

2016

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL
2016
Amendment to be moved by the
Attorney-General**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Attorney-General**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2016

Introduction

This explanatory statement relates to an amendment to the *Justice and Community Safety Legislation Amendment Bill 2016* (the Bill) as presented to the Legislative Assembly.

The Bill

The Bill amends 17 Acts and three Regulations. The amendments are intended to improve the operation of each amended law without amounting to a substantial change in policy.

Purpose of the amendment

The amendment amends the Bill by inserting a new part 1.20A in schedule 1 of the Bill.

New part 1.20A amends the *Victims of Crime (Financial Assistance) Act 2016* to allow the Victims of Crime Commissioner to give financial assistance to an applicant, who is a child, through a payment to the Public Trustee and Guardian to be held on trust for the applicant.

Outline

Background

The *Victims of Crime (Financial Assistance) Act 2016* (new financial assistance Act) is intended to come into effect on 1 July 2016, replacing the current scheme operating pursuant to the *Victims of Crime (Financial Assistance) Act 1983* (current financial assistance Act). The current financial assistance Act is a court based scheme which utilises provisions set out in the *Court Procedure Rules 2006*.

In approving the making of an award for a child the court usually orders that the Territory pay the amount awarded into court to be paid out to the Public Trustee and Guardian.

The new financial assistance Act transfers decision making for financial assistance from the court to the Victims of Crime Commissioner. However, it does not make provision for the Victims of Crime Commissioner to give financial assistance as a payment to the Public Trustee and Guardian.

The amendment inserted by new part 1.20A of the Bill, will correct this oversight and allow payments to children, under the new financial assistance Act, to be held on trust by the Public Trustee and Guardian.

Human Rights considerations

The amendment promotes section 11 of the *Human Rights Act 2004* (HRA) – protection of the family and children, by providing a payment option which will ensure that financial assistance for a child is used or held for the benefit of the child. This recognises that a child lacks full legal capacity to control money paid as financial assistance and there is no legal requirement for a parent to use the payment consistently with the child's best interests.

Clause notes

Amendment 1 Schedule 1, Proposed new part 1.20A – Victims of Crime (Financial Assistance) Act 2016

This amendment inserts new part 1.20A in the Bill consisting of new clauses 1.41A and 1.41B.

Clause 1.41A (New section 48 (d))

Section 48 of the *Victims of Crime (Financial Assistance) Act 2016* sets out the ways in which the commissioner can make a payment of financial assistance if the commissioner has decided that financial assistance should be given to an applicant.

The intention of that section is to allow the commissioner the flexibility to make payments of financial assistance in a range of ways. It is expected that, wherever possible, payments will be made directly to service or treatment providers to support accountability and efficiency.

Clause 1.41A amends section 48 to provide an additional payment option to the commissioner when the applicant for financial assistance is a child. The additional option will allow the commissioner to give financial assistance as a payment to the Public Trustee and Guardian to be held on trust for the applicant.

It is expected that this clause will mainly be relied on to give recognition payments. It is expected that the commissioner will consider the best interests of the child, the quantum of financial assistance and the parental or guardianship circumstances of the child when deciding which payment option to use.

Where the commissioner makes payment to the Public Trustee and Guardian, they will hold the payment on trust for the benefit of the child. The payment may be used for the child's maintenance and advancement. The trust would ordinarily end on the child turning 18 years of age.

Clause 1.41B amends the dictionary, note 2 of the new financial assistance Act, consequential on the amendment made by clause 1.41A.