




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 1 December 2016

**VICTIMS OF CRIME ASSISTANCE AND OTHER LEGISLATION AMENDMENT
BILL**

Message from Governor

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.02 pm): I present a message from His Excellency the Governor.

Madam DEPUTY SPEAKER (Ms Farmer): The message from His Excellency recommends the Victims of Crime Assistance and Other Legislation Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

VICTIMS OF CRIME ASSISTANCE AND OTHER LEGISLATION AMENDMENT BILL 2016

Constitution of Queensland 2001, section 68

I, PAUL de JERSEY AC, Governor, recommend to the Legislative Assembly a Bill intitled—

A Bill for an Act to amend the Criminal Code, the Evidence Act 1977, the Penalties and Sentences Act 1992, the Victims of Crime Assistance Act 2009 and the Youth Justice Act 1992, and to amend the legislation mentioned in schedule 1, for particular purposes.

GOVERNOR

Date: 1 DEC 2016

Tabled paper: Message, dated 1 December 2016, from His Excellency the Governor recommending the Victims of Crime Assistance and Other Legislation Amendment Bill 2016 [[2231](#)].

Introduction

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.02 pm): I present a bill for an act to amend the Criminal Code, the Evidence Act 1977, the Penalties and Sentences Act 1992, the Victims of Crime Assistance Act 2009 and the Youth Justice Act 1992, and to amend the legislation mentioned in schedule 1, for particular purposes. I table the bill and explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Victims of Crime Assistance and Other Legislation Amendment Bill 2016 [[2232](#)].

Tabled paper: Victims of Crime Assistance and Other Legislation Amendment Bill 2016, explanatory notes [[2233](#)].

I am pleased to introduce the Victims of Crime Assistance and Other Legislation Amendment Bill which will advance the way in which victims of crime are treated in Queensland. The bill has two main objectives. Firstly, it amends the Victims of Crime Assistance Act 2009 to implement the 15 recommendations of the final report of the statutory review of that act which was tabled in this House on 16 December 2015; make a number of amendments to the act aimed at streamlining processes and

improving operational efficiency; and extend the victims of crime financial assistance scheme to all victims of domestic and family violence. Secondly, it improves support for victims of sexual assault during the legal process by introducing a sexual assault counselling privilege to implement recommendation 130 of the Special Taskforce on Domestic and Family Violence in Queensland in its report *Not now, not ever: putting an end to domestic and family violence in Queensland* and amending the special witness provisions in the Evidence Act 1977.

The victims of crime financial assistance scheme established by the VOCA Act commenced in December 2009, replacing compensation based schemes under the Criminal Offence Victims Act 1995 and the Criminal Code. The VOCA Act aims to provide victims with timely assistance to help them recover from acts of violence rather than receiving a lump sum payment after a lengthy court process. In accordance with section 144 of the VOCA Act, the Department of Justice and Attorney-General conducted a statutory review of that act. The review found the financial assistance scheme provides an effective response to assist victims of crime but identified some areas for improvement and made 15 recommendations for amendments to the act. The bill implements all 15 recommendations of the statutory review as well as making a number of other amendments to the act to streamline processes and improve operational efficiency.

One of the VOCA Act's purposes is to establish fundamental principles of justice for victims that guide how victims are treated by government agencies. The bill replaces these principles with a new, plain English Charter of Victims' Rights. The charter applies to all government agencies and will extend to non-government agencies that receive Commonwealth, state or territory funding to provide support to victims of crime in Queensland. This will ensure victims receive consistent treatment across both government and non-government services. The role of the Victim Services Coordinator will be strengthened by the bill to allow him or her to help victims resolve their complaints against government and non-government agencies about breaches of the charter. The Victim Services Coordinator will better identify trends and issues and proactively help agencies implement the charter effectively.

The Palaszczuk government made an election commitment to ensure all victims of domestic and family violence can access financial assistance, even where the domestic violence was nonphysical in nature. Consistent with that commitment, the bill extends the financial assistance scheme to all victims of domestic and family violence, including victims of non-physical domestic and family violence such as emotional or economic abuse. The bill streamlines the provisions about victim impact statements by removing the provisions from the VOCA Act and placing them in the Penalties and Sentences Act 1992. Also, the bill will allow victims of offences involving domestic and family violence, including breaches of domestic violence orders, police protection notices and release conditions under the Domestic and Family Violence Protection Act 2012, to give a victim impact statement at the time of sentencing the offender. This amendment will enable all victims of domestic and family violence to fully participate in the criminal justice system and have their voices heard.

The bill will increase the amount of funeral assistance payable to the family members of a victim who has tragically died because of a violent crime from \$6,000 to \$8,000 to reflect the increased cost of funerals and to provide a higher level of assistance to these victims. Also, the bill streamlines the amounts payable to victims as special assistance, which is a lump sum payment in addition to financial assistance to recognise the impact of the harm caused to the victim. The amounts prescribed for special assistance will now be a fixed amount for each of the four different categories of offences: category A, being the most serious offences such as rape or murder, will be set at \$10,000, down to category D, being the least serious offences, which will receive \$1,000. The bill reinforces that the financial assistance scheme is one of last resort. The bill requires victims who are eligible for payments from other sources for the same act of violence to access those other payments before they are paid financial assistance under the act.

The bill strengthens Victim Assist Queensland's information-gathering powers, including allowing it to obtain information from court registrars, the registrar of the State Penalties Enforcement Registry, the Department of Transport and Main Roads and the Queensland Police Service. The information obtained will be used by Victim Assist Queensland to decide a victim's application for financial assistance as well as to assist the state recover amounts of assistance from a convicted offender. The bill also imposes obligations on victims to notify VAQ if they receive a payment for the act of violence from another source for a period of six years after the date the financial assistance is granted. Information obtained by VAQ will be protected by the confidentiality provisions in section 140 of the act. The bill will also allow VAQ to provide confidential personal information to a person for genuine research. The bill also will establish a sexual assault counselling privilege based on the New South Wales model. This model aims to strike a balance between the right to a fair trial for an accused person and the public interest in preserving the confidentiality of counselling communications between a victim

of a sexual assault and a counsellor. The privilege will cover communications made to or by a counsellor before or after a sexual assault offence which is defined to cover any offence or alleged offence of a sexual nature.

Counselling must, however, be provided in the course of the counsellor's current paid or voluntary employment. This will ensure that communications with a mere friend or confidant are not caught by the privilege. The sexual assault counselling privilege will work in two ways. Firstly, in preliminary proceedings an absolute privilege will apply. This means that, in a committal or bail proceeding, there will be no access to protected counselling communications unless the victim waives the privilege or the privilege is lost because it is made in the commission of an offence. This approach ensures that the underlying purpose of the privilege is not defeated on the basis that a party could use or rely on a protected counselling communication during the subsequent trial.

Secondly, the bill provides that a qualified privilege will apply in other criminal proceedings, including a trial, and proceedings under the Domestic and Family Violence Protection Act. This means that, unless a victim has waived the privilege or it is lost, a person wishing to access a protected counselling communication will need to apply to the court for leave. In considering whether to grant leave, the court will be required to have regard to specified criteria, which aims to balance the competing public interests of ensuring a fair trial and respecting the privacy of counselling communications. In order to provide fairness to an accused person, where the prosecution reasonably considers that it has evidence that is subject to the privilege, as part of its disclosure obligations under the Criminal Code the amendments provide that a notice must be provided to the accused stating that the prosecution is in possession of what it considers is a protected counselling communication and that an application may be made to the court seeking leave for access.

This is all about encouraging victims of sexual offences to seek help, to seek advice, to seek counselling and to not have fear in relation to divulging that information. We know that the first step in becoming a survivor is first acknowledging that the offence has occurred. We know that it is so important that people seek that sort of support. I acknowledge in the chamber here today the Minister for the Prevention of Domestic and Family Violence.

Other amendments to the Evidence Act in the bill relate to special witnesses. Currently, the court has discretion under section 21A of the Evidence Act 1977 to make a range of orders or directions to support a special witness when giving evidence, including, for example, allowing evidence to be given via a videotape recording. This bill amends the definition of 'special witness' in section 21A of the Evidence Act to provide that a victim or alleged victim of a sexual offence who is to give evidence about the commission of an offence by the alleged offender is automatically recognised as a special witness.

Amendments in the bill will commence on a date to be set by proclamation to allow for a range of implementation activities to occur, including the development of amendments to subordinate legislation and operational processes. The amendments in this bill have been developed in close consultation with key stakeholders and community groups across Queensland. I want to acknowledge those stakeholders, particularly those strong advocates and groups such as the Women's Legal Service that help so many women who are victims of sexual assault and domestic and family violence, for their ongoing advocacy for not just these initiatives but also a range of initiatives to protect and support women in the community.

The bill delivers important reforms to improve the justice system's response to victims of crime in this state and continues to demonstrate the Palaszczuk government's unwavering commitment to keeping the people of Queensland safe. I am proud to commend this bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.12 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Madam DEPUTY SPEAKER (Ms Farmer): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

Portfolio Committee, Reporting Date

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (3.13 pm), by leave, without notice: I move—

That under the provisions of standing order 136 the Legal Affairs and Community Safety Committee report to the House on the Victims of Crime Assistance and Other Legislation Amendment Bill by 27 February 2017.

Question put—That the motion be agreed to.

Motion agreed to.