

**2016**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**VICTIMS OF CRIME (FINANCIAL ASSISTANCE) BILL 2016**

**EXPLANATORY STATEMENT**

Presented by  
Simon Corbell MLA  
Attorney General



## **Introduction**

This explanatory statement relates to the Victims of Crime (Financial Assistance) Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## **Purpose of the Bill**

The Victims of Crime (Financial Assistance) Bill 2016 repeals and replaces the *Victims of Crime (Financial Assistance) Act 1983* (the repealed Act).

Financial assistance is provided to victims of crime as part of the ACT community's recognition that crime takes an enormous physical, financial and emotional toll on its victims. The Bill is consistent with the United Nations declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 (UN Victims Declaration). The UN Victims Declaration provides that states should endeavour to provide financial compensation to victims who have suffered significant bodily injury or impairment of physical or mental health as a result of serious crimes where financial compensation is not fully available from the offender or other sources.

The Bill establishes an administrative scheme for providing financial assistance to victims who have been injured as a result of an act of violence. Applications under the new scheme are assessed by the Victims of Crime Commissioner (the commissioner), rather than submitted for a decision of a court, as is the case under the repealed Act.

The new scheme recognises a wide range of victims, provides certainty and transparency of decision-making, consistency and proportionality in the assistance available for various types of offences and timely responses to the individual circumstances of victims of crime.

The structure of the new scheme will enhance access to the scheme for victims of crime through: improved case management procedures; simplified application processes; reduced reliance on legal representation and increased transparency of decision-making.

The Bill provides three main categories of financial assistance for victims of crime: immediate need payments, economic loss payments and recognition payments. An immediate need payment will be made quickly and when a victim needs it most, to promote recovery, prevent further harm and minimise further threats to safety. Economic loss payments provides for payment of expenses or loss of earnings incurred as a direct result of the injury.

Recognition payments are lump sum payments to acknowledge the trauma suffered by a victim of crime as a result of an act of violence. The levels of recognition payments are based on the objective level of harm that is likely to be caused to the victim. Recognition payment amounts are increased where one or more circumstance of aggravation exists.

A number of provisions in the repealed Act have been substantively retained, for example those relating to the victims financial assistance levy and the limitation on lawyers legal costs.

## Human Rights Considerations - Overview

The Victims of Crime (Financial Assistance) Bill 2016 engages a number of the rights in the *Human Rights Act 2004* (the HRA).

The Bill engages, and may be seen as placing limitations on, the following HRA rights:

- recognition and equality before the law, section 8;
- privacy and reputation, section 12; and
- fair trial, section 21.

The Bill also engages, and supports, the following HRA rights:

- protection of family and children, section 11; and
- right to liberty and security of person, section 18.

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The following provisions of the Bill seen as potentially engaging human rights are considered having regard to the provisions of section 28 of the HRA:

- the exception to the requirement to report to police: clause 31;
- provisions relating to information sharing: clauses 38, 40, 41 and 79; and
- provisions relating to recovery from offenders: clause 71 and 74.

### Special reporting class victims

Clause 31 sets out the reporting requirements for applicants for financial assistance. It provides that applicants who are *special reporting class victims* are not required to report the act of violence to police to be eligible for an immediate need payment or an economic loss payment.

Clause 31 is to the effect that an applicant is a *special reporting class victim* if the applicant is a primary victim:

- i. of a sexual offence;
- ii. of an offence committed by a person who was in a position of power, influence or trust in relation to the primary victim when the violent crime was committed;
- iii. who was a child when the act of violence occurred;
- iv. who has an impaired capacity (whether or not it existed when the act was committed);  
or
- v. who did not report the relevant act of violence to the police because of threats made, or intimidation by another person.

Applicants for an immediate need payment, who are special reporting class victims, have the option of reporting the act to at least two of the following agencies, instead of to police:

- i. an appropriately qualified non-government agency;
- ii. a government agency; or
- iii. a doctor or a psychologist or a counsellor or a social worker.

Applicants for an economic loss payment who are *special reporting class victims* have the option of reporting to a government agency and a doctor or a psychologist or a counsellor or a social worker, as an alternative to reporting to police.

This is a significant departure from the repealed Act, which requires all victims to have reported the act of violence to police.

#### *Nature of the right affected*

Section 8 of the HRA provides that ‘everyone is equal before the law and is entitled to the equal protection of the law without discrimination.’ Clause 31 may be seen to engage this aspect of section 8 by providing different reporting requirements for different categories of victims. All victims other than *special reporting class victims* are required to report to police to be eligible for financial assistance.

#### *The importance of the purpose of the limitation*

The victims of crime financial assistance scheme is a scheme of last resort and is not intended to operate in isolation of wider criminal justice system responses to crime. It is vital that the scheme encourage the reporting of crime to police to allow offences to be dealt with by the criminal justice system. Police investigations also provide valuable information that will assist the commissioner to make decisions about applications for financial assistance. If victims do not report to police, there may be insufficient information for the commissioner to determine the application. Not all victims of crime face the same level of barriers to reporting a crime to police that are experienced by vulnerable special reporting class victims.

#### *The nature and extent of the limitation*

Any limitation, in terms of distinctions between victims resulting from clause 31, only applies to immediate need payments and economic loss payments. No limitation applies in relation to recognition payments, as all victims are required to provide evidence that the applicant has reported the act of violence to police in order to be eligible for these types of payments.

#### *The relationship between the limitation and its purpose*

The requirement for victims of crime, other than *special reporting class victims*, to provide a police report to be eligible for financial assistance ensures that police will be informed of the act of violence and will allow them to conduct further investigations. This can assist the commissioner with additional sources of information on which to base a decision about financial assistance. Less restrictive application criteria for certain vulnerable victims who are more likely to face barriers when reporting crime to police ensures they are not precluded from accessing assistance. The relationship between the policy intent and the limitation is clear and necessary to ensure these vulnerable victims can access assistance while also maintaining the requirement to report to police as the standard requirement.

#### *Any less restrictive means reasonably available to achieve the purpose*

It is considered that there are no less restrictive means available to achieve this purpose.

To the extent that there is any limitation on rights this is reasonable and proportionate, noting the public interest of facilitating access to the scheme for vulnerable victims of crime.

#### **Commissioner may ask for information when deciding application for financial assistance**

Division 3.5 provides powers for the commissioner to obtain information when deciding applications for financial assistance.

Clause 38 provides that when deciding an application for financial assistance the commissioner may make any inquiries that the commissioner believes on reasonable grounds are relevant to the application and by written notice ask the applicant to give an authorisation allowing the commissioner to obtain further information about the application from another person.

Clause 40 provides the commissioner with the power to ask for information and documents from the chief police officer or an investigating police officer. Clause 40(1) provides a list of things the commissioner may request information and documents about. Clause 40(3) prevents the requested officer from providing the information or documents if doing so would prejudice an investigation, lead to the identification of an informer or affect the safety of any person. Clause 40(5) provides that if the requested officer provides a copy of a person's statement, the officer must remove all particulars identifying the maker of the statement unless they are relevant to deciding the application.

Clause 41 allows the commissioner to ask for information from a court registrar about a proceeding started for an act of violence that is the subject of the application.

#### *Nature of the right affected*

Section 12 of the HRA provides that 'everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.' In international law this has been interpreted as limiting public authorities to only obtaining information relating to an individual's private life the knowledge of which is essential in the interests of society.<sup>1</sup> Division 3.5 may be seen to engage section 12 of the HRA by providing the commissioner with power to access private information.

#### *The importance of the purpose of the limitation*

The purpose of this limitation is to ensure that the commissioner has access to sufficient information to make a decision about an application. It is vital that the commissioner has the ability to verify and seek further evidence to support an application before making a decision about financial assistance.

#### *The relationship between the limitation and its purpose*

The information sharing clauses are necessary for the commissioner to determine an applicant's claim for assistance. The scheme cannot operate without information regarding the facts of the act of violence, injury incurred, investigation, and court process. The scheme would be significantly diminished if the commissioner was not able to obtain enough information to assist victims of crime, or was placed in the position of potentially making awards to co-offenders and co-conspirators.

#### *The nature and extent of the limitation*

The clauses are limited in their application. The commissioner can only request information that specifically relates to the application for financial assistance being considered, when deciding an application for financial assistance in relation to an act of violence. Upon receipt of the information, the commissioner is bound to treat it in accordance with the *Information Privacy Act 2014* and the *Health Records (Privacy and Access) Act 1997*.

---

<sup>1</sup> General Comment No. 16: *The right to respect of privacy, family, home and correspondence, and protection of honour and reputation* (Art. 17) : . 08/04/1988.

International human rights law requires that limitations on privacy must be reasonable and proportionate; interferences must be lawful and not arbitrary.<sup>2</sup> It prescribes that legislation must specify in detail the precise circumstances in which such interferences may be permitted, and that a decision to make use of such authorised interference must be made only by the authority designated under the law, and on a case-by-case basis.<sup>3</sup>

These safeguards are clearly met by the clauses in question. The information and documents that can be requested from police about an act of violence must be specific in nature and limited to the issues identified in the clause. The clause also provides that the information must not be given if the officer believes on reasonable grounds that giving the information or documents may prejudice an investigation, lead to the identification of an informer or affect the safety of any person. The registrar is not required to provide information if satisfied on reasonable grounds that the giving of the information is contrary to a law in force in the Territory, or otherwise inappropriate.

*Any less restrictive means reasonably available to achieve the purpose*

It is considered that there are no less restrictive means reasonably available to ensure that the commissioner has access to sufficient information to make a decision about an application.

### **Commissioner may ask registrar for information relevant to recovery action**

Clause 75 provides that the commissioner may ask the registrar for information that is relevant to deciding whether to take, or continue recovery action under part 6 of the Bill.

Clause 75 provides a list of things that the commissioner may ask the registrar for information about. The registrar is required to provide this information unless satisfied on reasonable grounds that the giving of the information is contrary to a law in force in the Territory or otherwise inappropriate.

This provision is expected to be used to obtain an address for the notice to be issued to an offender, and to determine whether the offender was found guilty of an offence that involves an act of violence that is the subject of an application for financial assistance.

*Nature of the right affected*

Obtaining information about an offender may be seen to activate section 12(a) of the HRA, which states that ‘everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.’ As discussed above, this limits public authorities to only obtaining information relating to an individual's private life, the knowledge of which is essential in the interests of society.<sup>4</sup>

*The importance of the purpose of the limitation*

The purpose of recovery action is to require offenders to contribute financially to the scheme as a result of the harm done to their victims. Without access to information such as the offender's current address, the commissioner would not be able to perform this function.

The limitation is also necessary to allow the commissioner to obtain information to determine the appropriateness of taking recovery action. Without sufficient information, recovery action could be

---

<sup>2</sup> <http://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Privacyandreputation.aspx>

<sup>3</sup> General Comment No. 16: *The right to respect of privacy, family, home and correspondence, and protection of honour and reputation* (Art. 17) : . 08/04/1988.

<sup>4</sup> General Comment No. 16: *The right to respect of privacy, family, home and correspondence, and protection of honour and reputation* (Art. 17) : . 08/04/1988.

taken in situations where the offence the offender is convicted of does not relate to the act of violence for which financial assistance was granted.

#### *The nature and extent of the limitation*

The limitation is not extensive as information may only be sought for a limited purpose, and must specifically relate to the act of violence that is the subject of the application. This ensures that only information relevant to the commissioner's recovery action is provided.

#### *The relationship between the limitation and its purpose*

It is appropriate to ensure that the commissioner can access the information required to undertake recovery action to require offenders to contribute financially to the scheme.

#### *Any less restrictive means reasonably available to achieve the purpose*

It is considered that there are no less restrictive means reasonably available to achieve this purpose.

### **Recovery intention notice**

Clause 70 provides that an offender is liable to repay a recoverable amount if they receive a recovery notice and do not, on or before the recovery date, pay the recoverable amount or apply to the ACT Civil and Administrative Tribunal for a review.

Recovery can only be sought if an offender has been convicted or found guilty of a recompensed offence and an assisted person has been given financial assistance or a funeral expense payment in relation to the recompensed offence. The policy intent is that the offender should contribute to the financial cost of the scheme.

Recovery from offenders is a two-step process, which requires the commissioner to issue a recovery intention notice (clause 74) providing the offender with an opportunity to object to the recovery action before issuing a recovery notice (clause 77).

Under clause 74(3), the only grounds an offender may rely on to object to recovery action are that the offender is not the person who is liable for the recovery amount or that the commissioner has not taken into account a payment that the offender has made or is required to make in relation to the recompensed offence in accordance with a court order.

Clause 77 provides that the commissioner must take into account any objections under clause 74(4) before confirming the commissioner's intention to recover from the offender and giving the offender a written recovery notice.

Clause 76(1) explicitly states that, as far as practicable, the commissioner must not give the offender confidential information about a person who receives financial assistance under the Bill in a recovery proceeding. This means that the offender will be informed of the amount of financial support provided to a person in relation to the act of violence that they were convicted for, but not the nature or composition of the assistance the applicant received.

Clause 77(3) provides that an offender may apply to the ACT Civil and Administrative Tribunal for external review of the recovery notice.



### *Nature of the right affected*

These clauses may be seen to engage the right to fair trial (s 21) of the HRA, which provides that “everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.”

Section 21 of the HRA gives effect to article 14 of the International Covenant on Civil and Political Rights and promotes the procedural fairness and natural justice in proceedings against a person. The right to fair trial is a fundamental, but not absolute, human right and can be subject to limitations.

The right is engaged by restricting the grounds for objection available to an offender in relation to a recovery order being issued by the commissioner.

### *The importance of the purpose of the limitation*

The financial assistance scheme is intended to benefit victims by giving financial assistance to aid recovery, improve safety, help prevent future acts of violence and recognise the harmful effects of acts of violence. It is not appropriate to provide an offender with details of the assistance provided to the victim. Providing details of where the victim accessed therapeutic support or locksmith assistance creates a foreseeable safety risk to the victim. A victim’s right to privacy would be interfered with if an offender could access counselling notes or details about other medical treatment received. Limiting the grounds for objection is essential in order to ensure the safety and the privacy of victims applying under the scheme.

### *The nature and extent of the limitation*

An offender issued with a recovery notice has an internal right of review to the commissioner and an external right of review to the ACT Civil and Administrative Tribunal. In addition, the *Administrative Decisions (Judicial Review) Act 1989* will apply to decisions made by the commissioner. This enables the review of certain administrative decisions on grounds including that a decision was not procedurally fair. There are also common law procedural fairness protections which may apply.<sup>5</sup>

Further, the imposition of a recovery notice and any resulting review of the notice are civil matters. The international standard relating to the right to fair trial for civil matters is significantly lower than the threshold for criminal matters. The Human Rights Committee General Comment states ‘anyone convicted of a crime shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law... (this) does not apply to procedures determining rights and obligations in a suit at law<sup>6</sup> or any other procedure not being part of a criminal appeal process.’<sup>7</sup>

The European Court of Human Rights has also considered the scope of the right in relation to civil matters. The Court acknowledged that the requirements inherent in the concept of a “fair hearing” are not the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge; ‘the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases.’<sup>8</sup>

Based on this analysis, the marginal limitation is reasonable and necessary to protect the privacy and safety of the victim in matters relating to recovery orders.

---

<sup>5</sup> Attorney-General website, Fair trial and fair hearing rights, <http://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx>

<sup>6</sup> Communication No. 450/1991, I.P. v. Finland, para. 6.2.

<sup>7</sup> HUMAN RIGHTS COMMITTEE Ninetieth session Geneva, 9 to 27 July 2007 General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, Communication No. 352/1989, Douglas, Gentles, Kerr v. Jamaica, para. 11.2.

<sup>8</sup> European Court of Human Rights, Guide to Article 6, Para 173, [http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf), *Dombo Beheer B.V. v. the Netherlands*, s 32; *Levages Prestations Services v. France*, s46.

### *The relationship between the limitation and its purpose*

It is appropriate for the commissioner to determine the amount of assistance a victim requires, having regard to the individual circumstances of the victim and the maximum amounts prescribed. These decisions are subject to external review, on application by the applicant. If it is clear that the offender committed the act of violence that resulted in the injury incurred by the victim, it is not appropriate for an offender to dispute the amount of assistance the commissioner gave to an individual as a result of the act of violence.

The limitation prohibits an offender from seeking information about the details of the assistance provided to an assisted person to use as the basis for an appeal against the amount of financial assistance provided. The applicant is required to satisfy the commissioner that they suffered an injury as a result of the act of violence. Allowing offenders access to details of that injury and treatment received may create a safety risk to the victim, interfere with a victim's right to privacy, or may deter victims of crime from making an application.

### *Any less restrictive means reasonably available to achieve the purpose*

It is considered that there is no less restrictive means reasonably available to achieve the purpose of this limitation.

### **Commissioner may ask government agency for offender's home address for recovery action**

Clause 79 provides that if the commissioner decides to take recovery action under this part the commissioner may, at any time, ask a government agency for the offender's home address. If a government agency has the information requested under subsection (1) the government agency must give that information to the commissioner unless any other law prevents the information from being given.

This provision is expected to be used to obtain an address to enable a recovery intention notice to be given to an offender.

### *Nature of the right affected*

Obtaining information about the home address of an offender may be seen to activate section 12(a) of the HRA, which states that 'everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.' As discussed above, this limits public authorities to only obtaining information relating to an individual's private life the knowledge of which is essential in the interests of society.<sup>9</sup>

### *The importance of the purpose of the limitation*

The purpose of recovery action is to require offenders to contribute financially to the scheme. This is not achievable if the commissioner is unable to locate an offender to pursue recovery. Without access to the offender's current address, the commissioner would not be able to perform this function.

### *The nature and extent of the limitation*

The limitation is very narrow; the commissioner is only able to request one piece of very specific information, the offender's home address. This information may only be sought once the commissioner has made a decision to take recovery action.

---

<sup>9</sup> General Comment No. 16: *The right to respect of privacy, family, home and correspondence, and protection of honour and reputation* (Art. 17) : . 08/04/1988.

Further, any government agency receiving a request to provide the information is only required to provide the address if not prevented from doing so by any other Act, or State or Commonwealth law.

*The relationship between the limitation and its purpose*

It is appropriate to ensure that the commissioner can access an offender's address to allow the commissioner to undertake recovery action to require offenders to contribute financially to the scheme.

*Any less restrictive means reasonably available to achieve the purpose*

It is considered that there are no less restrictive means reasonably available to achieve this purpose.

# Victims of Crime (Financial Assistance) Bill 2016

## Detail

### Notes on Clauses

#### Part 1 Preliminary

This part comprises clauses 1 to 6 and deals with formal matters including the name of the legislation, its commencement and the objects of the Act.

##### Clause 1 – Name of the Act

This clause is a formal provision that sets out the name of the Bill, once enacted.

##### Clause 2 – Commencement

This clause explains when the provisions in the Bill will take effect. Clause 2(1) provides for commencement either on 1 July 2016 or if, before 1 July 2016, the minister fixes another date on which the Bill will commence, that date.

Clause 2(2) provides that if the Bill has not commenced within 18 months beginning on its notification day, it automatically commences on the first day after that period.

These provisions provide certainty around when the Act commences while also providing some flexibility to ensure administrative arrangements are in place to support the Bill when it commences. Clause 2(3) makes it clear that section 79 of the *Legislation Act 2001* will not apply to this Bill. That section would otherwise require automatic commencement six months after notification.

##### Clause 3 – Dictionary

This is a technical clause identifying the dictionary and explaining conventions used to define words and terms for the purpose of the Act.

##### Clause 4 – Notes

This is a technical clause explaining the status of notes in the Act.

##### Clause 5 – Offences against Act – application of Criminal Code etc

This clause makes it clear that the *Criminal Code 2002* applies to all offences against the Act. The Act should also be read in conjunction with the *Legislation Act 2001*, which provides for interpretation, common definitions, and legislative machinery for the Act.

Under section 133 of the *Legislation Act 2001*, the current value of a penalty unit is \$150 if the person charged is an individual or \$750 if the person charged is a corporation.

## **Clause 6 – Object of Act**

This clause sets out the object of the Act which is to help victims of crime by establishing a system for giving financial assistance to: assist victims of crime to recover from acts of violence; contribute to the safety of victims of crime and the prevention of future acts of violence; acknowledge the harmful effects of acts of violence; and complement other services provided for victims of crime.

## **Part 2                      Important concepts**

This Part comprises clauses 7 to 17 and defines key words and terms used in the Act.

### **Clause 7 – Meaning of *act of violence***

Financial assistance is only available if a person has sustained an injury, or is a related victim of a person who has died, as a result of an act of violence.

Clause 7 defines an act of violence as conduct that results in a person's injury or death that is, or happens in the course of, an offence occurring on or after commencement of the Act.

The offence must be either a schedule 1 offence or an offence prescribed by regulation. A schedule 1 offence is defined in the dictionary as:

- a) an offence listed in schedule 1 (Offences act of violence), division 1.2.1 (General offences), which includes offences against the person, sexual offences, female genital mutilation, sexual servitude, robbery and aggravated robbery; and
- b) if the victim of an offence is a relevant person in relation to the person who carried out the offence, an offence listed in division 1.2.2 (Domestic violence offences). The dictionary refers to section 15 of the *Domestic Violence and Protection Orders Act 2008* for the definition of relevant person.

The inclusion of domestic violence offences, in schedule 1, division 1.2.2 extends eligibility for financial assistance to victims of domestic violence who have not been subjected to a physical act of violence, recognising the harmful effects of these domestic violence offences.

The ability to prescribe offences by regulation provides a capacity to respond to changes within the criminal law.

Clause 7(2) sets out three factors which are not relevant to deciding whether conduct is an act of violence. For the purpose of this Act, it does not matter whether a person responsible for the conduct has been identified, lacks legal capacity, or has not been charged with, or found guilty of, the offence.

These factors are not required as the object of this Bill is to help victims of crime rather than pursue a person responsible for the conduct through the criminal justice system. It also recognises that, under clause 43 the scheme is administered on the basis of the balance of probabilities, which is a lower burden of proof than the criminal justice system requires to establish that an offence has been committed.

### **Clause 8 – Meaning of *circumstance of aggravation for an offence***

Clause 8 defines a circumstance of aggravation for an offence to recognise: the effects of serious injury, the circumstances in which the act of violence occurred or the vulnerability of the victim at the time of the act of violence.

Clause 8(1)(a) provides that it is a circumstance of aggravation for an offence where as a direct result of the offence a very serious injury that is not likely to be permanent is caused to the primary victim.

Very serious injury is defined in the dictionary as being an injury that results in at least one of the following: a physical bodily impairment that is very serious; a disfigurement that is very serious; a mental illness or mental disorder that is very serious; or the death of a foetus. This circumstance of aggravation is intended to recognise the pain and suffering experienced by applicants who have suffered very serious injuries that are not likely to be permanent or may be alleviated by treatment. It is intended that the regulation will establish a separate recognition payment category for applicants who have suffered very serious injuries that are likely to be permanent to recognise the profound effect of those injuries.

Clause 8(1)(b) provides that it is a circumstance of aggravation for an offence if the offence forms part of a series of offences that are related. The purpose of this clause is to recognise the fear and trauma that can be experienced by people who experience victimisation over a period of time. Examples include, but are not limited to: offences with the same offender and same primary victim or contemporaneous or near contemporaneous offences.

The circumstances of aggravation provided in clauses 8(1)(c) and (d) relate to circumstances where a person carries out the offence acting in company, or uses an offensive weapon against the primary victim. These circumstances of aggravation recognise the heightened level of fear and trauma a victim of crime may experience in these circumstances.

Clauses 8(1)(e) and (f) provide circumstances of aggravation that relate to the vulnerability of the victim at the time the offence occurred. These circumstances are where the offence: is carried out by a person in a position of power, trust or authority in relation to the primary victim; involves a primary victim who, when the offence was carried out, had an impaired physical, psychological or intellectual capacity, involves a primary victim under 18 years old or more than 65 years old, or involves a primary victim who was pregnant.

Clause 8(2) provides that a circumstance of aggravation identified in clause 8(1) is not a circumstance of aggravation for an offence if the circumstance is an element of the offence. The purpose of this clause is to ensure that the circumstance is not considered twice for the purpose of establishing the level of financial assistance to which a victim of crime is entitled.

The concept of circumstance of aggravation is relied on in clause 28 Recognition payment for primary victim and clause 44 Deciding whether applications involve related acts of violence.

## **Clause 9 – Meaning of *injury***

Clause 9(1)(a) provides that an injury is any of the following: a physical injury, a mental illness and a mental disorder. Clause 9(1)(b) sets out that injury includes the aggravation, acceleration or recurrence of any of the factors listed in clause 9(1)(a) or the contraction, aggravation, acceleration or recurrence of a disease.

Clause 9(1)(c) provides that if the injury occurs in the course of, or as a result of, a sexual or domestic violence offence, injury also includes: an unplanned pregnancy, a sense of violation, reduced sense of self-worth, increased fear or feelings of insecurity or a reduced capacity to participate in sexual activity. By extending eligibility to a broader range of physical and emotional responses this provision recognises the intimate and personal nature of these offences and the distinct impacts these offences may have on victims of crime. Clause 9(2) defines a domestic violence offence as a schedule 1 offence for which the victim of the offence is a relevant person.

A sexual offence is defined in the dictionary, and means an offence against a provision of the following sections of the *Crimes Act 1900*: part 3 (sexual offences); part 4 (female genital mutilation); or part 5 (sexual servitude).

## **Clause 10 – Meaning of *homicide***

Clause 10 defines homicide for the purpose of this Act.

## **Clauses 11 and 12 – Meaning of *primary victim* and Meaning of *related victim***

Clause 11 and 12 provide the definitions of primary victim and related victim for the purpose of the Act.

## **Clauses 13, 14 and 15 – Meaning of *class A related victim*, Meaning of *class B related victim* and Meaning of *class C related victim***

Clauses 13, 14 and 15 provide definitions of class A, class B and class C related victims.

Clause 13 provides that a class A related victim is a person who, at the time a primary victim dies, both a dependant of the primary victim and either a close family member of, or in a relevant relationship with, the primary victim. A definition of dependant is provided in the dictionary of the Act.

Clauses 14 provides that a class B related victim is a person who, at the time a primary victim dies, is financially independent of the primary victim and either a close family member of the primary victim who has a genuine personal relationship with the primary victim, or in a relevant relationship with the primary victim.

Clauses 15 provides that a class C related victim is a person who, at the time a primary victim dies, is financially independent of the primary victim and is a family member of the primary victim.

Clause 15(2) explains that a family member is a person who has a genuine personal relationship with the primary victim and is either a sibling of the primary victim (including stepsiblings and half-siblings) or, if the primary victim was an Aboriginal person or Torres Strait Islander person, a person who in accordance with the primary victim's community is regarded as a sibling. The expanded definition of family member in clause 15(2)(b)(ii) is designed to recognise the kinship and cultural structures of Aboriginal or Torres Strait Islander people, and ensure that these family members are able to access the scheme.

Clauses 14 and 15 provide that class B related victims and class C related victims must, at the time the primary victim dies, have had a genuine personal relationship with the primary victim. The purpose of this requirement is to limit financial assistance, including recognition payments, for related victims to people with whom the primary victim had a genuine relationship. The purpose of recognition payments for related victims is to recognise the significant loss and emotional distress caused by the death of a person because of the genuine personal relationship between the primary victim and the applicant.

The requirement for a genuine personal relationship is not included for a class A related victim to recognise that some dependants may not have a close relationship with the primary victim, but are still financially reliant on the primary victim and will be significantly impacted by their death. An example of this is a child who is a dependant of the primary victim but has no genuine personal relationship with them.

The term 'close family member' is defined in clause 17 for the purpose of the Act.

The term 'relevant relationship' is defined in the dictionary by reference to section 15 of the *Domestic Violence and Protection Orders Act 2008*.

The meanings of class A related victim, class B related victim and class C related victim are relied on in Part 3 to set out the eligibility for financial assistance for each class.

### **Clause 16 – Meaning of *homicide witness***

Clause 16 defines homicide witness for the purpose of the Act.

### **Clause 17 – Meaning of *close family member***

Clause 17 defines close family member for the purpose of the Act.

## **Part 3                      Financial Assistance**

### **Division 3.1 Eligibility**

This division comprises clauses 18 to 23 and sets out the kinds of payments that each kind of victim of crime is eligible to apply for.

The note clarifies that in addition to financial assistance under this part a person may also be eligible for a funeral expense payment under part 4.

### **Clause 18 – Eligibility for financial assistance**

Clause 18 provides a clear general statement of legal standing setting out that financial assistance may only be given to a person who is eligible to apply in accordance with this division.

### **Clauses 19, 20 and 21 – Primary Victim, Class A related victim, Class B related victim**

Clauses 19, 20 and 21 set out the payments that primary victims, class A related victims and class B related victims are eligible to apply for. Each of these categories of victim is eligible to apply for one or more of the following: an immediate need payment, an economic loss payment and a recognition payment.

### **Clauses 22 and 23 – Class C related victim, Homicide witness**

Clauses 22 and 23 provide that class C related victims and homicide witnesses are eligible to apply for one or more of the following: an immediate need payment and an economic loss payment. These categories of victims are not eligible to apply for a recognition payment.

## **Division 3.2                      Amount of financial assistance**

This clause comprises clauses 24 and 25 and sets out the maximum total financial assistance payable to a person and the CPI indexation to be applied.



### **Clause 24 – Maximum total financial assistance**

Clause 24 provides that the maximum total amount of financial assistance that may be given to a person for an application for financial assistance is the amount prescribed by regulation.

### **Clause 25 – CPI indexation of certain prescribed amounts**

Clause 25 provides that the following amounts prescribed by regulation must be amended each year in line with variations in CPI that happen after the commencement of the regulation:

- maximum total financial assistance;
- recognition payment for primary victim;
- recognition payment for class A related victim; and
- recognition payment for class B related victim.

Clause 25(2) prevents the amounts being reduced as a result of the CPI adjustment. Clause 25(5) provides a definition of CPI.

An example of how adjustments are calculated is given at the end of clause 25(4) to assist interpretation.

## **Division 3.3      Financial Assistance**

This division comprises clauses 26 to 30 and sets out the purposes for which and circumstances in which various kinds of financial assistance can be paid.

### **Clause 26 – Immediate need payment**

Clause 26 sets out the circumstances in which a financial payment for an immediate need may be made and provides for certain matters relating to these payments to be prescribed by regulation.

Immediate need payments are intended to help victims of crime with expenses that are immediate at the time of the application. Examples may include: home security measures for a victim of a domestic violence offence, emergency medical treatment for a victim of an assault offence or relocation costs for a victim of a sexual assault or a stalking offence.

It is expected that most immediate need payments will be made to the provider directly, or to the applicant or another person to reimburse expenses already paid, as permitted by clause 48. Immediate need payments may be subject to reduced application requirements in some circumstances under clause 31(4)(a).

Clause 26(1) provides that an immediate need payment may be made to a person for reasonable expenses incurred, or expected to be incurred, for an immediate need that is related to an act of violence.

Clause 26(2) provides that the ‘reasonable expense’ requirement is satisfied if payment of the expense, at the time the application is made, is likely to: promote the recovery of the person; prevent further harm to the person; or limit further threats to the safety of the person.

Clause 26(3) provides that a regulation may prescribe: a particular immediate need for which an immediate need payment may be made; a condition, if any, to making the immediate need payment; the maximum amount, if any, of the payment for the need; and the maximum amount, if any, of all immediate need payments that may be made in relation to a single act of violence.

### **Clause 27 – Economic loss payment**

Clause 27 provides that an economic loss payment may be made to a person for economic loss sustained as a result of an act of violence. There must be a causal connection between the economic loss sustained and the act of violence.

Clause 27(2) provides that a regulation may prescribe: economic loss for which an economic loss payment may be paid; a condition, if any, to making the economic loss payment; the maximum amount, if any, of the payment for the loss; and the maximum amount, if any, of all economic loss payments that may be made in relation to a single act of violence.

### **Clauses 28, 29 and 30 - Recognition payment for primary victim, Recognition payment for class A related victim, Recognition payment for class B related victim**

Clauses 28(1), 29(1) and 30(1), respectively, provide that recognition payments may be made to primary victims, class A related victims and class B related victims. A recognition payment may be made for trauma experienced by the person as a result of an act of violence.

Recognition payments are not intended to reflect the level of compensation that a victim of crime may be entitled to at common law or under any other legislation.

Clause 28(2) provides for a regulation to prescribe an offence in the course of which the act of violence must occur for a recognition payment to be made to a primary victim. The regulation may prescribe the amount payable generally or if a circumstance of aggravation applies to the offence or if the act of violence results in a very serious injury that is likely to be permanent in the primary victim. Clause 8 sets out the circumstances of aggravation.

The dictionary provides that a very serious injury means an injury that results in at least one of the following: the loss or impairment of a bodily function that is very serious; a disfigurement that is very serious; a mental illness or mental disorder that is very serious; or the death of a foetus. It is expected that the commissioner will consider whether or not the very serious injury is capable of being alleviated by medical or other treatment when determining whether it is permanent.

Under clauses 29(2) and 30(2) a recognition payment for a class A related victim or a class B related victim is a payment of the amount prescribed by regulation.

The regulation will set out, in a table format, for all classes of victims, the types of acts of violence for which recognition payments are payable. The table will set out the amounts payable, including for primary victims the amounts according to whether or not the act of violence occurred in one or more circumstance of aggravation or resulted in a very serious and permanent injury.

## **Division 3.4 Applications for financial assistance**

This division comprises clauses 31 to 37 and sets out the way in which applications must be made, time limits for making applications, the notices that must be provided to an applicant, and the effect of withdrawal, amendment, lapse or death on an application.

### **Clause 31 – Application to commissioner**

Clause 31 provides that an applicant may apply to the commissioner for financial assistance and sets out what must be included in the application. Clause 31(2)(a) to (c) require the application for financial assistance to be in writing, include a contact address and indicate the financial assistance payment that the applicant wishes to claim.

Clause 31(2)(d) requires the applicant to provide either: evidence that the act of violence that is the subject of the application has been reported to a police officer, or if the applicant is a special reporting class victim, and the application does not include a claim for a recognition payment, the evidence specified in clause 31(4).

A special reporting class victim is defined in clause 31(3) as a primary victim:

- of a sexual offence;
- of an offence in which the person responsible for the act of violence was in a position of power, trust or authority in relation to the primary victim;
- who has an impaired physical, psychological or intellectual capacity;
- who was under 18 years of age when the act of violence occurred; or
- who did not report the act of violence because of threats made or intimidation by another person.

The purpose of this provision is to recognise that there may be significant barriers to reporting for vulnerable victims and victims of sexual offences. Many victims of sexual offences do not report the offence to anyone. In the Final Report *Family Violence – a National Legal Response* the Australian and NSW Law reform commissions noted that only a small percentage of sexual assaults and related offences are reported to police.<sup>10</sup> It was also noted that victims of sexual or physical violence perpetrated by their partners are less likely to report to police than victims who did not know the perpetrator.<sup>11</sup>

Two of the Act's objects are to assist victims of crime to recover from acts of violence and to contribute to the safety of victims of crime and the prevention of future acts of violence. These objects are supported by providing financial assistance in specific situations to victims of crime who have not reported the act of violence to police.

Clause 31(4) sets who a special reporting class victim must report the act of violence to if they are applying for an immediate need payment or for an economic loss payment. If a special reporting class victim has reported the act of violence to police, they are not required to provide evidence of additional reports under clause 31(4) to satisfy clause 31(2)(d).

Clause 31(4)(a) provides that for an application for an immediate need payment only, the applicant must report the act of violence to at least two of the specified categories of people to meet the reporting requirements for an immediate need payment. The categories are: a government agency; a doctor or a psychologist or a counsellor or a social worker; or an appropriately qualified non-government agency. Clause 31(5) defines 'appropriately qualified non-government agency' as an agency specified by the commissioner in the commissioner's guidelines. It is expected that the commissioner will maintain up-to-date guidelines which specify agencies that have expertise in providing services to victims of crime and also demonstrate robust record-keeping practices. The inclusion of reports to these non-government agencies recognises that some victims of crime may seek support from specialist services before engaging with a doctor, psychologist, counsellor, social worker or government agency.

Clause 31(4)(b) requires an applicant applying for assistance for an immediate need payment and an economic loss payment or for an economic loss payment only, to have reported the act to a government agency and a doctor or a psychologist or a counsellor or a social worker.

---

<sup>10</sup> Australian Law Reform Committee & NSW Law Reform Committee. Final Report *Family Violence—A National Legal Response* (2010) Chapter 24, <http://www.alrc.gov.au/publications/Family%20Violence%20-%20A%20National%20Legal%20Response%20%28ALRC%20Report%20114%29/29-integrated-responses>.

<sup>11</sup> *Ibid.* Chapter 24

These provisions will allow victims of crime who face barriers to reporting crime to police to apply for an immediate need payment or an economic loss payment. The requirement to provide evidence of a report protects the integrity of the scheme and also encourages engagement with support services.

### **Clause 32 – Time for making application**

Clause 32(1) requires an application to be made within three years of the last occurring of the following: the day of the act of violence that is the subject of the application; if there are two or more relevant acts of violence, the day of the most recent act of violence, or if the applicant was under 18 years of age when the act of violence occurred the day the applicant turns 18.

Clause 32(2) allows the commissioner to extend the time for making an application if there are reasonable grounds to believe that it is in the interests of fairness. When making this decision the commissioner must have regard to the matters identified in clauses 32(2)(a)-33(2)(f).

The purpose of this provision is to recognise that the impact of the act of violence and the person's vulnerability may mean that the person is not able to make an application within the time period imposed by clause 32(1). This is particularly the case for victims of sexual offences, domestic violence offences and offences where the victim was vulnerable at the time of the act of violence. 66% of all sexual assault victims referred to Victim Support ACT in 2014-15 were under the age of 18 at the time of the incident; however the average age at the time of referral was 29 for victims who were below 10 years of age at the time of the incident and 26 for children aged between 10 and 17 years at the time of the incident. This indicates that most victims did not access the service until years after the incident, when they were adults.<sup>12</sup>

### **Clause 33 – Notice of repayment and recovery procedures**

Clause 33(1) requires the commissioner to provide written notice about the action that may be taken under part 5 (Repayment of financial assistance and funeral expenses by assisted person) or part 6 (Recovery from offender) as soon as practicable after the application is received.

Clause 33(2) requires the commissioner to state in the notice that if financial assistance is given to the applicant, the person responsible for the act of violence that is the subject of the application may be contacted to recover some or all of the financial assistance given.

The purpose of this clause is to ensure that an applicant is made aware as early as possible about their obligations under part 5 (Repayment of financial assistance and funeral expenses by assisted person) and the possibility that the offender may be contacted and required to repay under part 6 (Recovery from offender) to allow applicants to make a fully informed decision about whether they wish to proceed with an application. It is expected that information about clause 73 (Commissioner must consult assisted person before giving recovery intention notice to the offender) will be provided within this notice.

---

<sup>12</sup> Victim Support ACT, *Annual Report 2014-15* p8

### **Clauses 34 and 35 – Withdrawal of application, Amendment of application before commissioner’s decision**

Clause 34 provides that an applicant may withdraw an application for financial assistance at any time. However, once the commissioner has decided the amount of financial assistance under section 46 and given the financial assistance to the applicant, withdrawal is no longer possible as the application is finalised and the applicant becomes an assisted person.

Clause 35 provides that an applicant may amend an application at any time before the commissioner has decided the application. After the commissioner has decided the application, an applicant is able to make an application to increase the amount of financial assistance received under Division 3.7. Part 5 deals with situations where some or all of the amount of financial assistance given is required to be repaid.

An applicant may withdraw or amend an application by written notice given to the commissioner.

### **Clause 36 – Application lapses if no contact with commissioner**

Clause 36 provides a structure under which applications are deemed to have lapsed when certain circumstances are met.

Clause 36(1) provides that clause 36 applies if an applicant does not contact the commissioner within 6 months after the day the commissioner gives notice under clause 33 (Notice of repayment and recovery procedures).

Clause 36(2) requires the commissioner to provide written notice to an applicant that the application will lapse under clause 36(3) if they do not make contact with the commissioner within 6 months. In total, 12 months must have passed without contact from the applicant before the application lapses.

Contact with the commissioner is defined in the dictionary as including contact with a member of the staff of the commissioner or a delegate of the commissioner. If an application does lapse, the applicant may reapply for financial assistance, subject to clause 32 (Time for making application).

The purpose of this provision is to ensure that the commissioner is able to progress applications in a timely manner and to prevent applications from remaining open indefinitely.

### **Clause 37 – Application lapses on death of applicant**

Clause 37 sets out that if an applicant for financial assistance dies before the application is finally decided the application lapses.

## **Division 3.5            Commissioner may ask for information when deciding applications for financial assistance**

This division comprises clauses 38 to 41 and sets out the commissioner’s powers to ask for information from various sources when deciding applications for financial assistance.

### **Clause 38 – Power to ask for further information**

Clause 38(a) provides the commissioner with power to make any inquiries that the commissioner believes on reasonable grounds are relevant to the application. Under clause 38(b) the commissioner has the power to ask the applicant for further specific information about the application or an authorisation to obtain further information about the application from another person.

The purpose of this clause is to ensure that the commissioner has access to sufficient information, from a variety of sources, when deciding applications for financial assistance. It is vital that the commissioner has the ability to verify and seek further evidence to support an application.

### **Clause 39 – Power to ask for examination by health practitioner**

Clause 39(1) provides the commissioner with power to ask the applicant to submit to an examination by a health practitioner and for a report of that examination to be given to the commissioner. Health practitioner is defined in the *Legislation Act 2001*. Clause 39(2) allows the health practitioner to provide a report and other relevant information to the commissioner. If the commissioner asks for an examination by a health practitioner, clause 39(3) requires the commissioner to pay for the examination.

The purpose of this clause is to ensure the commissioner has access to further medical information from a qualified health practitioner for the purpose of deciding an application. The commissioner is required to pay for the examination so that this significant expense, which is for the purpose of assisting the commissioner to decide applications does not fall on applicants, many of whom may not have the capacity to pay for a medical examination.

### **Clause 40 – Power to ask for information from chief police officer**

Clause 40 provides the commissioner with power to ask the chief police officer or an investigating police officer (the requested officer) for certain information about an act of violence when deciding an application for financial assistance and also provides details about the circumstances in which information may be shared.

Clause 40(1)(a) provides that the commissioner may ask for the following information and documents about the act of violence that is the subject of the application:

- the facts;
- the progress of an investigation;
- if a proceeding is not started, the reasons for not starting a proceeding;
- if a proceeding is started, details of the charges laid; the place and date of the hearing of the proceeding; the outcome of the proceeding including any sentence imposed; the outcome of any appeal; and if the proceeding is discontinued, the reasons for discontinuing the proceeding.

Clause 40(1)(b) provides that the commissioner may also request a copy of any person's statement about the act of violence that is the subject of the application. Clause 40(1)(c) provides that the commissioner may request clarification about any of the information mentioned in clause 40(1)(a) including any changes to information previously provided.

Clause 40(2) requires the requested officer to comply with a request under clause 40(1) if the officer has possession of or access to the information or documents requested.

The purpose of clauses 40(1) and (2) is to ensure that the commissioner has access to further information held by police about the act of violence. The information and documents that may be requested under this clause are limited to information and documents that directly relate to the act of violence that is the subject of the application.

Clause 40(3) provides that the requested officer must not comply with the request under clause 40(1) if the officer believes on reasonable grounds that giving the information may prejudice an investigation to which the information may be relevant, lead to the identification of an informer or affect the safety of any person. If the requested officer decides that the request cannot be complied

with, clause 40(4) requires the officer to notify the commissioner and give reasons for not complying with the request.

The purpose of this provision is to ensure that the need for the commissioner to have access to information relevant to deciding applications for financial assistance is balanced with the need to maintain the integrity of police investigations and ensure the safety of any person is not placed at risk.

Clause 40(5) requires the requested officer to remove all particulars identifying the maker of a statement mentioned in clause 40(1)(b) except particulars the officer believes are relevant to assist the commissioner to decide the application.

The purpose of this clause is to ensure that the commissioner receives only the information required to make a decision and private information is not shared for purposes other than deciding applications for financial assistance.

Clause 40(6) provides that giving information or documents under this clause is authorised despite any other territory law. Clause 40(7) defines investigating police officer for the purposes of clause 40.

### **Clause 41 – Power to ask for information from registrar**

Clause 41(1) provides the commissioner with power to ask the registrar for information about a proceeding started for the act of violence that is the subject of the application. Registrar is defined in the *Legislation Act 2001*.

The purpose of this clause is to ensure that the commissioner has access to further information held by the registrar about the act of violence.

Clause 41(2) allows the commissioner to request information about: the charges laid against the person alleged to have engaged in the act of violence; the charges laid against another person alleged to have conspired with the person alleged to have engaged in the act of violence that is the subject of the application; the place and date of hearing of the proceeding; the outcome of the proceeding including any sentence imposed; and the outcome of any appeal.

Clause 41(3) requires the registrar to give the information to the commissioner unless the registrar is satisfied on reasonable grounds that the giving of the information is either contrary to a law in force in the Territory, or otherwise inappropriate. Clause 41(4) allows information to be provided by allowing the commissioner access to electronic information maintained by the registrar. Clause 41(5) provides that the electronic information may only be used in connection with the information requested under clause 41(2).

The purpose of clauses 41(2) to (5) is to set out the circumstances in which information may be shared. These clauses also ensure that the information that may be requested is limited to information that directly relates to the act of violence that is the subject of the application and private information is not shared for purposes other than deciding applications for financial assistance.

## **Division 3.6 Deciding applications for financial assistance**

This division comprises clauses 42 to 48 and sets out how applications for financial assistance are to be decided by the commissioner.

### **Clause 42 – Time for deciding application for financial assistance**

This provision sets out the requirements of the commissioner in relation to timeframes for deciding applications.

Clause 42(1) requires the commissioner to decide applications for financial assistance as soon as reasonably practicable after receiving the application, or if further information is requested, upon receiving that information. It is expected that in practice, the commissioner will actively case manage applications to ensure they are progressed and finalised as quickly as possible, taking into account the time required to obtain information and evidence needed to make decisions.

Clause 42(2) requires the commissioner to give priority to a decision about an application that includes a claim for an immediate need payment and to decide that claim before deciding any other claim in the application if an application, for financial assistance includes a claim for an immediate need payment.

The purpose of this clause is to ensure that an applicant's immediate health and safety needs are given priority. This clause supports the objects of assisting victims of crime to recover from acts of violence and contribute to the safety of victims of crime and the prevention of future acts of violence set out in clause 6(a) and (b) of the Bill. Examples of situations where this clause will apply include: a victim of a serious assault requiring an immediate surgical procedure to ensure recovery is possible, or a domestic violence victim who needs to relocate because of a serious risk to their safety.

### **Clause 43 – Deciding matters relevant to application for financial assistance generally**

This clause provides the legal standard of proof that the commissioner must be satisfied of when making decisions under the Act. Clause 43 requires the commissioner to be satisfied on the balance of probabilities about the existence of any matter relevant to deciding an application for financial assistance. Clause 43 also provides a non exhaustive list of examples of a matter relevant to an application for financial assistance.

### **Clause 44 – Deciding whether applications involve related acts of violence**

This provision sets the process for the commissioner to determine whether applications involve related acts of violence, and when they should be treated as a single application.

Clause 44(1) provides that clause 44 applies if a person makes two or more separate applications under division 3.4 (Applications for financial assistance).

Clause 44(2) requires the commissioner to review the applications to work out if the applications are for acts of violence that occur in the course of a series of offences that are related. Some examples of what may constitute a series of offences that are related are provided to assist in interpretation.

Clause 44(3) provides circumstances in which acts of violence that occur in the course of a series of offences that are related must be treated as a single act of violence. These circumstances are: if the series of offences are, or are likely to be, part of a single ongoing offence; if the effect of treating each act of violence separately would result in the applicant receiving a total amount of financial assistance that would be disproportionately more than the amount of financial assistance that would be appropriate for the totality of harm suffered by the applicant; or other circumstances prescribed by regulation.

The purpose of this clause is to ensure that the totality of the circumstances is considered and related offences are not considered in isolation. This supports the recommendation made by the joint Australian Law Reform Commission and New South Wales Law Reform Commission report 'Family violence – A national legal response' that victims compensation legislation should not provide that



acts are ‘related’ merely because they are committed by the same offender, and should provide that victims have the opportunity to object if claims are to be treated as related.<sup>13</sup>

Clause 44(4) requires the commissioner to give the applicant written notice if the commissioner is satisfied that the acts of violence that are the subject of separate applications appear to be a single act of violence. Clause 44(4)(a) sets out that the notice must state that the separate applications appear to disclose a series of offences that are related, and that without further information suggesting otherwise the acts of violence occurring in the course of the offences must be treated as a single act of violence. Clause 44(4)(b) provides that the notice must ask the applicant to tell the commissioner in writing within 14 days after the notice is received, if there is a reason why the acts of violence should not be treated as a single act of violence.

This clause is intended to ensure the applicant has an opportunity to provide further information before a decision is made, as a decision to treat acts of violence as a single application may significantly impact on the applicant’s eligibility for financial assistance and the decision making process. The opportunity to provide further information is in addition to rights of review identified in part 9.

Clause 44(5) provides that after considering any reasons given by the applicant, in response to the notice, the commissioner must decide whether or not to treat the acts of violence as a single act of violence and provide written notice of the decision to the applicant.

Clause 44(6) provides that if the commissioner decides to treat the acts of violence as a single act of violence the separate applications are taken to be a single application for financial assistance.

Clause 44(7) provides that if the commissioner decides to treat the separate applications as a single application and the application includes a primary victim’s claim for a recognition payment, the commissioner must decide whether the acts of violence amount to a circumstance of aggravation as defined in clause 8 to inform a determination under clause 28.

The applicant will also have an external right of review to the ACT Civil and Administrative Tribunal under part 9. This supports the recommendation made by the joint Australian Law Reform Commission and New South Wales Law Reform Commission report ‘Family violence – A national legal response’ that victims have the opportunity to object to the decision to treat their applications as a single application.<sup>14</sup>

### **Clause 45 – Circumstances in which financial assistance must not be given**

This clause identifies disqualifying circumstances in which financial assistance must not be given and sets out a process for determining when this applies. The intent of the clause is to ensure the scheme benefits victims of crime, and that criminal conduct does not result in gaining a benefit from the scheme. The disqualifying circumstances identified in this clause are based on more serious criminal conduct than the contributory conduct which leads to a reduction under clause 47(2).

Clause 45(1) applies if the commissioner believes on reasonable grounds that any of the disqualifying circumstances apply in relation to an applicant for financial assistance. Disqualifying circumstances are that: the applicant is not eligible for the assistance; the applicant conspired with the person responsible for the act of violence; the applicant was involved in a serious crime when the act of violence occurred and the crime was the main reason it occurred; the applicant is claiming as a related victim and the act of violence relates to a serious crime carried out by the primary victim; and

---

<sup>13</sup> ALRC Report Volume 1 <http://www.alrc.gov.au/publications/List%20of%20Recommendations/29-integrated-responses-0>

<sup>14</sup> ALRC Report Volume 2 page 1395

the applicant has unreasonably failed to give assistance to the police in relation to the act of violence that is the subject of the application.

Clause 45(2) requires the commissioner to provide the applicant with written notice: that the application appears to involve a disqualifying circumstance described in the notice; that without further information the applicant will not receive financial assistance; and asking the applicant to tell the commissioner in writing within 14 days after the notice is received, if there is a reason why the disqualifying circumstance does not apply.

This clause is intended to ensure the applicant has an opportunity to provide further information to the commissioner before a decision is made to refuse to grant financial assistance to the applicant. This additional opportunity is provided, in addition to rights of review, because of the significance of a decision not to grant assistance and to ensure that this decision is only made when all relevant and available information has been considered.

Clause 45(3) requires the commissioner to consider any reasons given by the applicant in response to the notice, decide whether or not the disqualifying circumstance applies in relation to the applicant, and tell the applicant the commissioner's decision by written notice.

Clause 45(4) prohibits the commissioner from giving financial assistance to the applicant if the commissioner decides that a disqualifying circumstance applies in relation to an applicant.

Clause 45(5) provides a definition of serious crime for the purposes of deciding if an offender was injured during the course of a serious offence under clause 45(1)(c) or (d).

## **Clause 46 – Deciding the amount of financial assistance**

Clause 46 sets out the way in which the commissioner decides the amount of financial assistance.

Clause 46 requires the commissioner to decide the amount of financial assistance that may be given to an applicant for financial assistance if the commissioner; believes on reasonable grounds that the applicant is eligible to apply; is satisfied that the application complies with division 3.4 (Applications for financial assistance); and has decided no disqualifying circumstances apply in relation to the applicant.

Clause 46(2) sets out the process the commissioner must go through when deciding applications that include a claim for an immediate need payment, and economic loss payment or a recognition payment.

If the application includes a claim for an immediate need payment, clause 46(2)(a) requires the commissioner to: consider the services available to the applicant under the victims services scheme or other sources; decide the immediate needs the applicant has; decide the maximum amount of financial assistance to which the applicant is entitled for immediate needs; and decide the immediate need payment to be made to the applicant. The amount an applicant is entitled to for an immediate need payment is subject to clause 26 (Immediate need payment).

If the application includes a claim for an economic loss payment, clause 46(2)(b) requires the commissioner to: consider the services available to the applicant under the victims services scheme or other sources; decide the applicant's economic loss; and decide the economic loss payment to be made to the applicant. The amount an applicant is entitled to for an economic loss payment is subject to clause 27.

The requirement for the commissioner to consider the extent to which services are available to the applicant under the victims services scheme and from other sources, supports the object of the Bill in clause 6(d) that the scheme is designed to complement other services provided for victims of crime.

An example is when ACT Housing is able to assist a related victim by providing crime scene clean up after a homicide.

If an application includes a claim for a recognition payment, clause 46(2)(c) requires the commissioner to: identify the act of violence that is the subject of the application; for a primary victim decide whether the act of violence occurs in a circumstance of aggravation; decide whether the act of violence caused a very serious injury that is likely to be permanent; and decide the recognition payment to be made to the applicant. The amount an applicant is entitled to for a recognition payment is subject to clause 28(2)(b).

Clause 46(2)(c) ensures that the commissioner considers all elements that make up a recognition payment, including any relevant circumstance of aggravation or a very serious injury that is likely to be permanent under clause 28(2)(b). These elements are designed to recognise the harmful effects of acts of violence on individual victims.

After considering the relevant factors set out in clauses 46(2)(a) to (c), clause 46(d) requires the commissioner to reduce the amount in accordance with clause 47 if that clause applies.

Clause 46(3) provides that the commissioner must tell the applicant by written notice of the commissioner's decision.

### **Clause 47 – Reducing amount of financial assistance**

This clause sets out when the commissioner must make a reduction to the amount of financial assistance payable under clause 46. The purpose of a reduction is to ensure that applicants do not receive payments for the same loss or harm from more than one source and to ensure the integrity of the scheme by acknowledging any contribution the applicant may have made to the injury or the act of violence that is the subject of the application.

Clause 47(1)(a) provides that clause 47 applies if the commissioner believes on reasonable grounds that, for an act of violence that is the subject of an application for financial assistance, the applicant has received an associated payment covering the same harm or loss as the financial assistance is intended to cover.

The dictionary provides a definition of associated payment. The dictionary states that an associated payment to a person who has received, or is eligible to receive, financial assistance or a funeral expenses payment means an amount that has been paid to the applicant (or to another person for the applicant) as a result of an act of violence that is the subject of the applicant's application. This includes: an award of damages in a civil proceeding; a payment under a workers compensation law; and an insurance payment or a payment made under a reparation order under the *Crimes (Sentencing) Act 2005*. Any amount that is payable under this bill, for example an amount paid under part 4 (Funeral expenses), is not an associated payment.

Clause 47(1)(b) and (c) provide that clause 47 applies if the commissioner believes on reasonable grounds that the applicant has previously been required to repay an amount under either part 5 (Repayment of Financial Assistance and funeral expenses) or part 6 (Recovery from offender) and has not repaid that amount. This allows the commissioner to ensure that the scheme recovers amounts owed by an applicant prior to providing further financial assistance to that applicant.

Clause 47(1)(d) provides that clause 47 applies if the commissioner believes on reasonable grounds that the applicant has been involved in contributory conduct.

Clause 47(3) provides a definition of contributory conduct covering conduct by the applicant: that contributed to the injury suffered by the applicant; participating in or assisting in the act of violence;

encouraging someone else to participate in or assist the act of violence; or failing to take reasonable steps to mitigate the extent of injury.

The intent of recognising the applicant's contribution, participation or encouragement, is to recognise that the applicant's conduct, whilst not serious enough to prevent the applicant from seeking assistance, did contribute in some way to the act of violence.

Failing to take reasonable steps to mitigate the extent of injury is intended to apply to deliberate acts by the applicant that increase the severity of an injury. For example, if an applicant refuses to accept any treatment for a very serious injury and as a result of that refusal the injury becomes a very serious permanent injury, the commissioner may decide to reduce the amount of financial assistance and award the amount available for a recognition payment for a very serious injury that is not permanent.

If clause 47 applies, clause 47(2) requires the commissioner to reduce the amount of financial assistance given to the applicant by an amount. If the circumstances mentioned in clause 47(1)(a) apply, the commissioner must reduce the amount of financial assistance by an amount equal to the associated payment. If circumstances mentioned in clause 47(1)(b) or (c) apply, the commissioner must reduce the amount of financial assistance by an amount equal to the outstanding repayment amount. If circumstances mentioned in subsection 47(1)(d) apply, the commissioner must reduce the amount of financial assistance by an amount that the commissioner is satisfied is appropriate taking into account the applicant's contributory conduct.

#### **Clause 48 – How financial assistance may be given**

Clause 48 sets out the ways in which the commissioner can make a payment of financial assistance if the commissioner has decided that financial assistance should be given to the applicant.

The intention of this clause is to allow the commissioner the flexibility to make payments of financial assistance in a range of ways. It is expected that, wherever possible, payments will be made directly to service or treatment providers to support accountability and efficiency.

### **Division 3.7 Variation of amount of financial assistance**

This division comprises clauses 49 and 50 and provides a process for applications to vary the amount of financial assistance given to an applicant.

#### **Clause 49 – Application to vary amount of financial assistance previously received**

Clause 49(1) allows a person to apply to the commissioner to vary an amount of financial assistance received by the person only if, the person's circumstances have changed or are likely to change, since the earlier assistance payment.

The purpose of this clause is to support the objects of the act by responding to changes in a person's circumstances. For example, a person who was given financial assistance as a special reporting class victim who later reports the offence to police, may apply to vary the amount of financial assistance received to include a recognition payment. Another example is where a person requires further medical treatment that was not required at the time the financial assistance was given.

Clause 49(2) sets out the requirements for making an application under clause 49. The application must: be made within 7 years after the commissioner first gives financial assistance to the person. The application must also state particulars about: the earlier assistance payment; the variation sought to the earlier assistance payment; the act of violence to which the earlier assistance payment relates; how the person's circumstances have changed or are likely to change; and include any other information prescribed by regulation.

Clause 49(3) provides that only 1 application may be made in a year unless the commissioner is reasonably satisfied that exceptional circumstances exist to allow more than 1 application to be made in the year.

### **Clause 50 – Deciding varied amount of financial assistance**

Clause 50(1) provides that if the commissioner receives an application under clause 49 the commissioner must decide whether to refuse or agree to increase the amount of financial assistance to the applicant. If the commissioner agrees to increase the amount, the commissioner must work out the amount of the increase.

Clause 50(2) sets out that if the commissioner decides to increase the amount of financial assistance, the total amount of all financial assistance to the applicant must not, after the increase is given, be more than the maximum financial assistance amounts that applied when financial assistance was first given.

Clause 50(3) provides that division 3.5 (Commissioner may ask for information when deciding applications for financial assistance) and division 3.6 (Deciding applications for financial assistance) apply to the commissioner when deciding an application under clause 49 as if a reference to an application for financial assistance was a reference to a variation application. The purpose of this clause is to ensure decision making requirements are consistent.

Clause 50(4) requires the commissioner to tell the person by written notice the commissioner's decision under clause 50(1) and arrange for payment of any increased amount.

## **Part 4                      Funeral expenses**

This part comprises clauses 51 to 61 and sets out the process for making an application for a funeral expense payment and the circumstances in which a funeral expense payment may be made.

### **Clause 51 – Eligibility to apply for funeral expense payment**

Clause 51 sets out the eligibility criteria for an application for a funeral expense payment. A person may apply if the person has paid, or is required to pay, the costs of a funeral for a primary victim who died as a result of homicide.

This part is not limited to persons who have a familial or personal relationship with the primary victim of a homicide. Any person who has paid or is required to pay for the funeral of a primary victim of homicide is able to obtain a funeral expense payment under this part. It is expected that a large proportion of payments will be made directly to the service provider.

### **Clauses 52, 53 and 54 – Application for funeral expense payment, Amount of funeral expense payment and Time for making application for funeral expense payment**

Clause 52 requires an application for a funeral expense payment to be made in writing; include a contact address for the person making the application; contain any other information, and comply with any other requirement prescribed by regulation for the application.

Clause 53 provides that the maximum amount of a funeral expense payment is the lesser of the reasonable costs of a funeral that is the subject of the application and the amount prescribed by regulation as the maximum funeral expense payment.

Clause 54 provides that an application made under clause 52 must be made within 3 years after the death of the primary victim.

### **Clause 55 – Notice of repayment and recovery procedures to applicant for funeral expense payment**

Clause 55(1) requires the commissioner to provide written notice about the action that may be taken under part 5 (Repayment of financial assistance and funeral expenses by assisted person) or part 6 (Recovery from offender) as soon as practicable after the application is received.

Clause 55(2) requires the commissioner to state in the notice that if a funeral expense payment is made to the applicant, the person responsible for the act of violence that is the subject of the application may be contacted to recover some or all of the payment.

The purpose of this clause is to ensure that an applicant is made aware as early as possible about their obligations under part 5 (Repayment of financial assistance and funeral expenses by assisted person) and the possibility that the offender may be contacted and required to repay under part 6 (Recovery from offender). It is expected that information about clause 73 (Commissioner must consult assisted person before giving recovery intention notice to offender) will be provided within this notice to allow applicants to make a fully informed decision about whether they wish to proceed with an application.

### **Clauses 56 and 57 – Withdrawal of application for funeral expense payment and Amendment of application before commissioner’s decision for funeral expense payment**

Clauses 56 and 57 provide that an applicant may withdraw an application for a funeral expense payment at any time, or amend an application at any time before the commissioner has decided the application, by written notice given to the commissioner.

### **Clause 58 – Application for funeral expense payment lapses if no contact with commissioner**

Clause 58 provides a structure under which applications are deemed to have lapsed when certain circumstances are met.

Clause 58(1) provides that clause 58 applies if an applicant does not contact the commissioner for 6 months after the day the commissioner gave notice under clause 55 (Notice of repayment and recovery procedures to applicant for funeral expense payment).

Clause 58(2) requires the commissioner to provide written notice to an applicant that their application will lapse under clause 58(3) if the applicant does not make contact within 6 months. In total, 12 months must have passed without contact from the applicant before the application lapses.

Contact with the commissioner is defined in the dictionary as including contact with a member of the staff of the commissioner or a delegate of the commissioner. If an application does lapse, the applicant may reapply for a funeral expense payment, subject to clause 54 (Time for making application for funeral expense payment).

The purpose of this provision is to ensure that the commissioner is able to progress applications in a timely manner and to prevent applications from remaining on foot indefinitely.

### **Clause 59 – Application lapses on death of applicant for funeral expense payment**

Clause 59 sets out that if an applicant for a funeral expense payment dies before the application is finally decided, the application lapses.

## **Clause 60 – Deciding application for funeral expense payment**

Clause 60 requires the commissioner to decide whether a funeral expense payment is payable and if the payment is payable, the amount of the funeral expense payment.

Clause 60(2) provides that division 3.5 (Commissioner may ask for information when deciding applications for financial assistance) and 3.6 (Deciding applications for financial assistance) apply to the commissioner when deciding an application under clause 52 as if a reference to an application for financial assistance was a reference to a funeral expense payment application. The purpose of this clause is to ensure that decision making processes are consistent.

Clause 60(3) requires the commissioner to tell the applicant, by written notice, the commissioner's decision.

## **Clause 61 – How funeral expense payment may be given**

Clause 61 sets out the ways in which the commissioner can make a funeral expense payment if the commissioner has decided the amount of a funeral expense payment.

The intention of this clause is to allow the commissioner the flexibility to make funeral expense payments in a range of ways. It is expected that payments will be made directly to service providers wherever possible to support accountability and efficiency.

## **Part 5 - Repayment of financial assistance and funeral expenses by assisted person**

This Part comprises clauses 62 to 68, which set out when a financial assistance or funeral expense payment may be suspended, and the process for repayment by an assisted person.

A person who has received financial assistance under this Bill is required to repay money to the scheme if an associated payment is later received covering the same loss or harm. This part sets up a process by which the commissioner and assisted person can negotiate for repayment through an agreed arrangement.

The purpose of this part is to avoid a person receiving payments covering the same harm or loss from multiple sources and to support one of the objects of the Bill in clause 6, which is to complement other services provided for victims of crime.

### **Clause 62 – Definitions – pt 5**

Clause 62 defines the key terms: repayment amount, repayment arrangement notice, and repayment direction notice for the purposes of this part.

The meaning of an associated payment, which is relied on in the definition of repayment amount, and defined in the dictionary, is discussed above in relation to clause 47.

### **Clause 63 – Suspension of financial assistance or funeral expense payment**

Clause 63 applies if: a person has applied for financial assistance under part 3 (Financial assistance) or a funeral expense payment under part 4 (Funeral expenses); the commissioner has decided the amount of financial assistance that the applicant is entitled to receive under section 46 or section 60;

and the commissioner believes on reasonable grounds that the applicant is entitled to receive an associated payment in relation to the act of violence that is the subject of the application.

Under clause 63(2) the commissioner may suspend payment of any financial assistance or funeral expense payment, until after the associated payment is made, if the commissioner believes on reasonable grounds that the applicant is entitled to receive a payment that will amount to an associated payment. The intent of this clause is to allow the commissioner to wait until an associated payment is made so that the relevant reduction to the amount of financial assistance can be determined under clause 47 (Reducing amount of financial assistance).

Under clause 63(3), if the commissioner believes on reasonable grounds that, despite an entitlement to an associated payment, the payment is unlikely to be made, the commissioner may decide not to suspend payment of any financial assistance or funeral expense payment.

### **Clause 64 – Assisted person must notify commissioner about associated payment**

Clause 64 sets out the actions an assisted person must take if they receive an associated payment after financial assistance is given or a funeral expense payment is made.

Clause 64(2) requires the assisted person to tell the commissioner in writing about the associated payment within 28 days after the associated payment is received.

Clause 64(3) creates an offence if an assisted person who is required to comply with clause 64(2) fails to tell the commissioner about the associated payment. The maximum penalty is 50 penalty units, imprisonment for 6 months or both. The purpose of this offence is to ensure that the commissioner is notified of associated payments to enable repayment processes to be commenced, and to promote compliance with the notice requirement.

### **Clause 65 – Assisted person liable for repayment amount**

This clause provides a clear statement of when an assisted person is liable to pay a repayment amount, where the person has been issued a repayment direction notice under clause 67.

Clause 65(1) applies if an assisted person: receives an associated payment after receiving financial assistance or a funeral expense payment; is given a repayment direction notice; and does not, on or before the repayment date either pay the repayment amount or apply for a review of the repayment direction notice.

Clause 65(2) provides that the assisted person is liable to pay the repayment amount to the Territory. Clause 65(3) provides that the repayment amount is a debt due to the Territory, payable by the assisted person.

### **Clause 66 – Repayment arrangement notice**

Clause 66 requires the commissioner to provide a written repayment arrangement notice to the assisted person as soon as practicable after receiving information about the associated payment.

Clause 66(1) identifies what information the commissioner must include in the repayment arrangement notice to identify the amount to be repaid and make arrangements for repayment.

Clause 66(2) requires an assisted person who receives a repayment arrangement notice to contact the commissioner within 28 days to either make an arrangement to pay the repayment amount or vary the repayment amount.



Clause 66(3) requires the commissioner to take the circumstances of the assisted person into account when deciding an arrangement for repayment or variation of a repayment amount. The intention of this provision is to ensure any repayment arrangements do not cause hardship for victims of crime.

### **Clause 67 – Repayment direction notice**

Clause 67 applies if the commissioner has given an assisted person a repayment arrangement notice and the assisted person has not within 28 days, made contact with the commissioner or paid the repayment amount.

Clause 67(2) requires the commissioner to give the assisted person a repayment direction notice and identifies what information the commissioner must include in the repayment direction notice.

Clause 67(3) requires an assisted person who receives a notice under clause 67(2) to pay the commissioner the repayment amount or apply to the ACT Civil and Administrative Tribunal for a review on or before the repayment date.

Clause 67(4) provides that an assisted person's liability to pay is stayed if the applicant applies for a review under clause 67(3). Clause 67(5) provides the stay of liability is removed if an assisted person's application under clause 67(3) is dismissed by the ACT Civil and Administrative Tribunal.

### **Clause 68 – Death of assisted person before repayment made**

Clause 68 provides that the commissioner must not seek to recover an outstanding recovery amount from the estate of an assisted person.

The purpose of this clause is to provide a consistent approach in situations where an applicant or assisted person dies prior to payment or repayment being made. Clause 37 prevents an applicant's estate from obtaining the financial assistance the assisted person was eligible for; clause 68 in turn prevents the commissioner from obtaining a repayment amount that an assisted person was liable for.

## **Part 6                      Recovery from offender**

This part comprises clauses 69 to 79 and sets out the process for recovery action to recover a recoverable amount from an offender.

The policy intent is that, as a result of the harm caused to their victim, the offender should contribute to the financial cost of the scheme.

This part provides a two stage process of review to ensure that offenders have the opportunity to respond before a recovery notice is issued, and to provide offenders with access to external review of certain decisions.

### **Clause 69 – Definitions – pt 6**

Clause 69 defines key words and terms used in this part.

### **Clause 70 – Offender liable to repay recoverable amount**

This clause provides a clear statement of when an offender is liable to pay the recoverable amount.

Clause 70(1) provides that clause 70 applies if the offender receives a recovery notice for a recoverable amount and the offender does not, on or before the recovery date, either pay the recoverable amount or apply for a review of the recovery notice.

Clause 70(2) provides that an offender is liable to pay a recoverable amount to the Territory. Clause 70(3) provides that the recoverable amount is a debt due to the Territory, payable by the offender.

### **Clause 71 – Commissioner must decide whether to take recovery action etc**

This clause sets out when the commissioner must recover a recoverable amount, when a recoverable amount should be reduced and liability in circumstances where two or more offenders have committed a recompensed offence.

Clause 71(1) provides that the commissioner must, as far as practicable, recover a recoverable amount from an offender who is liable to pay the amount.

Clause 71(2) provides that if 2 or more offenders have been convicted or found guilty of a recompensed offence each of the offenders is jointly and severally liable under this part. Clause 71(3) provides that if 2 or more offenders have been convicted or found guilty of a recompensed offence the commissioner may apportion the amount each offender must pay to the Territory.

The intention is that clauses 71(2) and (3) will allow the commissioner multiple options for recovering an amount when there is more than one offender. It is expected that this will include recovering the full recoverable amount from one offender, apportioning the recoverable amount equally between offenders or apportioning the recoverable amount in some other way. When making decisions under these clauses, it is expected that the commissioner will have regard to any objections made by the offender under clause 74, court decisions about relative culpability as well as an offender's capacity to pay.

Clauses 71(4) and 71(5) require the commissioner to decide whether an amount should be reduced if the commissioner has decided to recover a recoverable amount and take into account the amount of any repayment by the assisted person under part 5.

### **Clause 72 – Commissioner must assess risks associated with recovery action**

Clause 72 lists the factors that the commissioner is required to consider before taking or continuing recovery action. The commissioner must consider: the objective risks to the safety of any person as a result of recovery action and the subjective concerns of an assisted person about the commissioner's contact with an offender or recovery action generally.

The purpose of this clause is to minimise the risk that seeking recovery of an amount may compromise the safety or welfare of an applicant or any other person. The objects of the Act relate to the recovery, safety and acknowledgment of victims of crime. The recovery of an amount under this part is secondary to the continuing safety and wellbeing of a victim of crime or another person.

### **Clause 73 – Commissioner must consult assisted person before giving recovery intention notice to offender**

Clause 73 requires the commissioner to tell, by written notice, each assisted person to whom the offence that is the subject of the recovery notice relates, about the recovery action, contact with the offender and the consultation period as identified in clauses 73(1)(a) to (c).

Clauses 73(1)(a) and (b) require the commissioner to tell the assisted person that the commissioner is taking recovery action and that the commissioner will contact the offender to give the offender a recovery notice.

Clause 73(1)(c) requires the commissioner to tell the assisted person that the assisted person must tell the commissioner, in writing within 28 days, whether the person has any concerns about the commissioner contacting the offender or the action generally.

Clause 73(2) provides that the commissioner must, after the end of the consultation period specified in clause 73(1)(c) take into account the matters raised, if any, by an assisted person.

The purpose of this clause is to ensure that an assisted person is provided an opportunity to raise any concerns and have those concerns considered prior to a recovery notice being given to an offender. The clause also supports the objects of assisting victims of crime to recover from acts of violence and to contribute to the safety of victims of crime set out in clause 6.

### **Clause 74 – Recovery intention notice**

Clause 74(1) provides that this section applies if the commissioner has complied with section 73 and is satisfied on reasonable grounds that in all the circumstances recovery action is still practicable and appropriate.

Clause 74(2) requires the commissioner to provide a written recovery intention notice to the offender as soon as practicable after consulting an assisted person. Clauses 74(3)(a) to (f) identify what information the commissioner must include in the recovery intention notice.

Clause 74(4) allows an offender to object, on certain grounds, to the recovery intention notice within 28 days after the day the recovery intention notice is given. Clauses 74(4)(a) and (b) provide that the grounds for objection are that: the offender is not the person who is liable for the recoverable amount; or the commissioner has not taken into account that the offender has made, or is required to make, a payment in relation to the recompensed offence in accordance with a court order.

By restricting the grounds for objection that the offender may rely on, this clause prevents the offender from disputing the amount of assistance the commissioner gave to an individual victim as a result of the act of violence. This limitation is reasonable and necessary to ensure the privacy and

safety of victims of crime in accordance with the objects of aiding recovery from acts of violence and improving victims' safety to help prevent future acts of violence.

Clause 74(5) requires an objection under clause 74(4) to be in writing and include the facts relied on by the offender in support of the objection.

### **Clause 75 – Commissioner may ask registrar for information relevant to recovery action**

Clause 75(1) provides that the commissioner may, at any time, ask a registrar for information that is relevant to deciding whether to take or continue recovery action.

Clause 75(2) sets out, without limiting clause 75(1), what the commissioner may ask for information about.

Clause 75(3) requires the registrar to give the information to the commissioner unless the registrar is satisfied on reasonable grounds that giving the information is either contrary to a law in force in the Territory, or otherwise inappropriate. Clause 75(4) allows information to be provided by allowing the commissioner access to electronic information maintained by the registrar. Clause 75(5) provides that the electronic information may only be used in connection with the information requested under clause 75(2).

The purpose of this clause is to provide the commissioner with sufficient information to seek recovery of a recoverable amount. This clause also ensures that the information that may be requested is limited to information that relates to the recovery action and private information is not shared for purposes other than recovery action.

### **Clause 76 – Commissioner must not give offender confidential information**

Clause 76(1) provides that the commissioner must not, as far as practicable, in any recovery action, give confidential information to the offender about a person who receives financial assistance or a funeral expense payment. Clause 76(2) defines confidential information as including the name, contact details, medical or psychological reports, counselling notes or other identifying information about the assisted person.

The purpose of this clause is to restrict when the commissioner may provide the personal details of an assisted person and the specific types of assistance the assisted person received to an offender. The qualification that this applies 'as far as practicable' recognises that in some circumstances it will be necessary to provide limited information about an assisted person to an offender in order to identify the act of violence that is the subject of the application for which recovery is being sought. It is expected that the commissioner will only provide information about an assisted person when it is absolutely necessary.

### **Clause 77 – Recovery notice**

This clause sets out when a recovery notice may be given, what the notice must include and the action the offender is required to take.

Clause 77(1) provides that if, after giving an offender a recovery intention notice and taking into account any objection to the notice, the commissioner is satisfied on reasonable grounds that in all the circumstances recovery action from the offender is still practicable and appropriate, the commissioner must give the offender a written recovery notice. Clauses 77(1)(a) to (h) identify what information the commissioner must include in the recovery notice.

Clause 77(2) provides a time limit for when the commissioner must give a recovery notice. A recovery notice must not be given to an offender more than 2 years after the last occurring of:

- a) the date on which the offender is convicted or found guilty of the recompensed offence;
- b) the date on which a person is given financial assistance or a funeral expense payment is made.

The purpose of this clause is to provide certainty for offenders and assisted persons, by placing an outer limit on the time within which recovery action can be taken.

Clause 77(3) requires an offender who is given a recovery notice to either pay the recoverable amount or apply to the ACT Civil and Administrative Tribunal for a review of the recovery notice on or before the recovery date.

Clause 77(4) provides that an offender's liability to pay is stayed if the offender applies for a review under clause 77(3)(b).

Clause 77(5) provides that dismissal of an application for review removes the stay of liability.

### **Clause 78 – Arrangement for payment of recoverable amount**

This clause provides that the commissioner may make alternative payment arrangements with an offender, for a recoverable amount, in some circumstances.

Clause 78(1) provides that clause 78 applies if the commissioner believes on reasonable grounds that timely recovery of a recoverable amount under part 6 is unlikely because of the offender's financial circumstances.

Clause 78(2) allows the commissioner to make an arrangement with the offender to pay the recoverable amount in instalments or to pay an agreed recoverable amount as a lump sum or in instalments.

Clause 78(3) allows the commissioner to include conditions in the agreement if the commissioner believes on reasonable grounds that the conditions are appropriate for ensuring timely recovery.

Clause 78(4) discharges the offender from liability for the recoverable amount under section 77 for the relevant offence, if the agreed recoverable amount is paid.

Clause 78(5) provides that to the extent that an amount stated in an arrangement under clause 78(2) is unpaid under the conditions of the arrangement, it is a debt due to the Territory.

The purpose of this clause is to recognise that some offenders will not have the financial capacity to pay the full amount sought or to pay in one payment. This clause provides a mechanism for the commissioner to recover as much of the amount as is possible, having regard to the circumstances of the offender and timeliness of payments. This clause promotes offender accountability, without placing an unrealisable financial burden on the offender. The commissioner, as a public authority, is required under section 40B of the *Human Rights Act 2004* to act and make decisions consistent with human rights, including the right to equality and the right to protection of family and children when determining the alternative payment arrangements to be made under this clause.

### **Clause 79 – Commissioner may ask government agency for offender's home address for recovery action**

For the purpose of assisting the commissioner to take recovery action, this clause allows the commissioner to ask a government agency for the offender's home address and requires the government agency to provide the information unless prevented from doing so by any other law.

Clause 79(1) applies if the commissioner decides to take recovery action under part 6 and allows the commissioner to, at any time, ask a government agency for the offender's home address.

Clause 79(2) provides that if a government agency has the information requested, the government agency must give that information to the commissioner unless any other Act, or State or Commonwealth law, prevents the information being given.

Clause 79(3) defines key words and terms for the purposes of this clause.

The purpose of clause 79 is to allow the commissioner to obtain information about an offender's address from a wide range of sources, such as Centrelink, Medicare or other agencies such as state driver licensing agencies, where there is no legal impediment preventing the commissioner from doing so. It is essential that the commissioner have an ability to obtain an address for an offender. If the commissioner is unable to give an offender a recovery intention notice under this part, recovery cannot be pursued.

## **Part 7                      Victims financial assistance levy**

This part comprises clauses 80 to 84 which impose a victims financial assistance levy.

The purpose of this part is to require offenders to contribute to the cost of providing financial assistance for victims of crime. Since the victims financial assistance levy was introduced in 1996 as part of the *Criminal Injuries Compensation Act 1983*, the levy has been used to require offenders to financially contribute to the cost of the financial assistance scheme. The provisions for imposition of the levy are being included in the new victims financial assistance scheme established by the Bill to replace the provisions in the repealed Act.

### **Clause 80 – Meaning of *offence*– pt 7**

Clause 80 defines the terms 'offence' and 'infringement notice' for the purposes of part 7.

### **Clause 81 – Meaning of *convicted* and *convicts*– pt 7**

Clause 81 defines the terms 'convicted' and 'convicts' for the purposes of part 7.

### **Clause 82 – Imposition of victims financial assistance levy**

Clause 82(1) states the purpose of the victims financial assistance levy, which is to provide a source of revenue to contribute to the cost of providing financial assistance for victims of crime. Clause 82(2) identifies that the amount of the levy is \$50, and that the levy is recoverable under the *Crimes (Sentence Administration) Act 2005*. Clause 82(3) provides that the levy is in addition to any other pecuniary penalty imposed in relation to the offence.

## **Clauses 83 and 84 – Exemptions and Effect of appeal etc**

Clause 83 sets out when a court may exempt a person from liability to pay the victims financial assistance levy. Clause 84 sets out the effect of appeal proceedings on a person's liability to pay the victims financial assistance levy.

## **Part 8 Administration**

This part comprises clauses 85 to 89 and sets out the commissioner's functions and power to make guidelines. It also sets out when officials are protected from liability and creates an offence relating to protected information.

### **Clause 85 – Meaning of *official* – pt 8**

Clause 85 defines official for the purposes of part 8.

### **Clause 86 – Functions of commissioner**

Clause 86 provides that the functions of the commissioner under this Bill are to: manage and administer the scheme; receive and decide applications for financial assistance and funeral expense payment; pay amounts for financial assistance; pay amounts for funeral expense payment; administer repayment and recovery processes; and review certain decisions, which are identified in schedule 2, part 2.1 (Internally reviewable decision). These functions are additional to the commissioner's functions under the *Victims of Crime Act 1994*.

### **Clause 87 – Commissioner's guidelines**

Clause 87 allows the commissioner to make guidelines about the operation of the scheme and the non-government agencies that are appropriately qualified for reporting under clause 31 (Application to commissioner). Clause 87(2) provides that these guidelines are notifiable instruments.

### **Clause 88 – Protection of officials from liability**

Clause 88(1) provides that an official is not personally liable for anything done or omitted to be done honestly and without recklessness in the exercise of a function under the Act or in the reasonable belief that the conduct was in the exercise of a function under the Act.

Clause 88(2) provides that any liability that would attach to an official instead attaches to the Territory.

The purpose of this section is to protect officials from personal liability if the official was acting honestly and without recklessness.

### **Clause 89 – Secrecy**

Clause 89 creates an offence relating to recording or divulging protected information, other than where this is authorised by the Act or another law of the Territory, is done in an official capacity under this Act or another law, or is done with the consent of the person to whom the information relates.

Protected information is defined in clause 89(5) as information about a person that is disclosed to, or obtained by, an official because of the exercise of a function under the Act by the official or someone else.

Clause 89(1)(a) provides that an official commits an offence if the official makes a record of protected information about someone else and is reckless about whether the information is protected information.

Clause 89(1)(b) provides that an official also commits an offence if the official does something that divulges protected information about someone else; is reckless about whether it is protected information; and doing the thing would result in the information being divulged to someone else.

For example, if a statement of facts about an offence is obtained from a requested officer under clause 40 (Power to ask for information from chief police officer), an official would not be able to divulge the contents of that statement to the applicant, as it would contain protected information about the offender.

The maximum penalty for an offence under clause 89 is 50 penalty units, imprisonment for 6 months or both. The purpose of the offences is to ensure that protected information about applicants and offenders is not divulged or recorded by officials.

Clause 89(2) provides that the offence does not apply if the record is made or the information is divulged under this Act or another law applying in the Territory, or in relation to the exercise of a function as an official.

Clause 89(3) provides that the offence does not apply if the protected information about someone else is divulged with that person's consent. Clause 89(4) provides that an official need not divulge protected information to a court unless it is necessary to do so for this Act or another law applying in the Territory.

Clause 89(5) defines key words and terms for the purpose of clause 89.

## **Part 9 Notification and review of decisions**

This part comprises clauses 90 to 95 and sets out the processes for internal review by the commissioner or a delegate and external review by the ACT Civil and Administrative Tribunal.

### **Clause 90 – Definitions – pt 9**

This clause defines key terms and words for the purposes of part 9, including which decisions are internally reviewable decisions or reviewable decisions.

### **Clause 91 – Internal review notices**

Clause 91 requires the commissioner or the delegate to give an internal review notice to the relevant applicant listed in schedule 2, if the commissioner or the delegate makes an internally reviewable decision. These provisions are intended to ensure that applicants are informed about their rights of review.

### **Clause 92 – Applications for reconsideration**

This clause sets out the requirements for making an application for reconsideration.

Clause 92(1) provides that an entity mentioned in schedule 2, part 2.1 may apply to the commissioner for reconsideration of an internally reviewable decision.



Clauses 92(2) and (3) require the application to be made in writing within 28 days and to set out the grounds on which reconsideration is sought.

Clause 92(4) provides that where an application is made, the decision is automatically stayed until the application is finally dealt with.

### **Clause 93 – Reconsideration of decisions**

Clause 93 sets out the way in which the commissioner must reconsider applications made under clause 92 for reconsideration of an internally reviewable decision.

Clause 93(1) requires the commissioner to review the decision or appoint a person or entity to review the first decision as soon as practicable after receiving an application for reconsideration of a decision. It is expected that in practice the commissioner will actively case manage applications to ensure they are progressed as quickly as possible.

Clause 93(2) requires the commissioner or the appointed reviewer to reconsider the first decision and confirm, vary or set aside the decision within 30 days of receiving the application for reconsideration. The purpose of this section is to provide a level of certainty for applicants and ensure that applications under this part are dealt with expeditiously.

### **Clause 94 – Reviewable decision notice**

Clause 94 requires a person who makes a reviewable decision to give a reviewable decision notice (under the *ACT Civil and Administrative Tribunal Act 2008*) to the applicant in relation to the reviewable decision that has been made.

### **Clause 95 – Applications for review**

Clause 95 provides that an entity mentioned in schedule 2, part 2.2 may apply to the ACT Civil and Administrative Tribunal for review of a reviewable decision.

## **Part 10                      Miscellaneous**

This part comprises clauses 96 to 101.

### **Clause 96 – Limitation on lawyers legal costs**

This clause restricts the amount a lawyer can charge or seek to recover for legal costs for services relating to the Act.

Clause 96(1) provides that a lawyer must not charge or seek to recover legal costs that are higher than the amount prescribed by regulation for legal services that relate to an application, appeal or review process under the Act. Clause 96(2) defines key words and terms for the purpose of this section.

The purpose of this clause, which is substantively the same as part 5 of the repealed Act, is to ensure that access to legal services relating to the Act is affordable for applicants and offenders.

### **Clause 97 – WPI indexation of lawyers legal costs**

Clause 97(1) provides that amounts prescribed by regulation under clause 96 must be amended each year in line with any adjustment in WPI that has occurred since the commencement of the regulation.

Clauses 97(2) to 97(4) prevent the amounts being reduced as a result of the WPI adjustment. Clause 97(5) provides a definition of WPI.

An example of how adjustments are calculated is given at the end of clause 97(4) to assist interpretation.

### **Clause 98 – Review of Act**

Clause 98(1) requires the Minister to review the operation of the Act as soon as practicable after the end of its 3rd year of operation.

Clause 98(2) requires the Minister to present a report of the review to the Legislative Assembly within 12 months after the day the review is started. Clause 98(3) provides that this clause expires 4 years after the day it commences.

The purpose of this section is to ensure that the scheme operates efficiently and effectively to meet the objects of the Act contained in clause 6. As the Act provides for the commencement of a new scheme, it is expected that improvements and adjustments may be required after 3 years of operation to address practical issues that may arise.

### **Clause 99 – Determination of fees**

Clause 99(1) provides that the Minister may determine any necessary fees. Clause 99(2) provides that the Ministerial determination is a disallowable instrument for the purposes of the *Legislation Act 2001*.

### **Clause 100 – Approved forms**

Clause 100(1) allows the commissioner to approve any necessary forms for this Act. Clause 100(2) stipulates that where there is an approved form it must be used. Clause 100(3) provides that an approved form is a notifiable instrument under the *Legislation Act 2001*.

### **Clause 101 – Regulation-making power**

Clause 101(1) provides the power for the Executive to make any necessary regulations for the purposes of this Act. Clause 101(2) allows the regulation to create offences with a maximum penalty of 10 penalty units.

## **Part 11 Repeals and consequential amendments**

This part comprises clauses 102 and 103 and sets out the legislation repealed and consequential amendments made as a result of this Act.

### **Clauses 102 and 103 – Legislation repealed and Legislation amended – sch 3**

Clause 102 sets out the legislation repealed under this Act.

Clause 103 enlivens the consequential amendments set out in schedule 3.

## **Part 20                      Transitional**

This part comprises clauses 200 to 205 and sets out the transitional arrangement for the new scheme.

### **Clause 200 – Definitions – pt 20**

This clause defines key words and terms used in this part.

### **Clause 201 – Application for financial assistance commenced but not finalised under repealed Act, and later action**

Clause 201(1) provides that clause 201 applies if an application under the repealed Act is made, but not finalised before the commencement day.

Clause 201(2) provides that the repealed Act continues to apply to: the initial application and any proceeding relating to the initial application; a later application for variation of a final award and any proceeding relating to the variation application; the repayment of an amount of financial assistance by an assisted person; and the restitution of an amount of financial assistance from a person found guilty of a related crime. Clause 201(3) clarifies the meaning of a matter for clause 201.

The purpose of clause 201 is that pending applications and future matters arising from those applications are not affected by the commencement of the new Act.

### **Clause 202 – Application for financial assistance not commenced under repealed Act may be made within 12 months after commencement day, and later action**

Clause 202(1) provides that clause 202 applies if a person who, immediately before the commencement date, is entitled to make an application under the repealed Act and has not made the initial application.

Clause 202(2) allows applicants to make the initial application to the Magistrates Court within 12 months after the commencement day.

Clause 202(3) provides that the repealed Act continues to apply to: the initial application and any proceeding relating to the application; a later application for variation of a final award and any proceeding relating to an application for variation of a final award; the repayment of an amount of financial assistance by an assisted person; and the restitution of an amount of financial assistance from a person found guilty of a related crime. Clause 202(4) clarifies the meaning of the matter for clause 201.

The purpose of clause 202 is to provide a transition period in which eligible people have the opportunity to lodge an application under the repealed Act before applications are no longer accepted under the repealed Act.

### **Clause 203 – Application for financial assistance under repealed Act not made within 12 months after commencement day may be made under this Act**

Clause 203(1) provides that clause 203 applies if immediately before the commencement day a person is entitled to make an application under the repealed Act and the person has not, within 12 months of commencement, made the application in accordance with section 202.

Clause 203(2) provides that the person may apply for financial assistance under this Act for an act of violence that would have been the subject of the application under section 27 of the repealed Act.

Clause 203(3) provides that this Act applies to the application mentioned in clause 203(2).

Clause 203(4)(a) provides that, for an application mentioned in clause 203(2), if the act of violence that is the subject of the application arises in the course of an offence against the *Crimes Act 1900*, sections 51 to 62 (which includes sexual assault, sexual intercourse and acts of indecency), the applicant is eligible for a maximum amount of a recognition payment of \$50,000.

Clause 203(4)(b) provides that, for an application mentioned in clause 203(2), if as a result of the act of violence the person suffers an extremely serious injury under section 11 of the repealed Act the applicant is eligible for a recognition payment of \$30,000.

The purpose of clause 203 is to allow those who have been injured by violent acts before the commencement of the new Act, to apply under this Act instead of the repealed Act, and to provide recognition payments that align with the special assistance payments, victims of certain sexual offences and victims who incurred an extremely serious injury were eligible for under the repealed Act.

### **Clause 204 – Transitional regulations**

Clause 204 enables the Executive to make regulations dealing with transitional matters.

The clause contains 2 different regulation making powers.

Clause 204(1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Clause 204(2) enables the making of a regulation that modifies the Act. However, a regulation under this clause may only modify part 20 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Clause 204(3) gives a regulation under clause 204(2) full effect according to its terms. A provision of part 20 of the Bill modified by regulation will operate in the same way (in relation to another provision of the Act or any other Territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The clause is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly.

Also, any modification by regulation of part 20 of the Bill has no ongoing effect after the expiry of that part.

## **Clause 205 – Expiry – pt 20**

This clause provides that part 20 expires 5 years after the commencement day. The note explains that transitional provisions will continue to have effect after their expiry, but are removed from the Act. This means that people who are eligible to apply to the commissioner under clauses 201, 202 and 203 can continue to make applications under those provisions after part 20 expires.

## **Schedule 1 Offences – act of violence**

Schedule 1 provides a list of offence types, in table form, that constitute general offences and domestic violence offences.

## **Schedule 2 Reviewable decisions**

Schedule 2 provides a list of internally and externally reviewable decisions under the Act.

## **Schedule 3 Consequential amendments**

Schedule 3 provides consequential amendments to other Acts.

## **Dictionary**

Defines key words and terms used in the Act.