



The Queensland Law Handbook is a comprehensive plain-English legal resource designed to help you deal with your legal problems.

See queenslandlawhandbook.org.au for the most up-to-date version of this chapter

Assisting Victims of Crime

CHAPTER CONTENTS

Introduction	3
The Victims of Crime Assistance Act	3
Charter of Victims' Rights	4
Financial Assistance to Victims of Crime	5
Act of Violence Defined	6
Victim Categories	7
Types of Financial Assistance Available	7
Eligibility Criteria for Financial Assistance	9
Accessing Other Options First	10
Transitional Provisions	11
Applying for Victims of Crime Financial Assistance	12
Protection for Victims and Witnesses at Court	14

Victim Impact Statements	17
Other Services Available for Victims of Crime	17
Legal Notices	19

Introduction

In Queensland, victims of violent crime are given protection, information, assistance and support under a number of Acts including the:

- Victims of Crime Assistance Act 2009 (Qld) (VOCA Act)
- Domestic and Family Violence Protection Act 2012 (Qld) (DFVP Act)
- Evidence Act 1977 (Qld) (Evidence Act)
- Criminal Law (Sexual Offences) Act 1978 (Qld) (Sexual Offences Act).

The Victims of Crime Assistance Act

The VOCA Act provides victims of an act of violence with access to recovery-focused financial assistance. Under this scheme, which is administered by Victim Assist Queensland (VAQ), eligible victims can claim for the payment or reimbursement of the costs of goods and services they require to recover from the physical and psychological effects of an act of violence. In addition to financial assistance, VAQ provides a central point of coordination for victims through referral to specialist support services including court support.

The purposes of the VOCA Act are to [s 3(1) VOCA Act]:

- declare a charter of rights for victims
- provide a mechanism for implementing the rights and processes for making complaints about conduct inconsistent with the rights
- provide a scheme to give financial assistance to certain victims of acts of violence.

The objectives of this financial assistance scheme are [s 3(2) VOCA Act]:

- 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
- 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
- to add to other services provided by government to victims of acts of violence.

The grants of financial assistance to victims of acts of violence under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise [s 3(3) VOCA Act].

The VOCA Act is administered by the Department of Justice and Attorney-General through VAQ.

Charter of Victims' Rights

The Charter of Victims' Rights (sch 1AA VOCA Act) describes the way a victim should be treated, as far as practicable and appropriate, by Queensland government agencies and non-government organisations.

Victims have the right to make a complaint if this charter is not followed (ss 19–20A VOCA Act).

General rights

Victims should be treated with respect, courtesy, compassion and dignity, while taking into account the victim's needs.

A victim's personal information, including the victim's address and telephone number, will not be disclosed unless authorised by law.

A victim will be informed, at the earliest practicable opportunity, about services and remedies available to the victim (sch 1AA pt 1 div 1 VOCA Act).

Rights in the criminal justice system

Information about the investigation

A victim will be informed about the progress of the investigation of the crime, unless informing the victim may jeopardise the investigation. If the investigation may be jeopardised, the victim will be informed accordingly.

Information about the prosecution and court matters

A victim will be informed about:

- the name of a person charged with an offence in relation to the crime
- the issuing of a warrant for the arrest of a person accused of committing the crime
- major decisions (and the reasons for that decision) about the prosecution of the accused person. This includes the charges brought against the accused person, not bringing charges, substantial changes to the charges or accepting a plea of guilty to a lesser or different charge
- relevant court processes, including when the victim may attend a court proceeding, and the date and place of hearing of a charge against the accused (this includes details of an application for bail made by the accused)
- any diversionary programs available to the accused in relation to the crime
- the outcome of a criminal proceeding against the accused, including the sentence imposed and the outcome of an appeal
- bail applications including the outcome of a bail application made by the accused, and any arrangements made for the release of the accused, including any special bail conditions imposed that may affect the victim's safety or welfare
- the trial process and their role as a witness, if a victim is a witness at the accused's trial.

Minimised contact with the accused at court

During a court proceeding, the victim will be protected from unnecessary contact with, or violence, or intimidation by, the accused, defence witnesses, and family members and supporters of the accused.

Victim impact statement

A victim may make a victim impact statement (outlining the harm caused by the crime) under the Penalties and Sentences Act 1992 (Qld) for consideration by the court during sentencing of a person found guilty of an offence relating to the crime.

Return of a victim's property

A victim's property held by the state for an investigation or as evidence will be returned to the victim as soon as possible (sch 1AA pt 1 div 2 VOCA Act).

Rights when the offender goes to prison

Victims Register (adult offenders)

Once an offender has been convicted, eligible victims can register to receive information. If registered, a victim will be kept informed of the following matters (sch 1AA pt 2 VOCA Act):

- the offender's period of imprisonment. The victim may be advised if the offender transfers to another prison
- the escape of the offender from custody or whether the offender is unlawfully at large.

Submissions to the parole board

An eligible person has the opportunity to write to the parole board under the Corrective Services Act 2006 (Qld) about granting parole to the offender. Eligible victims will receive correspondence from the Victims Register inviting them to make a submission if a prisoner lodges an application for parole, other than exceptional circumstances parole (sch 1AA pt 2 VOCA Act).

Right to make a complaint

A victim may make a complaint about a contravention of a right under this charter, and will be given information about the procedure for making a complaint.

A friend or family member may also make the complaint for the victim, with their permission.

The complaint can be made straight to the agency the victim has been dealing with, or to the Victim Services Coordinator at VAQ.

A victim can contact VAQ for a complaint form. If preferred, they can write the complaint as a letter or email.

Financial Assistance to Victims of Crime

Victims of an act of violence may apply for financial assistance to pay for goods and services needed to aid their recovery from the psychological and physical effects of a violent crime. Assistance can be sought to pay for counselling, medical and travel expenses, loss of earnings, loss or damage to clothing that the victim was wearing during the crime and, in exceptional cases, other expenses such as relocation costs. Assistance can

also be sought for costs associated with obtaining a report that forms part of the victim's application for assistance. The expenses claimed must directly relate to the victim's recovery from an injury sustained that is a direct result of the act of violence.

Applications for financial assistance are assessed by a government assessor under the VOCA Act. The assessor determines, on the balance of probabilities, whether an act of violence has occurred, and if the applicant was injured as a direct result of the act of violence. Assessors rely on evidence from a variety of sources to make a determination on an applicant's eligibility for an amount of assistance granted (e.g. police reports, medical records, receipts and invoices).

Approved guidelines for granting financial assistance are published by VAQ.

Act of Violence Defined

An act of violence is a crime (or series of related crimes), and an act of violence is domestic violence (or a series of related acts of domestic violence) where the act has been committed by one or more persons in Queensland, and it has directly resulted in the death of, or injury to, one or more persons, irrespective of where the death or injury happened (s 25 VOCA Act).

Acts of violence may include:

- assault, grievous bodily harm
- sexual assault, rape, incest and indecent treatment of children
- robbery, burglary with violence
- stalking, kidnapping, deprivation of liberty
- murder, attempted murder and manslaughter
- dangerous operation of a motor vehicle causing death or grievous bodily harm
- domestic and family violence such as:
 - physical, sexual, emotional, psychological and economic abuse
 - threatening, coercive controlling behaviour
 - damaging a person's property or threatening to do so
 - depriving a person of liberty or threatening to do so
 - threatening a person with the death or injury of the person, a child of the person, or someone else
 - threatening to commit suicide or self-harm so as to torment, intimidate or frighten
 - causing or threatening to cause the death or injury to an animal, to control, dominate or coerce the person
 - unauthorised surveillance of a person or arranging someone else to do any of these things.

A series of crimes or acts of domestic violence may be considered related if they:

- are committed against the same person and
 - are committed at about the same time or
 - are committed over a period of time by the same person or group or
 - share another common factor or
- all contribute to the death of or injury to a person or
- are related in some other way having regard to the circumstances of the crime (s 25B VOCA Act).

A series of related crimes or a series of related acts of domestic and family violence is taken to be a single act of violence. Assistance can only be granted for the single act of violence (s 25B(5)(a)–(b) VOCA Act).

Victim Categories

The VOCA Act identifies four main categories of victims (s 26 VOCA Act).

Primary victim

A primary victim is a person who has been harmed as a direct result of an act of violence committed against them.

Related victim

A related victim is a close family member or a dependant of a primary victim who has died as a result of an act of violence.

Parent secondary victim

A parent secondary victim is a parent or guardian injured as a direct result of finding out about an act of violence committed against their child under the age of 18. This may include the victim's parents, carers, step-parents, co-parents, foster parents, kinship carers, or any other person responsible for the day-to-day care of the child. However, it does not include a person acting in place of a parent on a temporary or short-term basis.

Witness secondary victim

A witness secondary victim is a person injured as a direct result of witnessing (seeing or hearing) an act of violence.

Types of Financial Assistance Available

The components of assistance available under the VOCA Act differ according to victim type (see Table 1).

Funeral assistance of up to \$8000 is available for a person who incurs funeral expenses for a primary victim who has died as a direct result of an act of violence.

Table 1: Financial assistance components

	Primary victim	Secondary parent victim	Secondary witness victim (more serious)	Secondary witness victim (less serious)	Related victim
Counselling expenses	✓	✓	✓	✓	✓
Medical and dental expenses	✓	✓	✓	✓	✓
Incidental travelling expenses	✓	✓	✓	✓	✓
Report expenses	✓	✓	✓	✓	✓
Loss of earnings	✓	✓ *	✓ *		
Damage to clothing	✓				
Reasonable other expenses due to exceptional circumstances (e.g. home security upgrades for safety or relocation costs if it is not safe to remain)	✓	✓	✓		✓
Special assistance payment	✓				
Payments a person may have received if the primary victim had not died					✓
Distress payment					✓
Funeral assistance					✓
Legal costs to apply for assistance	✓	✓	✓		✓

*Exceptional circumstances only

Interim assistance

A victim may claim interim assistance for urgent expenses they have incurred as a result of the act of violence. Referred to as interim assistance (ss 97–100 VOCA Act), a victim may claim up to \$6000 of interim expenses prior to a final decision on the general application for assistance.

Where interim assistance is granted, the amount paid is deducted from the final grant of assistance payable to the victim. If the interim assistance exceeds the amount granted under the general application, or the application is refused, the victim must refund the amount granted.

Payment of financial assistance grants

Payments can be made to the victim, or to someone else for the benefit of the victim. Lump sum payments will be paid to the Public Trustee where the victim is a child and/or an adult with impaired capacity. Payments may also be made directly to a service provider on invoice, or to another party who has paid expenses on a victim's behalf, if receipts are provided that clearly show that the outlays have been incurred by the other party (ss 93–95 VOCA Act).

Eligibility Criteria for Financial Assistance

Reporting the act of violence

In most cases, to be eligible for financial assistance, the violent crime needs to have been reported to police. However, for special primary victims, the act of violence can be reported to police, a doctor, psychiatrist, psychologist, counsellor or domestic violence support service (s 81 VOCA Act).

A special primary victim is a primary victim of an act of violence who:

- was under the age of 18 when the act of violence was committed
- has impaired capacity
- is the victim of an act of violence involving a sexual offence
- was harmed or injured by a person in a position of power, influence or trust over the victim at the time the act of violence was committed
- is being threatened or intimidated by the person who committed the act of violence, or by someone else.

If the victim is not considered to be a special primary victim, the crime must be reported to police.

Evidence of injury

To be eligible for financial assistance, the victim must have evidence of a sustained injury as a direct result of the act of violence (except for related victims). Injury is defined as one or more of the following (s 27 VOCA Act):

- bodily harm
- mental illness or disorder (including anxiety and depression)
- intellectual impairment
- disease
- unwanted pregnancy (as a consequence of rape)
- the adverse impacts of a sexual offence or domestic and family violence such as:
 - a sense of violation
 - reduced self-worth or perception
 - lost or reduced physical immunity
 - lost or reduced physical capacity (including the capacity to have children) whether temporary or permanent
 - increased fear or increased feelings of insecurity
 - the adverse effect of others reacting adversely to the person
 - the adverse impact on lawful sexual relations.

Evidence of an injury could include a medical certificate from a health practitioner, or a victim can submit other medical records such as a hospital discharge summary or a letter from a doctor. If a victim cannot provide evidence of injury with their application, VAQ can (with the victim's consent) gather evidence from a range of sources, including Queensland Police Service, Queensland Ambulance Service, Child Safety Services, Queensland Health, Queensland Courts, registered health practitioners, counsellors, domestic and family violence services or sexual assault services.

Accessing Other Options First

The VOCA scheme is a complementary scheme of financial assistance, which means victims are generally required to access other available sources of assistance before receiving a grant under the VOCA Act.

The VOCA Act requires a victim to apply for eligible compensation from a workers' compensation scheme (ss 31–34 VOCA Act), compulsory third party insurer (ss 36A–F VOCA Act) or the National Injury Insurance Scheme Queensland (ss 36G–J VOCA Act).

A workers' compensation application must be finally dealt with prior to a victim applying for financial assistance under the VOCA Act. If an individual has been injured in an act of violence at work or while travelling to or from their place of employment, they may be entitled to workers' compensation. The VOCA Act contains specific provisions for dealing with applications where an act of violence is work related. A workers' compensation application must be made and finalised before an application for financial assistance can be considered. The VAQ assessor will assess expense components that are not available under a workers' compensation claim, namely:

- damage to clothing
- legal expenses incurred in applying for financial assistance
- certain other expenses required to recover from the act of violence (other expenses exceptional circumstances).

If a person is entitled to make a motor accident insurance claim in relation to the act of violence, the person may apply for financial assistance under the VOCA Act. However, the assessor **must** defer deciding the application for financial assistance until the insurance claim is finally dealt with (s 36D VOCA Act). Assistance for counselling is the only exception to this—the assessor must decide the application in relation to counselling expenses (s 36F VOCA Act).

If a person is entitled to make an application to the National Injury Insurance Scheme Queensland (NIISQ), in relation to a motor vehicle accident, the person may apply for financial assistance under the VOCA Act. However, the assessor **may** defer deciding the application for financial assistance until the NIISQ application is decided (s 36I VOCA Act). However, the assessor must decide the application to the extent that it relates to all components of assistance except medical expenses. A concurrent deferral under ss 36D and 36I of the VOCA Act would prevent the assistance being granted for any components except counselling expenses.

Other common sources of relevant payments include:

- Centrelink
- Medicare

- private health insurance
- income protection or household insurance
- civil court claims.

Assessors are required to take these relevant payments and rebates into account and reduce any assistance granted by an amount equal to the relevant payment when determining a grant of assistance and can request a victim to provide supporting documentation from relevant agencies (s 86 VOCA Act).

The assessor will advise the victim of their intention to reduce the grant of assistance due to the relevant payment and invite submissions within 28 days, which are considered prior to making a decision to reduce the grant of assistance (s 88 VOCA Act).

VAQ asks applicants for assistance to disclose any relevant payment they have received. It is an offence to provide false or misleading particulars to an official in relation to an application (s 141 VOCA Act).

Because the nature of the scheme is to provide assistance as soon as reasonably practicable, assessors may place a condition on the grant that the applicant advise the department of any relevant payment, including that they repay the amount.

Nothing in the VOCA Act limits or takes away from a victim's common law rights to pursue an offender or other person responsible for an act of violence (s 22 VOCA Act).

In circumstances where a victim has a concurrent common law action, assessment of their application for financial assistance would continue unless the common law action had been decided or settled, at which point any damages received would be taken into account.

Transitional provisions

The VOCA Act contains transitional provisions relating to applying for financial assistance for acts of violence that occurred prior to 1 December 2009 and 1 July 2017.

Chapter 6 of the VOCA Act relates to offences committed prior to 1 December 2009 when the now-repealed Criminal Offence Victims Act 1995 (Qld) (COV Act) and ch 65A of the Criminal Code Act 1899 (Qld) (Criminal Code) were in force. Victims who were eligible for compensation under this repealed legislation may seek financial assistance under the VOCA Act. However, to be eligible for financial assistance, the victim must satisfy the eligibility requirements of the repealed legislation.

If the act of violence occurred before 1 December 2009, a victim may be eligible for assistance under the VOCA Act where:

- the offender is convicted, or pleads guilty in a District or Supreme court
- the offender was found to be of unsound mind at the time of committing the offence or is not fit for trial
- police provide notification that an offender is not identifiable or locatable after appropriate enquiry and search.

Chapter 8 of the VOCA Act contains transitional provisions that resulted from amendments to the VOCA Act that commenced on 1 July 2017. These provisions relate to:

- the introduction of the Charter of Victims' Rights
- the expansion of an act of violence to include all forms of domestic and family violence (as defined in the DFVP Act)
- an increase in some components of financial assistance
- the removal of shared pools of assistance for related, parent secondary and witness secondary victims
- the requirement for victims to apply to a compulsory third-party insurer or the National Injury Insurance Scheme Queensland prior to accessing assistance under the VOCA Act
- additional powers for a government assessor to consider and decide an application for financial assistance.

The application of the provisions within ch 8 of the VOCA Act varies and may be based on the act of violence date, the application date, the date a decision was made on an application or the date a decision was made on an application of the same type for the act of violence (e.g. a decision on one related victim's application for the act of violence).

A number of other transitional provisions apply. Please contact VAQ for more information.

Applying for Victims of Crime Financial Assistance

Application forms for financial assistance can be accessed on the VAQ website. It is an offence under the VOCA Act to make a statement or provide a document that is false or misleading. Victim Assist Queensland has a zero tolerance response to fraud, and instances of suspected fraud are investigated and prosecuted as appropriate.

Who can apply

An application for financial assistance can be made by:

- the victim
- a parent on behalf of the victim, if the victim is a child under 18 years of age
- a victim child, if the child is at least 12 years of age and is represented by a solicitor
- the victim's guardian, if the victim is an adult with impaired capacity
- an administrator, if there is no guardian appointed and the victim is an adult with impaired capacity
- an attorney under an enduring power of attorney, if there is no guardian or administrator and the victim is an adult with impaired capacity
- a member of the victim's support network, if none of the above are applicable or available and the victim is an adult with impaired capacity
- someone else approved by the scheme manager for a victim who is a child or an adult with impaired capacity or otherwise requires assistance (s 51 VOCA Act).

Adverse factors

A number of factors adversely affect a victim's eligibility for financial assistance including where:

- the applicant conspired to commit an act of violence
- the primary victim was engaged in criminal activity that caused the act of violence
- the act of violence is not reported, unless there is a reasonable excuse for the report not being made
- reasonable assistance is not given in the police investigation, arrest or prosecution of the alleged offender and that failure to assist prevented the arrest or prosecution of the alleged offender.

Time limit for applications

A victim is required to lodge an application for financial assistance within three years of the act of violence. In the case of a victim who was a child at the time of the act of violence, the application must be made by the time they turn 21 years of age. A related victim's application must be lodged within three years of the death of the primary victim (s 54 VOCA Act).

If the act of violence occurred before 1 December 2009 and the offender has been convicted, the application must be made within three years of the conviction, or if the primary victim was a child at the time of the conviction, by the time they turn 21.

A victim may apply to the scheme manager for an extension of time for the purpose of applying for assistance.

An application for funeral expense assistance must be made within three years after the death of the primary victim. However, the scheme manager may extend the time to make an application if it would be appropriate and desirable to do so (s 58 VOCA Act).

Amendments to grants of assistance

A grant of assistance can be amended under the VOCA Act if a victim has been granted assistance and their circumstances change (s 101(1) VOCA Act). An adult victim may make one application to amend a grant of assistance per calendar year for a period of six years after the initial grant of assistance is finalised. In the case of a victim who was a minor when they applied for assistance, applications to amend a grant must be made before the child turns 24 years of age (i.e. six years from the day they turn 18).

If the scheme manager reasonably suspects an applicant has received, or is likely to receive, a relevant payment that was not taken into consideration by an assessor, the scheme manager must give the applicant a notice stating that the grant of assistance will be amended. If, because of a relevant payment, a decision is made to reduce the amount of assistance the applicant is eligible for, the applicant must refund the amount in excess of the assistance granted. This amount becomes a debt payable to the state by the applicant.

Recovering payments from offenders

Sections 107 to 120 and 185 to 194 of the VOCA Act set out the provisions of the Offender Debt Recovery scheme. The VOCA Act provides that the state may seek to recover financial assistance paid to victims from offenders convicted of relevant offences. Sections 185 to 194 (VOCA Act) enable the state to seek recovery of criminal injury compensation paid under the repealed Criminal Code scheme or the COV Act.

For debts established under ch 3 of the VOCA Act, the state may only recover financial assistance if the action to recover is started within six years of the following and whichever is later:

- the date the person was convicted of the relevant offence, or
- the date the application for the grant of financial assistance was made.

Protection for Victims and Witnesses at Court

The Evidence Act contains provisions designed to provide protection for witnesses at court in certain circumstances. These provisions extend to all victims who are required to give evidence against an alleged offender in criminal proceedings and are supplemented by the Charter of Victims' Rights. This charter requires that a victim who is a witness should be given information about the prosecution of the offender, the trial process and their role as a witness.

Improper questions

The court may disallow a question put to a witness in cross-examination (or inform the witness that a question need not be answered) if the question is considered improper (s 21 Evidence Act). A question may be considered by the court to be improper if it uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive or repetitive.

Whether a question is improper is a matter for the court to decide. In making this decision, the court will take into account the witness's age, education, level of understanding, cultural background or relationship to any party to the proceeding as well as any mental, intellectual or physical impairment of the witness.

Protection of a special witness in court

Section 21A of the Evidence Act allows a court to decide that a witness is a special witness. A special witness is entitled to have special arrangements to protect them when giving evidence in court.

A witness is considered to be a special witness where they are:

- a child under the age of 16 years
- a person who, in the court's opinion, if required to give evidence in accordance with the usual rules and practices of the court would:
 - as a result of a mental, intellectual or physical impairment, or a relevant matter be likely to be disadvantaged as a witness
 - be likely to suffer severe emotional trauma
 - be likely to be so intimidated as to be disadvantaged as a witness such as victims of sexual assault, witnesses to organised crime, or victims of domestic and family violence

In cases where a victim of crime is considered a special witness, the following protections may be requested:

- the accused person be excluded from the room (this is rare) or obscured from the view of the witness while the witness is required in court
- all persons other than those specified by the court be excluded from the room while the special witness is giving evidence (closed court)

- a person able to provide emotional support and who is approved by the court to be present while the witness is giving evidence
- a video recording of the evidence be made and viewed instead of direct testimony (although direct cross-examination of the special witness may be required)
- any other order or direction the court considers appropriate, including rest breaks or a direction that questions be kept simple.

Cross-examination by the person charged

Section 21N of the Evidence Act prevents an accused person from personally cross-examining a protected witness.

A protected witness is defined by s 21M(1) of the Evidence Act as:

- a witness under 16 years of age
- a witness who is a person with an impairment of the mind
- an alleged victim of a prescribed special offence
- an alleged victim of a prescribed offence, who the court considers would be likely to be disadvantaged as a witness or to suffer severe emotional trauma unless treated as a protected witness.

Prescribed offences and prescribed special offences tend to be serious offences including assault, burglary, robbery, grievous bodily harm, attempted murder, stalking and sexual offences involving children.

In cases where the accused person does not have legal representation, the court may arrange for free legal assistance by Legal Aid Queensland for the cross-examination (s 210 Evidence Act).

Protection of child witnesses

The general principles to be applied when dealing with an affected child witness are set out in pt 2 div 4A of the Evidence Act:

- A child is to be treated with dignity, respect and compassion.
- Measures should be taken to limit the distress or trauma suffered by a child when giving evidence.
- The child should not be intimidated in cross-examination.
- The proceeding should be resolved as quickly as possible.

A child's evidence is to be taken at the earliest possible opportunity. At a committal proceeding, a child will ordinarily give evidence only in a statement and will not be cross-examined. The evidence of an affected child is to be pre-recorded wherever possible, in the presence of a judicial officer, prior to trial and played to the jury at the trial. The pre-recorded tape of the child's evidence is then used at the trial instead of the child appearing as a witness. Trial cross-examination is not limited by the Evidence Act.

If the evidence has not been pre-recorded, it is mandatory that an audio-visual link (if available) be used for the giving of the child's evidence. As a result, an affected child may give evidence from another location (including another city) separate to where the proceeding is being heard. If an audio-visual link is not available, then a screen must be used so that the affected child witness cannot see the accused person.

Protection of victims of sexual offences

The Sexual Offences Act contains special rules of evidence concerning sexual offences that serve to protect the complainant while giving evidence. This Act defines a complainant as a person against whom a sexual offence is alleged to have been committed (s 3 Sexual Offences Act).

Reputation of the complainant

Section 4 of the Sexual Offences Act details six rules that apply in relation to any examination of witnesses or trial relating to a sexual offence. In particular, rules 1 and 2 protect complainants from questions and oblige a court to disallow evidence regarding their general reputation relating to chastity and sexual activities with any person, unless that evidence is deemed by the court to have substantial relevance to the case (rule 3). Rule 5 states that evidence establishing that a complainant has engaged in sexual activity with a person or persons is not a proper matter for cross-examination as to credit, unless it materially impairs confidence in the reliability of the complainant's evidence. The purpose of this rule is to ensure that a complainant is not regarded as less worthy of belief as a witness because they have engaged in sexual activity.

Section 4A of the Sexual Offences Act states that evidence of how and when a preliminary complaint of an alleged offence was made is admissible, regardless of when the preliminary complaint was made.

Exclusion from court

Under s 5 of the Sexual Offences Act, the public and any person not required by the court are excluded from the courtroom when the complainant is giving evidence. People allowed to remain in court during testimony include:

- the complainant's lawyers (however, it is rare for complainants to be personally represented in criminal trials)
- the defendant and the defendant's lawyers
- a Crown law officer
- the prosecutor
- a person providing emotional support
- the parent or guardian of a complainant under the age of 17
- any person whose presence the court decides is necessary or desirable for the hearing
- any person who has a proper interest in being present and whose presence would not be prejudicial to the interests of the complainant.

Publication of the complainant's identity

Section 6 of the Sexual Offences Act states that the complainant's name, address, school or place of employment, or any other particular likely to lead to identification of the complainant cannot be published unless the court orders otherwise. It is an offence to make a report or publication that could lead to the identification of the complainant without the court's permission (s 10 Sexual Offences Act).

Victim Impact Statements

Victims of personal offences or domestic and family violence, including breaches of domestic violence orders, police protection notices and release conditions under the DFVP Act, may give a Victim Impact Statement (VIS) at the time of sentencing of the offender.

A victim does not have to do a VIS, it is optional. Section 179M of the Penalties and Sentences Act 1992 (Qld) [Penalties and Sentences Act] enables a prosecutor to request that the court allow for a person to read aloud a VIS during sentencing. Section 179N of the Penalties and Sentences Act provide for a number of arrangements that the court can consider when allowing a person to read out a VIS. This may include excluding persons from the court or obscuring the reader's view of the offender.

More information about VISs is available from victim liaison officers at the Office of the Department of Public Prosecutions or on the Victim Assist website.

Other Services Available for Victims of Crime

Victim Assist's Information and Referral Service is available to answer questions and can also provide help:

- to complete the financial assistance application form
- to connect with a free victim support service
- to understand how to write a victim impact statement for the court
- with referrals to court support workers.

Victim Assist's Information and Referral Service refers victims and their families to appropriate specialist services, including specialist counselling services to meet their presenting support and recovery needs outside of the criminal justice system.

Victim Assist's local area victim coordination officers located in Cairns, Rockhampton and Ipswich courthouses and a local information and referral officer located in the Townsville courthouse work to improve service coordination and the capacity of agencies to deliver court support in local areas. When required, they also provide direct client services for victims of crime such as in-court support, assistance preparing a VIS, assistance to victims trying to understand their rights and how to make a complaint, referral information and support, and assistance to victims applying for financial assistance.

Counselling Notes Protect service

The Counselling Notes Protect service is a new free service delivered by Legal Aid Queensland and Women's Legal Service. This service provides advice, assistance and representation to sexual assault victims and counsellors who seek to prevent disclosure of counselling communications in court under the new sexual assault counselling privilege introduced in Queensland.

The privilege is based on the New South Wales legislative model. It provides for an absolute privilege in preliminary proceedings and a qualified privilege in other proceedings.

The privilege limits the disclosure and use of confidential communications made between a victim of sexual assault and a counsellor during a criminal proceeding, related civil proceeding or proceeding under the DFVP Act.

The privilege seeks to ensure people who have been sexually assaulted are not deterred from seeking therapy through fear of having their confidential counselling communications disclosed to others, including the accused, during legal proceedings.

You should seek legal advice about whether the privilege applies to your matter.

Legal Notices

Disclaimer

The Queensland Law Handbook is produced by Caxton Legal Centre with the assistance of volunteers with legal experience in Queensland. The Handbook is intended to give general information about the law in Queensland as at July 2016. The content of the Queensland Law Handbook does not constitute legal advice, and if you have a specific legal problem, you should consult a professional legal advisor.

External links

The Queensland Law Handbook provides links to a number of other websites, which are not under the control of Caxton Legal Centre. These links have been provided for convenience only and may be subject to updates, revisions or other changes by the entities controlling or owning those sites. The inclusion of the link does not imply that Caxton Legal Centre endorses the content, the site owner or has any relationship with the site owner.

Limitation of liability

To the maximum extent permitted by law, Caxton Legal Centre and the contributors to the Queensland Law Handbook are not responsible for, and do not accept any liability for, any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from the Queensland Law Handbook.

Copyright

The content of this website is subject to copyright. You may use and reproduce the material published on this website provided you do not use it for a commercial purpose, the original meaning is retained and proper credit and a link to the Queensland Law Handbook website is provided. If the material is to be used for commercial purpose, permission from Caxton Legal Centre must be obtained.