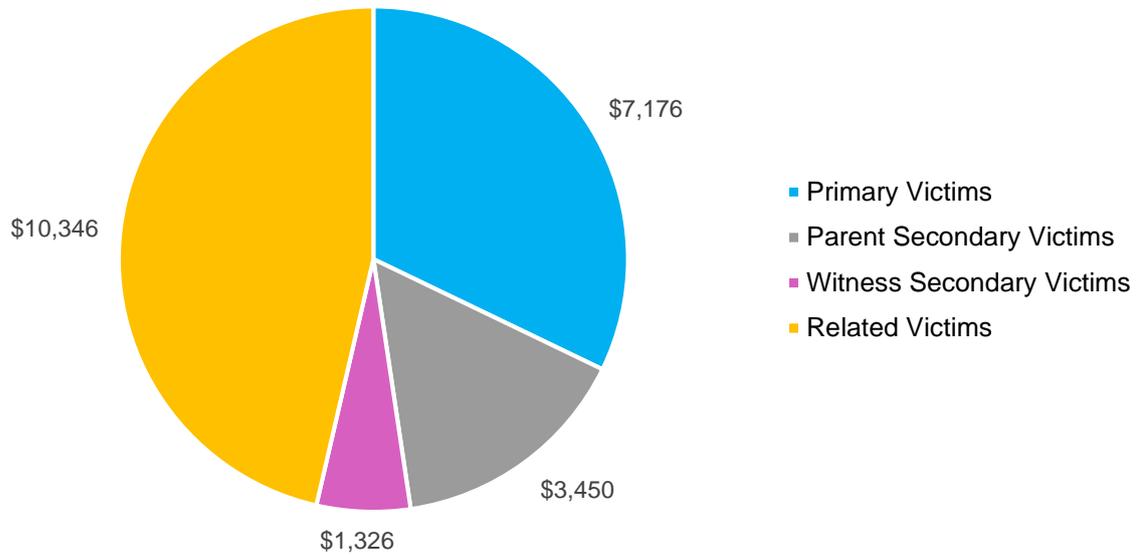
The evidence required to determine eligibility for assistance must support, on the balance of probabilities, that the victim has suffered an injury as a result of an act of violence. Applications for assistance must be in the approved form and include a medical certificate, other supporting documentation such as receipts, and consent for the government assessor to obtain other relevant information to assess the claim. The form must be verified by way of a statutory declaration. A statutory declaration is a written statement which is witnessed by a justice of the peace or other authorised person that allows a person to declare something to be true. It is an offence to make a false statement in a statutory declaration and the maximum penalty for the offence is seven years imprisonment under section 193 of the Criminal Code.

### **3.3 How many victims of crime are applying for assistance and how much assistance are they receiving?**

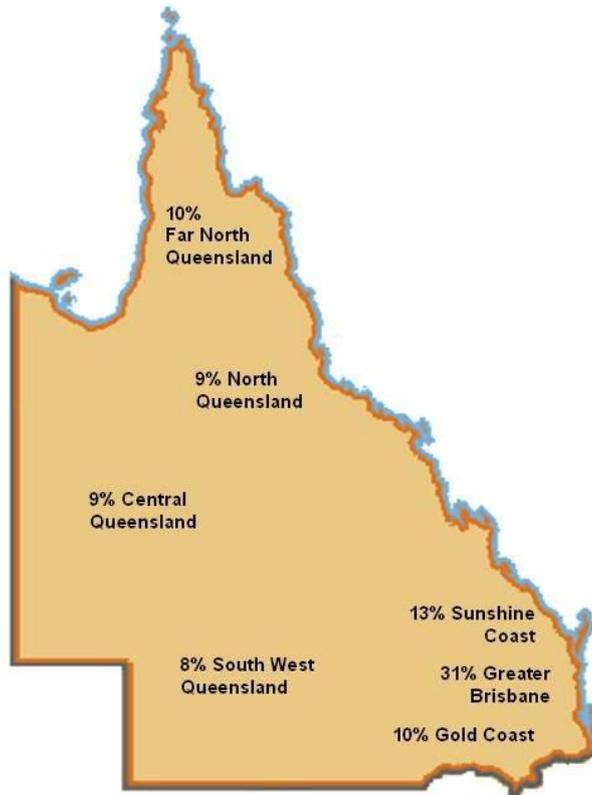
Since the Act commenced in 2009 to June 2014, 8381 applications for assistance were received by VAQ. The average grant of assistance over this time was approximately \$7,600. The average time for dealing with an application under the Act is 122 days and on average a victim will receive any immediate interim assistance they are eligible for within 27 days of VAQ receiving the application. The VAQ Client Satisfaction Survey indicates that victims seeking financial assistance in 2014 have reported a high level of satisfaction with the process.

In the 2013-14 financial year, 2008 applications for financial assistance were received by VAQ with a total of \$11,092,952 being granted. Male victims received \$5,490,962 of this total and females received \$5,602,989. Aboriginal and Torres Strait Islander people received 12 per cent of the total amount of assistance granted.

This chart highlights the average assistance amount provided per victim in each victim category in the 2013-14 financial year.



The below diagram illustrates the percentage of applications received by VAQ from victims by location. The remaining 10 per cent of people did not have a location recorded.



Not everyone who has been the victim of an act of violence submits an application under the financial assistance scheme. It is estimated that approximately five per cent of victims of a violent offence, for example, homicide, assaults, sexual assaults and robbery, reported to police apply for financial assistance under the Act. The reasons a victim may not make an application include:

- the victim may not see themselves as a victim or may not require help to recover;
- the victim may not be aware of the scheme;
- the victim may not wish to access financial assistance or support or may feel that the process is too overwhelming or burdensome;
- the offender may be known to the victim and the offender recovery scheme under the Act may cause concern for the victim (fear of retribution, particularly in domestic violence and sexual assault matters);
- the victim may have a criminal history which they do not wish to disclose; and
- the victim may have access to other support schemes, for example, Medicare or Worker's Compensation.

### **3.4 Comparing the financial assistance scheme to the repealed criminal injury compensation scheme**

The repealed criminal injury compensation scheme only applied to indictable offences dealt with in the District and Supreme Courts, which resulted in many victims having no recourse for compensation. The scheme required the victim to apply to the District or Supreme Court for compensation from the offender. In some circumstances the victim could seek an ex gratia payment from the State without going to Court. The Attorney-General was responsible for deciding the payments under this scheme.

Under the criminal injury compensation scheme, the average payment to a victim was \$18,200. Since 1999, 7707 victims received assistance under the COV Act. The average time for dealing with an application was 657 days – this does not include the time it took for the matter to be decided in court for court ordered compensation payouts.

Compared to the current scheme, although victims on average are receiving less money, more victims are receiving assistance (due to the expansion of the eligibility criteria to *all* acts of violence) and are receiving their assistance in a timelier manner given the more streamlined approach with Government assessors making determinations about granting assistance. The above statistics suggest that the new scheme under the Act is doing what it was intended to do – helping more victims by assisting them to recover from the act of violence as soon as possible after the act occurs.

### **3.5 Issues**

#### **Applying for financial assistance – reducing the complexity of applications**

The length and complexity of the application form and the various sources of evidence required to support the application for financial assistance means that completion of the application form is a difficult and onerous task for many victims. A victim is required to complete a 14 page application form and then collect various sources of evidence such as a medical certificate and invoices and then have the whole package witnessed by a justice of the peace or other relevant authority. This package can take some time

to put together for a victim who is already traumatised as a result of the act of violence they have suffered and who may also be involved in other processes requiring significant amounts of time and energy, such as police processes and obtaining medical treatment. A better balance is needed between making sure victims who are eligible for assistance can access the system easily while also ensuring that the State is able to verify the information provided to them prior to granting assistance.

One of the ways the process could be made easier for victims is to remove the need for victims to submit a statutory declaration with their application. This would be one less requirement that a victim would have to go through before claiming assistance.

A number of jurisdictions in Australia do not require a statutory declaration to accompany an application for financial assistance. Instead of a statutory declaration, an application form could include a section where the applicant declares the information provided is true and correct. These forms could then include a section advising the person that to provide false or misleading information is an offence and may adversely affect the outcome of their application.

Victims are also currently required to obtain a medical certificate from a health practitioner to prove the injury caused and the treatment required was a result of an act of violence, which can make the process of applying for financial assistance more onerous. This is sometimes difficult for victims who live in remote communities or those victims who may be traumatised through retelling their story about the violence committed against them.

Instead of requiring a medical certificate to be attached to the application, VAQ could obtain the proof of injury they need to determine the application through the police report for the incident or by obtaining the information directly from the relevant health practitioner. Receipts for specific expenses before assistance is given also can be used by VAQ to demonstrate that treatment is needed for the injury.

In New South Wales (NSW), the application form does not need to be accompanied by a medical report. Instead the report can be provided at a later date (but before assistance is granted). In fact, on the form the victim is asked whether they need help in obtaining the requisite evidence. This means that instead of the victim having to obtain the relevant documentation, the assessor is able to seek the information they need directly from the health practitioner which can save the victim a lot of time and extra stress.

Since the Act commenced, disputes about whether there has been an injury as a result of the act of violence are rare given the broad definition of injury in the Act. In most circumstances, enough information can be obtained from the police report given to VAQ and the receipts provided by the victim for expenses they wish to claim.

In NSW the test for receiving interim assistance is less stringent than for receiving other final payments such as loss of earnings and special assistance where the amounts paid out can be much higher. Victims only have to prove on the balance of probabilities that they are a victim of an act of violence without having a health practitioner specifically verifying the injury itself. It is possible that interim assistance applications in Queensland could be assessed based on this information only with minimal risk to Government in granting assistance to someone who has not suffered an injury, particularly given the capped maximum amount of interim assistance that can be granted is \$6,000. However, if assessors needed further information to verify the injury, they would still be able to ask the victim for it. Besides reducing the burden on victims, this approach may also increase the timeliness of interim applications which

means that victims receive the services they need quickly to recover from the act of violence.

**1. How could the application process be streamlined so it is less onerous for victims to apply while at the same time ensuring that Government has the appropriate checks and balances in place to make an assessment for a claim?**

#### **Pools of assistance for secondary and related victims – reducing red tape**

The maximum amount payable to all related victims and all parent secondary victims combined for one act of violence is a pool of \$100,000 and \$50,000 respectively. For example, if a child is injured as a result of an act of violence, both parents of the child are eligible for a combined total of \$50,000.

If a parent secondary victim or a related victim shares in a pool of financial assistance they are required to provide VAQ with the details of any other people who would be eligible for assistance. Before deciding an application, VAQ must attempt to identify other potential victims who have not applied and send them a written notice about the application, giving them three months to apply for assistance. This process can take extended periods of time as more victims are identified and notified of their right to apply. For example, during the first three month notice period other victims are identified and then another three month notice period is added (this process can continue with three months being added until all victims are identified). This waiting period can result in significant delays in processing applications. For example, the average waiting period for parent secondary and related victims is 153 days and 144 days respectively, however, the average waiting period for a primary victim whose application is being assessed on its own merit is 126 days.

In NSW there are no pools of assistance, rather maximum amounts are prescribed for each victim type and payment category. It is rare that entire pools of assistance are exhausted in Queensland.

Removing pools of assistance would reduce red tape and reduce the complexity of the application form by removing the need for victims to detail each related victim and the need for assessors to notify and wait for all applications to come in before assessing each individual's claim. This would mean that each victim would have their application assessed on its own merit rather than being considered as a part of the pool. This would result in victims receiving the help they need at the time they need it.

**2. Should pools of assistance be removed from the Act to streamline processes and ensure victims receive assistance at the earliest possible opportunity?**

#### **Special assistance – reducing red tape**

Under the Act, primary victims are eligible for a lump sum payment of special assistance of up to \$10,000. The purpose of special assistance is to recognise the impact of the harm caused to the victim and is in addition to financial assistance to pay for the costs of goods and services that the victim requires to recover from the physical and psychological effects of the act of violence.

The Act outlines a maximum and minimum amount of special assistance within four categories which are based on the seriousness of the act of violence. The

circumstances of the offence can also be taken into account by the assessor so that where the offence has particular characteristics, for example, where the victim has suffered a very serious injury or where the victim is a child, a person with impaired capacity or a person over the age of 60, the assessor can 'uplift' the amount to be paid to a more serious category of violence. This framework results in the assessor having to use their discretion to categorise the act of violence, determine whether an uplift is warranted in the circumstances, and then determine what specific amount should be paid within the range of the relevant category. This process leads to inconsistency in decisions as there is no specific formulation for making decisions about what amount a victim should be paid within the broad range.

To address this issue, increase certainty to victims and expedite the process to determine the amount of special assistance payable, the Act could be changed so that victims receive a set amount of special assistance within each category, for example, a victim of an attempted murder could receive a set amount of \$8,000 rather than an amount somewhere between \$5,000 and \$10,000 and a victim of a stalking offence would receive a set amount of \$650 rather than an amount between \$130 and \$650.

### **3. Should the Act be changed so victims receive a set amount of special assistance within each of the categories for this assistance?**

#### **Updating funeral assistance**

Funeral assistance of up to \$6,000 is payable to any person who incurs the cost of a funeral where the person dies as a result of an act of violence. This maximum amount has been in place since the Act commenced in 2009. In NSW, the maximum amount of funeral assistance payable is \$8,000.

There is a significant range of costs for funerals and it is recognised that people should choose the type of funeral they would like for their loved one. However, funeral assistance under the Act is not intended to cover the total cost of a funeral, rather, it is intended to be a contribution towards the costs. Advice from stakeholders suggests that the current maximum amount of \$6,000 does not provide sufficient assistance to people incurring the cost of a funeral.

### **4. Is the current maximum payment of \$6,000 for funeral assistance sufficient?**

#### **Eligibility for assistance**

A victim of an act of violence related to the operation of a motor vehicle is eligible for assistance under the Act. These victims may also be able to claim compensation under Queensland's Compulsory Third Party (CTP) insurance scheme which provides motor vehicle owners, drivers, passengers and other insured persons with an insurance policy for unlimited liability for personal injury caused by, through or in connection with the use of the motor vehicle in incidents to which the *Motor Accident Insurance Act 1994* (MAI Act) applies.

If the victim receives a CTP insurance payment after they have been granted financial assistance under the Act, this will result in an amendment being made to the amount of assistance that is payable under the Act and the victim being under a legal obligation to refund the difference to the State.

Once a victim is considered eligible for the CTP insurance scheme in Queensland, the same categories of assistance as the financial assistance scheme under the Act are generally covered, although there are some differences (for example, damage to clothing can be claimed under the financial assistance scheme, but not under the CTP insurance scheme).

Generally, Australian States and Territories do not provide financial assistance to victims of an act of violence related to the operation of a motor vehicle in their victim financial assistance schemes if the victim is eligible under a CTP insurance scheme.

The original rationale for extending the financial assistance scheme to victims of this type of violence was that it would enable victims to access the financial assistance they needed more quickly than they might by making a claim under the MAI Act. However, this approach can result in some challenges in administering the scheme. For example, it can result in the victim receiving money for the same injury twice and the victim then needing to repay money paid under the financial assistance scheme to the State. This approach is also not consistent with the intent of the victim financial assistance scheme as the Act specifically excludes victims from being eligible for assistance if they have or will receive payment for the act of violence from another source.

**5. Should victims who are eligible to claim assistance through CTP insurance be required to do this first rather than applying for assistance through the victims of crime financial assistance scheme?**

**Obtaining information to make decisions**

VAQ relies on the framework in the Act to obtain confidential information from other entities to assist in determining applications, any changes to assistance granted and amounts owed by victims and offenders to the State. For example, VAQ will seek information from Medicare and from insurance bodies to determine how much money a victim should be granted after payments from these entities have been taken into account.

However, there are some gaps in this framework which make it difficult for VAQ to make decisions in a streamlined and timely manner. The Act does not give VAQ the power to obtain information from State insurance and compensation bodies *after* a decision to grant financial assistance to a victim has been made. This means VAQ cannot identify when a person who has been granted assistance has been paid money, through for example, insurance or compensation, for the same act of violence and therefore there is a risk that person may be paid twice for the same act of violence.

**6. Should VAQ be given more powers to obtain confidential information about victims to assist them to determine applications for assistance?**

**Repealed *Criminal Offence Victims Act 1995 (COV Act)***

The previous compensation scheme under the COV Act was repealed in 2009. This scheme required the victim to apply to the Supreme or District Court for compensation from the offender after the offender was convicted of the offence. The Act provides a mechanism to ensure that where an offender was convicted of a relevant offence and a victim had already filed an application seeking compensation under the previous criminal compensation scheme before it was repealed, the victim did not lose any rights while at the same time ensuring that the old scheme ceased.

Nearly five years have passed since the repeal of the COV Act but there are still two groups of victims who have not fully transitioned over to the new financial assistance scheme under the Act and who continue to be processed under transitional provisions related to the repealed COV Act.

The first group is a small number of victims who filed an application seeking compensation with the Supreme or District Court prior to the Act commencing in 2009 and have taken no court action since 2012.

The second group of victims are those seeking some sort of ex gratia payment under the repealed COV Act from the State.

Having these two groups of victims under the repealed COV Act means VAQ is still required to have two systems in place to deal with the different types of applications under the two different schemes. Running two systems is problematic because it is resource intensive and provides for an uncertain environment as these applications could be enlivened at any time.

To address this issue, a deadline could be placed in the Act whereby a victim's right to continue to proceed with the criminal compensation matter in court is converted to a right to apply for financial assistance under the Act. These victims would have three years from the deadline being put in place to submit an application for financial assistance under the Act to VAQ (this is consistent with the timeframe for all other victims applying for assistance). This would mean that these victims do not lose a right to obtain assistance.

Also, processes to receive an ex gratia payment could be changed where instead of assistance being approved by the Attorney-General, it could be assessed by the VAQ Scheme Manager as are other claims under the Act. This would mean a more streamlined approach to processing these applications, resulting in quicker processing times for victims without any change to the monetary outcome.

Implementing these reforms would increase certainty, cease the operation of two systems, provide more timely assistance to victims and fully cease the operation of the COV Act which was the intention when the new Act commenced.

**7. Should there be an appropriate transitional period for people to finalise their current criminal compensation applications so that only one system of financial assistance for victims of crime is in place in Queensland?**

## 4. The fundamental principles of justice for victims

### 4.1 What are the fundamental principles of justice for victims?

The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (the UN Declaration) outlines a set of principles that recognises that victims of crime are unjustly subjected to loss, damage or injury as a result of the crime and may also suffer hardship when assisting with the prosecution of offenders, for example, when giving evidence and acting as a witness for the prosecution.

Chapter 2 of the Act declares a set of principles to be applied by government agencies when they are providing services to victims. These principles are consistent with the UN Declaration. The purpose of declaring the principles is to advance the interests of victims and inform victims of the way they should expect to be treated by Government agencies given the harm they have suffered as a result of the crime and their integral role in the criminal justice system in assisting with the prosecution of offenders.

The fundamental principles of justice state that a government agency in dealing with a victim of crime is to:

- treat the victim with courtesy, compassion, respect and dignity, taking into account their needs;
- respect the privacy of the victim;
- provide timely information about services to the victim;
- provide information about the investigation of the offence to the victim;
- provide information about the prosecution of an offender to the victim;
- provide advice in relation to the victim's role as a witness and the trial process in general;
- minimise contact between the victim and accused;
- enable the victim to provide a victim impact statement during sentencing; and
- provide information about a convicted offender to the victim.

The Queensland Police Service (QPS), Office of the Director of Public Prosecutions (ODPP) and Queensland Corrective Services (QCS) have specific responsibilities under the Act to provide certain information if a victim asks for it, including:

- details of police investigations into the offence committed against the victim including progress of the investigation, charges laid or discontinued and the name of the person charged, the date and place of any hearings in relation to the matter, and outcomes of proceedings;
- details of the prosecution of the offender from the prosecuting agency (ODPP or QPS), including details about court processes, decisions to change a charge, discontinue a charge or accept a plea, and outcomes of proceedings, including sentences imposed and appeals; and

- details about a convicted offenders' imprisonment from QCS, including the start date, end date and length of imprisonment, and any escapes from custody.

In addition, the Act requires QPS or ODPP to allow victims the opportunity to make a statement detailing the harm caused to them as a result of the offence. This statement may be read out aloud in Court or produced to the Court at the time of sentencing the offender.

## 4.2 Issues

### Strengthening the fundamental principles of justice

All jurisdictions in Australia have a victim's charter or a set of principles for the treatment of victims. The principles in the Act are predominantly consistent with other jurisdictions in Australia. However, some differences include:

- in South Australia (SA), NSW and the Northern Territory victims of serious offences are entitled to be consulted on certain prosecution decisions;
- in the majority of jurisdictions victims have a right to have property held by the state for investigative or evidentiary purposes returned promptly and any inconvenience minimised in the majority of jurisdictions; and
- in Western Australia (WA) victims are to be informed of the proposed residential address of the offender on release from custody in some circumstances.

In addition, the requirement for the victim to ask for information about police investigations, prosecution details and an offender's imprisonment is in direct contrast to some jurisdictions where the police and prosecution authorities have the responsibility of providing the information to a victim *without* the victim having to ask for it first.

One of the challenges in Queensland is that victims are often not aware of the information available or their right to request the information, and therefore may not feel as informed or as satisfied with the process as they may otherwise have been.

The Act could be amended to require the QPS and ODPP to advise victims of their rights as outlined above and to require the QPS and ODPP to give the victim a list of the type of information available to them. However, some other jurisdictions require the police and prosecutors to always give the information to the victim. This proposal is a middle ground approach where QPS and ODPP would not have to provide the information to all victims and recognises that not all victims will want to be given the information.

Further, to strengthen the principles of justice, additional principles could be included in the Act similar to those in other jurisdictions, for example, the right for a victim to have their property returned to them as soon as possible with the least amount of inconvenience caused.

**8. Should the fundamental principles of justice be strengthened to ensure victims' interests are promoted and their rights exercised?**

**9. Are there any other principles of justice that should be included in the Act to improve the treatment of victims?**

### **Who should the fundamental principles of justice apply to?**

Currently, the fundamental principles of justice only apply to government departments and employees, including the QPS and the ODPP. However, there are also a number of non-government services funded by the State to provide services to help victims recover from acts of violence. The Act does not require these non-government agencies to apply the principles of justice when working with victims. This may result in inconsistencies in the treatment of victims. It may be appropriate to apply the principles to these State funded non-government agencies and given these services' primary goal is to help victims of crime (they are funded by the State for this specific purpose), and it is likely that they already implement the basic standards of treatment outlined in the principles, it is unlikely to be an onerous requirement.

In both NSW and Victoria, the fundamental principles apply to both government and non-government publicly funded services. This approach ensures consistency and a more coordinated approach across agencies providing services to victims.

**10. Should non-government organisations, which are funded to provide victim support services, be required to apply the fundamental principles of justice?**

## **5. Victim Services Coordinator and resolving complaints related to the fundamental principles of justice**

### **5.1 The role of the Victim Services Coordinator**

Under Chapter 4 of the Act, a Victim Services Coordinator must be appointed by the Chief Executive of DJAG. The Victim Services Coordinator is a VAQ employee who reports to the Director of VAQ.

The legislative functions of the Victim Services Co-ordinator include:

- conducting or facilitating the undertaking of research about the needs of victims;
- developing programs to promote awareness of the needs of victims and the fundamental principles of justice;
- distributing information to stakeholders and the community about the Act and the functions of the Victim Services Coordinator;
- assisting victims to obtain the information or assistance they need;
- helping victim service providers to coordinate services provided so that they are efficient and effective;
- helping government agencies to develop and comply with processes for implementing the fundamental principles of justice and processes for resolving complaints about breaches of the principles; and
- facilitating the resolution of complaints.

Under the Act each government agency must have processes in place to help the agency and its staff to implement the fundamental principles of justice and to deal with

any complaints about the conduct of the agency that is inconsistent with the principles. A complaint may be made to the government entity or the Victim Services Coordinator. The responsibility for complaints processes and dealing with complaints sits with the relevant entity.

## **5.2 Issues**

### **Greater information powers for the Victim Services Coordinator?**

The Victim Services Coordinator can only help resolve the complaint if authorised to do so by the relevant entity's procedure. In summary, the Victim Services Coordinator's role is to "help" government agencies fulfil their responsibilities to implement the principles and develop processes for complaints, but the Coordinator's role does not extend to overseeing the resolution of complaints.

Since the commencement of the Act in 2009, there have been 67 complaints made directly to the Victim Services Coordinator in relation to alleged breaches of the fundamental principles of justice. Details of complaints that have been made directly to government agencies are not passed on to the Victim Services Coordinator unless the Victim Services Coordinator has been involved in assisting the person to make a complaint.

The review team is seeking views on whether it is necessary to strengthen the role of the Victim Services Coordinator so it is able to oversee the implementation of the fundamental justice principles and the complaints process. One way to do this could be to strengthen the Victim Services Coordinator's functions and powers to allow the co-ordinator to intervene in complaints against agencies to assist victims. Alternatively, the Victim Services Coordinator could be given the power to investigate victim complaints against the agency.

Another way could be to introduce a Commissioner for Victims of Crime in Queensland. Jurisdictions in Australia have different models for their victim assistance frameworks. Queensland is the only jurisdiction that has a Victim Services Coordinator. NSW, SA and the Australian Capital Territory (ACT) have an independent Commissioner for Victims of Crime. WA also has a Commissioner but this position sits within the WA Department of the Attorney-General. Generally, the Commissioners for Victims of Crime advise government on issues affecting victims, including making recommendations and advocate on behalf of victims. In NSW and the ACT they also have powers to investigate complaints made to them about the treatment of victims and breaches of the principles. The NSW Commissioner administers the financial assistance scheme in NSW whereas in other jurisdictions this is done by a government service. The Commissioner in SA has a power to appear in Court proceedings to assist the victim.

One of the potential benefits of establishing an independent Commissioner in Queensland is that they would be independent of government and may be better able to advocate for the rights and interests of victims. Based on the models operating in other jurisdictions, a Commissioner could also have powers of investigation. This would mean that where victims have not been treated fairly as outlined in the Act, an independent body would be able to investigate the matter. A Commissioner for Victims of Crime would also be able to independently scrutinise actions taken by agencies such as the QPS and the ODPP, as the majority of actions by these agencies do not currently come within the jurisdiction of an independent body such as the Ombudsman. A Commissioner could also be responsible for managing the victim financial assistance scheme and recovering money from convicted offenders.

All jurisdictions in Australia encourage complaints to be dealt with internally by the relevant agency. However, Commissioners for Victims of Crime have more powers to investigate and facilitate the resolution of a complaint themselves. In addition, in many jurisdictions, a complaint can be referred to the Ombudsman and in Victoria there is a specific “Victims Charter Enquiries and Complaints” line that victims may contact.

Not having knowledge of the number and nature of complaints made to government agencies makes it difficult for the Victim Services Coordinator to carry out its function to help entities to develop processes and comply with the principles. This is because the Victim Services Coordinator cannot identify patterns or trends about complaints and weaknesses in the implementation of the principles.

In order to allow the Victim Services Coordinator to target areas for improving implementation of the fundamental principles of justice, it could be given more powers to obtain complaints data from entities or require government agencies to report specifically on complaints about the principles. In addition, the Victim Services Coordinator could be given greater powers to be more involved in the complaints process, including helping victims resolve complaints where the victim has been or is dissatisfied with the response from the agency.

**11. Should the Victim Services Coordinator have an oversight role in relation to the implementation of justice principles to better support the rights and interests of victims?**

**12. Should the Victim Services Coordinator be given more powers to access information about complaints and be involved in complaints processes where necessary for the timely resolution of a complaint?**

## **6. Other issues?**

There may be other issues you have identified or other ways that the law may be changed to provide victims with the help they need to recover from acts of violence and to ensure that the State can recover debts efficiently from offenders. Please let us know about any of these matters.

## Questions

1.	How could the application process be streamlined so it is less onerous for victims to apply while at the same time ensuring that Government has the appropriate checks and balances in place to make an assessment for a claim?
2.	Should pools of assistance be removed from the Act to streamline processes and ensure victims receive assistance at the earliest possible opportunity?
3.	Should the Act be changed so victims receive a set amount of special assistance within each of the categories for this assistance?
4.	Is the current maximum payment of \$6,000 for funeral assistance sufficient?
5.	Should victims who are eligible to claim assistance through CTP insurance be required to do this first rather than applying for assistance through the victims of crime financial assistance scheme?
6.	Should VAQ be given more powers to obtain confidential information about victims to assist them to determine applications for assistance?
7.	Should there be an appropriate transitional period for people to finalise their current criminal compensation applications so that only one system of financial assistance for victims of crime is in place in Queensland?
8.	Should the fundamental principles of justice be strengthened to ensure victims' interests are promoted and their rights exercised?
9.	Are there any other principles of justice that should be included in the Act to improve the treatment of victims?
10.	Should non-government organisations, which are funded to provide victim support services, be required to apply the fundamental principles of justice?
11.	Should the Victim Services Coordinator have an oversight role in relation to the implementation of justice principles to better support the rights and interests of victims?
12.	Should the Victim Services Coordinator be given more powers to access information about complaints and be involved in complaints processes where necessary for the timely resolution of a complaint?

## APPENDIX – Table of financial assistance

	Primary	Parent secondary	Witness secondary (less serious offence – an act of violence not specified as a more serious offence)	Witness secondary (more serious offence – an act of violence that involves murder, manslaughter or dangerous driving causing death)	Related
<b>Maximum amount of assistance available</b>	Up to the value of \$75,000	Total pool up to the value of \$50,000 to cover all parents/guardians of the child primary victim	Up to the value of \$10,000	Up to the value of \$50,000	Up to the value of \$50,000 per victim or total pool of \$100,000 if there is more than one related victim
<b>Type of assistance available</b>					
<b>Medical and counselling expenses</b>	Within maximum	Within maximum	Within maximum	Within maximum	Within maximum
<b>Reasonable incidental travel expenses</b>	Within maximum	Within maximum and pool limits	Within maximum	Within maximum	Within maximum and pool limits
<b>Loss of earnings</b>	Up to \$20,000 within maximum	Up to \$20,000 per pool in exceptional circumstances within maximum	Not available	Up to \$20,000 per pool in exceptional circumstances within maximum	Not available
<b>Report expenses related to the application</b>	Within maximum	Within maximum	Within maximum	Within maximum	Within maximum
<b>Damage or loss to clothing</b>	Within maximum	Not available	Not available	Not available	Not available
<b>Other expenses if exceptional circumstances apply</b>	Within maximum	Within maximum and pool limits	Not available	Within maximum	Within maximum and pool limits
<b>Special assistance payment</b>	\$130 - \$10,000 within maximum	Not available	Not available	Not available	Not available
<b>Distress payment</b>	Not available	Not available	Not available	Not available	Up to \$10,000 within maximum
<b>But for death of primary victim, amount would have received</b>	Not available	Not available	Not available	Not available	Up to \$20,000 per pool within max
<b>Legal costs related to the application</b>	Up to \$500 in addition to maximum	Up to \$500 in addition to maximum	Not available	Up to \$500 in addition to maximum	Up to \$500 in addition to maximum
<b>Funeral expenses</b>	Any person who incurs funeral expenses may apply for a maximum of \$6,000				