

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Victims of Crime Assistance Amendment Bill 2023

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Mr Speaker, I move that the Bill now be read a second time.

This Bill makes amendments to the *Victims of Crime Assistance Act 1976* to address a recently identified area of uncertainty in relation to the calculation and indexation of awards under the Act and regulations.

Importantly, this Bill maintains the current beneficial approach in practice to calculating the maximum awards victims are entitled to, including the CPI indexation that applies.

I will first outline the history of regulations under the Act and their intended operation.

The *Victims of Crime Assistance Regulations 2021* (to which I will refer as 'the 2021 regulations') came into force on 15 December 2021. These replaced the *Victims of Crime Assistance Regulations 2010* (to which I will refer as 'the 2010 regulations').

The 2010 regulations set out prescribed maximum awards, but did not provide for any increase or indexation to those amounts over time. The 2021 regulations commenced with the same maximum award amounts as the 2010 regulations, but also introduced annual indexation to those amounts.

The intention when the 2021 regulations were made was for awards to be assessed according to the prescribed maximums that apply at the time the application is actually assessed and finalised, not the prescribed maximum that applied at the time the application was lodged. This has been the practice since 15 December 2021.

There was another important benefit for victims in the 2021 regulations. Where there are related victims of the same incident, the 2010 regulations capped the maximum collective payment for those victims at \$50,000.

In this context, 'related victims' means relatives of the primary victim, for example, a child of a victim. This cap caused difficulty, particularly in cases with several related victims, such as the immediate family members of a homicide victim. The 2021 regulations removed this cap, as well as a cap preventing related victims from claiming for medical expenses when the cap of \$50,000 had been expended.

With that brief history of the regulations in mind, I will now address the uncertainty this amendment will clarify.

Section 5(9) of the Act provides that 'where the Commissioner makes a determination in relation to an application for an award of compensation, this Act, as in force at the time the claim was lodged, applies'. Under the *Acts Interpretation Act 1931*, a reference to 'this Act', includes the regulations made under the Act.

If the *Acts Interpretation Act* applied, section 5(9) of the Act would require the regulations to be applied as they are in force at the time a person makes an application for compensation, rather than the time a decision is made about the application. In practice, given any pending criminal proceedings or other matters can delay applications under the Act, this would mean a victim may not receive the benefit of CPI indexation as at the time they receive their final award.

It is important to note that the *Acts Interpretation Act* applies to the interpretation of every Act except in circumstances where doing so would result in an outcome inconsistent with the true intent or object of the Act in question.

While one could rely on that principle, on the basis it would be inconsistent with the intent of the *Victims of Crime Assistance Act 1976* not to entitle victims to current CPI indexation and other benefits, it was decided that amendments were appropriate to put the matter beyond doubt. This supports the ongoing practice of the Commissioners who make the awards, based on the indexed amount at the time they make their decision.

Turning to the Bill, clause 4 of the Bill, in effect, provides that the maximum award for which a person is eligible is the greater of two amounts, being either:

- the amount that applied when they lodged their application, or
- the amount that applies when their application is determined.

The theoretical possibility of there being a decrease to the prescribed indexed maximum is already addressed by regulation 4(2)(b)(ii) which provides that if there is a decrease in any particular year, the amount for the previous year applies. However, as that provision is contained in the regulations and not the Act, clause 4 ensures that regardless of any changes to the regulations, victims will be eligible for whichever is the higher amount: the amount at application, or the amount when the award is made.

The other substantive clause of the Bill is clause 5, which firstly clarifies that the amendments progressed in the Bill apply to all pending applications, whether lodged before or after the changes come into effect. This will ensure that applications that are still in the process of being considered are subject to the new clarifying provision.

This Bill will address an inequity which arises where a group of related victims have applied before and after the commencement of the current Regulations. At present, those 'related victims' applying under the current regulations could receive up to the maximum award prescribed and medical expenses, while 'related victims' who applied under the previous

regulations would be subject to the prior maximum group cap and, as such, may receive a reduced or nil award and no medical expenses.

The second aspect of clause 5 validates awards made under the Act since 15 December 2021 to the extent there is any doubt about the current practice of applying the currently indexed amounts at the time the award is made. This date, of course, is the date the 2021 regulations commenced with the new benefits for victims of CPI indexation, and the removal of the cap on awards for groups of related victims.

It was always the intent of the 2021 regulations to benefit all awards made after 15 December 2021, regardless of the application date, and this Bill supports that ongoing practice.

I am pleased that this clarifying measure is one of many steps supporting our Government's overall strong commitment to supporting victims of crimes in Tasmania.

Mr Speaker, I commend the Bill to the House.