

South Australia

# **Victims of Crime (Commissioner for Victims' Rights) Amendment Act 2007**

An Act to amend the *Victims of Crime Act 2001*; and to make a related amendment to the *Criminal Law (Sentencing) Act 1988*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Victims of Crime (Commissioner for Victims' Rights) Amendment Act 2007*.

## **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

## **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Victims of Crime Act 2001***

### **4—Amendment of section 4—Interpretation**

Section 4—after the definition of *claimant* insert:

*Commissioner* means the Commissioner for Victims' Rights appointed under Part 3 Division 2;

### **5—Substitution of heading to Part 3**

Heading to Part 3—delete the heading and substitute:

## **Part 3—Victims of Crime Advisory Committee and Commissioner for Victims' Rights**

### **Division 1—Victims of Crime Advisory Committee**

### **6—Substitution of section 16**

Section 16—delete the section and substitute:

### **Division 2—Commissioner for Victims' Rights**

#### **16—Commissioner for Victims' Rights**

- (1) The Governor may appoint a suitable person to be the Commissioner for Victims' Rights.
- (2) The person appointed as the Commissioner must not be a member of the Public Service.
- (3) The Commissioner has the following functions:
  - (a) to marshal available government resources so they can be applied for the benefit of victims in the most efficient and effective way;
  - (b) to assist victims in their dealings with prosecution authorities and other government agencies;
  - (c) to monitor and review the effect of the law and of court practices and procedures on victims;
  - (d) to carry out other functions related to the objects of this Act assigned by the Attorney-General;

- (e) if another Act authorises or requires the Commissioner to make submissions in any proceedings—to make such submissions (either personally or through counsel);
  - (f) to carry out any other functions assigned under other Acts.
- (4) The Commissioner is a member *ex officio* of the advisory committee.
  - (5) The Commissioner is to be appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment.
  - (6) At the expiration of a term of office, the Commissioner will be eligible for re-appointment.
  - (7) The Governor may terminate the Commissioner's appointment if the Commissioner—
    - (a) is guilty of misbehaviour; or
    - (b) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
    - (c) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (d) is absent, without leave of the Attorney-General, for 14 consecutive days, or for 28 days in any period of 12 months.
  - (8) Except as provided in subsection (7), the Commissioner's appointment cannot be terminated.

### **16A—Powers of the Commissioner**

- (1) A public agency or official must, if requested to do so by the Commissioner, consult with the Commissioner regarding steps that may be taken by the agency or official to further the interests of—
  - (a) victims in general; or
  - (b) a particular victim or class of victim.
- (2) If, after consultation with a public agency or official, the Commissioner is satisfied that the public agency or official—
  - (a) has failed to comply with the requirements of Part 2 in circumstances where such compliance would have been practicable; and
  - (b) has not apologised or otherwise dealt with the victim in relation to the failure in a satisfactory way,the Commissioner may, by notice in writing to the public agency or official, recommend that the agency or official issue a written apology to the relevant victim.
- (3) The Commissioner must provide the relevant victim with a copy of the notice given under subsection (2).

- (4) The Commissioner must, in his or her report under section 16F, specify the number of notices given by the Commissioner under subsection (2), and the public agencies or officials to whom the notices were given, during the year to which the report relates.
- (5) The Commissioner must, in exercising his or her powers in relation to a particular victim, have regard to the wishes of that victim.

### **16B—Appointment of acting Commissioner**

- (1) If the Commissioner is temporarily absent, or the Commissioner's position is temporarily vacant, the Attorney-General may assign a suitable person to act in the Commissioner's position during the temporary absence or vacancy.
- (2) A person who is a member of the Public Service is eligible to act in the Commissioner's position.
- (3) The terms on which a person is assigned to act in the Commissioner's position will be as determined by the Attorney-General.
- (4) A person appointed to act in the Commissioner's position has, while so acting, all the functions and powers of the Commissioner.

### **16C—Staff**

- (1) The Commissioner will have such staff as is necessary for the effective performance of his or her functions.
- (2) The Commissioner's staff will consist of Public Service employees.

### **16D—Delegation**

- (1) The Commissioner may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Commissioner under this or any other Act.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Commissioner to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **16E—Independence of Commissioner**

- (1) Subject to this section, the Commissioner is entirely independent of direction or control by the Crown or any Minister or officer of the Crown.

- (2) The Attorney-General may, after consultation with the Commissioner, give directions and furnish guidelines to the Commissioner in relation to the carrying out of his or her functions.
- (3) Directions or guidelines under this section—
  - (a) must, as soon as practicable after they have been given, be published in the Gazette; and
  - (b) must, within 6 sitting days after they have been given, be laid before each House of Parliament.

### **16F—Annual report**

- (1) The Commissioner must, on or before 30 September in each year, present a report to the Attorney-General on the operations of the Commissioner during the previous financial year.
- (2) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### **7—Amendment of section 30—Victims of Crime Fund**

Section 30(4)—delete subsection (4)

### **8—Amendment of section 31—Payments from Fund**

Before subsection (1) insert:

- (a1) The following payments must be made from the Fund:
  - (a) all payments made by the Attorney-General under this Act;
  - (b) the salary of the Commissioner;
  - (c) the salaries of other staff of the Commissioner if those staff are designated by the Attorney-General as being staff to whom this provision applies.

## **Schedule 1—Related amendments to *Criminal Law (Sentencing) Act 1988***

### **1—Amendment of section 29B—Power to establish (or review) sentencing guidelines**

Section 29B(2)—after paragraph (c) insert:

- (ca) the Commissioner for Victims' Rights;