

Victims of Crime Assistance and Other Legislation Amendment Bill 2023

Explanatory Notes

Title of the Bill

The short title of the Bill is the Victims of Crime Assistance and Other Legislation Amendment Bill 2023.

Policy objectives of the amendments and the reasons for them

Increasing the maximum amounts of financial assistance payable to victims of acts of violence

The *Victims of Crime Assistance Act 2009* (VOCAA) provides financial assistance to certain victims of acts of violence. The VOCAA establishes the Financial Assistance Scheme (FAS), which seeks to:

- help victims of acts of violence to recover from the acts by giving them financial assistance;
- for primary victims, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the injuries suffered by them; and
- for related victims who have suffered distress, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the distress suffered by them.

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

Given the current financial pressures and increases in the costs of services caused by rising inflation, it is considered essential that amendments are made to lift the maximum amount of expenses that can be claimed and the amounts for each category of special assistance payment to ensure victims are supported in the immediate future while broader reviews, such as the review of the FAS and the broader supports provided to victims of crime as recommended by the various inquiries, are undertaken.

In addition to the increasing costs of services, it is also noted that the total maximum amount of assistance for victims, except funeral assistance, have not increased since the commencement of the VOCAA in 2009. Funeral expense assistance was increased from \$6,000 to \$8,000 when the VOCAA was amended in 2017.

On 28 September 2023, the Premier and Minister for the Olympic and Paralympic Games and the Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (the Attorney-General) announced a series of reforms to provide greater support to victims of crime and their families, including amendments to the FAS under the VOCAA to increase the maximum amount of assistance available to primary victims of crime – up to \$120,000 and a range of increases to payments including:

- maximum amount of financial assistance paid as distress payments to related victims – up to \$15,000;
- maximum amount of financial assistance available for funeral expenses – up to \$15,000;
- amount of the special assistance payment provided to eligible victims of acts of violence:
 - category A – \$15,000;
 - category B – \$9,000;
 - category C – \$6,000;
 - category D – \$3,000.

It is also proposed to increase the maximum amounts of financial assistance available to the following types of victims who are also eligible for assistance under the FAS:

- Parent secondary victims – up to \$75,000;
- Witness secondary victims – more serious act of violence – up to \$75,000;
- Witness secondary victims – less serious act of violence – up to \$20,000;
- Related victims – up to \$75,000.

To provide greater support specific to victims of acts of domestic and family violence, the Bill increases the categorisation of acts of domestic and family violence to increase the amount of special assistance payment that victim-survivors can receive. To achieve this objective, acts of domestic and family violence will be re-categorised from being a category D act of violence to a category B act of violence. The proposed amendments contained in the Bill would increase the special assistance payment for victims of acts of domestic and family violence from \$1,000 to \$9,000.

A summary of proposed increases to the financial assistance available to victims of acts of violence under the FAS are as follows:

Type of financial assistance	Current amount	Proposed amount
Maximum limit of financial assistance for primary victim of an act of violence (s 38 (1))	\$75,000	\$120,000
Maximum limit of financial assistance for parent secondary victim of an act of violence (s 41 (1))	\$50,000	\$75,000
Maximum limit of financial assistance for a witness secondary victim of a more serious act of violence (s 44(a))	\$50,000	\$75,000
Maximum limit of financial assistance for a witness secondary victim of a less serious act of violence (s 44(b))	\$10,000	\$20,000
Maximum limit of financial assistance for a related victim of an act of violence (s 48(1))	\$50,000	\$75,000
Maximum limit of financial assistance for a distress payment to a related victim (s 49(f))	\$10,000	\$15,000
Maximum limit of financial assistance for funeral expenses incurred by one or more persons for the funeral of a primary victims (ss 50(3) and 50(4))	\$8,000	\$15,000
Amount of special assistance that can be paid to a victim of a <i>Category A act of violence</i> (Schedule 2)	\$10,000	\$15,000
Amount of special assistance that can be paid to a victim of a <i>Category B act of violence</i> (Schedule 2)	\$3,500	\$9,000
Amount of special assistance that can be paid to a victim of a <i>Category C act of violence</i> (Schedule 2)	\$2,000	\$6,000
Amount of special assistance that can be paid to a victim of a <i>Category D act of violence</i> (Schedule 2)	\$1,000	\$3,000

Penalties and Sentences Act 1992

The Queensland Sentencing Advisory Council (QSAC) is established under the *Penalties and Sentences Act 1992* (PSA) with various functions, including:

- if asked by the Court of Appeal, to give the court the council's views, in writing, about the giving or reviewing of a guideline judgment;
- if asked by the Attorney-General, to advise the Attorney-General on matters relating to sentencing;

- to give information to the community to enhance knowledge and understanding of matters relating to sentencing; and
- to obtain the community's views on sentencing and matters about sentencing.

QSAC comprises of no more than 12 members appointed by the Governor in Council, on the recommendation of the Attorney-General, each with expertise or experience in various areas, including victims of crime, justice matters relating to Aboriginal people or Torres Strait Islanders, justice matters relating to domestic and family violence, law enforcement and vulnerable persons facing the criminal justice system.

On 2 September 2023, the Queensland Government announced the appointment of Mr Jon Rouse APM, as the interim Victims' Commissioner while the legislation was being developed to establish a permanent Victims' Commissioner.

On 12 September 2023, the Attorney-General announced that the Queensland Government was committed to ensuring that there is a victims' representative on QSAC.

To support the implementation of the Government's commitment, the Bill makes changes to the composition of QSAC's membership to increase representation of victims of crime, it is proposed to amend the PSA to increase the number of members on QSAC from no more than 12 to no more than 14 members; and enable the appointment a person with lived experience as a victim of crime and an additional further member (subject to Governor in Council approval on recommendation of the Attorney-General).

Achievement of policy objectives

To achieve the policy objectives, the Bill amends the:

- VOCAA to:
 - increase the maximum amount of financial assistance payable to the following persons:
 - primary victims of acts of violence – up to \$120,000;
 - parent secondary victims – up to \$75,000;
 - witness secondary victims – more serious acts of violence – up to \$75,000;
 - witness secondary victims – less serious acts of violence – up to \$20,000;
 - related victims – up to \$75,000;
 - related victims as distress payments – up to \$15,000; and
 - funeral expenses – up to \$15,000;
 - increase the amounts payable as special assistance payments:
 - Category A (including attempted murder, rape) – \$15,000;
 - Category B (including attempted offence of category A, sexual offences, grievous bodily harm) – \$9,000;

- Category C (including attempted offence of category B, serious assault, robbery) – \$6,000;
- Category D (including attempted offence of category C, assault, unlawful stalking) – \$3,000; and
- re-categorise the special assistance payment for acts of violence that are domestic violence from Category D to Category B in Schedule 2 of that Act.
- PSA to increase the number of members of QSAC from no more than 12 to no more than 14 to enable the appointment of a person who is a victim of crime and another additional member.

Alternative ways of achieving policy objectives

As the VOCAA provides a legislative framework for the provision of financial assistance to victims of acts of violence, there are no alternative ways of achieving the policy objectives other than amending that Act.

As QSAC is established under the PSA, there are no alternative options to achieve the policy objectives other than through making amendments to the PSA.

Estimated cost for government implementation

The anticipated costs of the increased maximum amounts of financial assistance will be met through normal budget processes.

The costs associated with increasing the number of members on QSAC will be met through existing departmental allocations.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Women’s Safety and Justice Taskforce, QPS COI and LASC inquiry all separately undertook a wide range of consultation with victim-survivors, victim service organisations and other key stakeholders. This consultation led to the findings and recommendations made following each inquiry.

The Bill gives effect to calls from victim support organisations (including Voice for Victims) to better support victims of crime to increase the upper level of victims’ support available.

Consistency with legislation of other jurisdictions

Other jurisdictions across Australia have FASs that provide financial support to victims of crime. While there are many similarities, there are some differences in the types of criminal offences that qualify for financial assistance and the maximum amounts of assistance that can be claimed by a victim of crime.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that this Act may be cited as the *Victims of Crime Assistance and Other Legislation Amendment Act 2023*.

Clause 2 provides that Parts 2 and 3 will commence on a day to be fixed by proclamation.

Part 2 Amendment of Penalties and Sentences Act 1992

Clause 3 states that Part 2 amends the *Penalties and Sentences Act 1992*.

Clause 4 amends section 201 to increase the number of members of the Queensland Sentencing Advisory Council to no more than 14 and include a requirement that at least one member of the Council be a person who has lived experience as a victim of crime.

Part 3 Amendment of Victims of Crime Assistance Act 2009

Clause 5 states that Part 3 amends the *Victims of Crime Assistance Act 2009*.

Clause 6 amends section 38(1) to increase the maximum amount of assistance that a primary victim of an act of violence may be granted to \$120,000.

Clause 7 amends section 41(1) to increase the maximum amount of assistance that a parent secondary victim of an act of violence may be granted to \$75,000.

Clause 8 amends sections 44(1)(a) and 44(1)(b) to increase the maximum amount of assistance that a witness secondary victim of an act of violence may be granted:

- if the act is a more serious act of violence – to \$75,000;
- if the act is a less serious act of violence – to \$20,000.

Clause 9 amends section 48(1) to increase the maximum amount of assistance that a related victim of an act of violence may be granted to \$75,000.

Clause 10 amends section 49(f) to increase the amount that a related victim may receive for distress suffered, or likely to be suffered, by a related victim as a result of the primary victim's death to \$15,000.

Clause 11 amends sections 50(3) and 50(4) to increase the amount that a person, or group of people, who incur funeral expenses for the funeral of a primary victim of an act of violence who has died as a direct result of the act of violence to \$15,000.

Clause 12 amends the example in section 111(2) to clarify that:

- a person who is granted special assistance for an act of violence on the basis that act is attempted murder, which is a category A act of violence, would be entitled to receive a payment of \$15,000;
- the State may recover \$9,000 from the convicted person which is the amount stated in Schedule 2, section 2 for a category B act of violence.

Clause 13 inserts a new Chapter 10 which provides for the transitional arrangements that will occur once the amendments contained in the *Victims of Crime Assistance and Other Legislation Amendment Act 2023* commence.

New section 221 provides that any reference to the *amendment Act* in Chapter 10 is a reference to the *Victims of Crime Assistance and Other Legislation Amendment Act 2023*.

New section 222 provides that if an application for assistance was made but not decided before the commencement of the amendment Act, the new provisions, as amended by the amendment Act, will apply. For example, if an application for assistance is made by a primary victim before the amendment Act commences but the application has not yet been decided, once the amendment Act commences, the primary victim will be entitled to receive a maximum amount of financial assistance of up to \$120,000.

New section 223 provides for the following in relation to the State's ability to recover assistance from an offender:

- where the act of violence happens after the commencement of the amendment Act, the VOCAA, as amended by the amendment Act, will apply where the State seeks to recover assistance paid to a victim from an offender; and
- where an act of violence, is made up of a series of related crimes or a series of related acts of domestic violence and one or more of the crimes or acts of domestic violence occurs prior to the commencement of the amendment Act, the unamended VOCAA will continue to apply where the State seeks to recover assistance from an offender.

Clause 14 makes a range of amendments to schedule 2.

Clause 14(1) and *Clause 14(2)* amend the *category B circumstances* and *category C circumstances* in Schedule 2, section 1 of the VOCAA to remove the references to "a series of related acts of domestic violence" as these references are now redundant as an act or series of related acts of domestic violence will be considered a category B act of violence for the purposes of the special assistance payment.

Clause 14(3) to *Clause 14(6)* amend the table in Schedule 2, section 2 of the VOCAA to increase the special assistance payment amount for:

- category A acts of violence to \$15,000;
- category B acts of violence to \$9,000;
- category C acts of violence to \$6,000; and
- category D acts of violence to \$3000.

Clause 14(7) amends Schedule 2, section 3(2) to state that acts of violence that are domestic violence are category B acts of violence for the purpose of special assistance payment for primary victims. By categorising acts of violence that are domestic violence under Category B, victims of acts of violence that are domestic violence will be entitled to receive a special assistance payment of \$9,000.

Clause 14(8) amends Schedule 2, section 3(4)(c) to omit the previous categorisation of acts of violence that are domestic violence. As outlined above, acts of violence that are domestic violence will be categorised as a Category B act of violence instead of a Category D act of violence.