

2020

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

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

EXPLANATORY STATEMENT

and

HUMAN RIGHTS COMPATIBILITY STATEMENT

(Human Rights Act 2004, s 37)

Presented by
Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

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VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

Overview and purpose of the Bill

This Bill provides victims of crime with rights that seek to ensure victims are treated appropriately in the justice process and are provided with information and opportunities to participate wherever possible, recognising that they are central to the justice process.

This Bill:

- a) replaces the ‘governing principles for the treatment of victims of crime in the administration of justice’ in the *Victims of Crime Act 1994* (VOC Act) with the Charter of Rights for Victims of Crime (the Charter), and
- b) introduces an accountability framework in the VOC Act and the *Human Rights Commission Act 2005* (HRC Act), that will give victims access to processes for making justice agency complaints and raising victims rights concerns where a victim right in the Charter has not been upheld by an obligated agency.

Charter of Rights for Victims of Crime

Victim rights in the VOC Act provide detailed guidance to victims and agencies about victim entitlements.

Existing provisions and entitlements for victims can be inconsistently applied and at times challenging for victims to access. Many victims experience difficulty navigating the justice system due to a lack of information and not being included in criminal justice processes.¹ This can lead to re-traumatisation, putting pressure on the victim support and health systems,² and can deter people from reporting crimes and cooperating with prosecutions.³

The ACT Human Rights Commission (HRC) notes that “people who have been victims of crime have limited influence on the course of investigation, prosecution and sentencing of crimes committed against them. They do not usually have lawyers to protect their interests and guide the prosecution process – their primary role in the criminal justice system is as witnesses. There is now recognition that vulnerable victims can be re-victimised through the trial and court processes.”⁴

¹ Holder R., *The Quality of Justice: Operation of the Victims of Crime Act in the ACT*, 2008, p. 53; ACT Victims of Crime Coordinator, *Thanks for giving us a voice: The experience and views of victims of crime with their rights in the ACT justice system. A report of a survey for the review of the ACT victims of crime Act 1994*, August 2008.

² Ashworth (1998) in Wedlock, E., and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*, 2016.

³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017; Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. xvii, 2016; Murphy and Barkworth (2014) in Wedlock, E., and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*, 2016.

⁴ Victim and Witness Rights under the ACT Human Rights Act 2004: A Practical guide for the justice sector on the Human Rights Act (ACT) 2004, ACT Human Rights Commission, <https://hrc.act.gov.au/wp-content/uploads/2015/03/Web-Version-Victims-Guide-Final.pdf>, p. 5.

The purpose of the Charter is to establish legislated rights for victims of crime and obligations for justice agencies when dealing with victims, along with an accountability framework for ensuring those obligations are met. The Charter provides detailed, clear operational guidance to victims and agencies about victim engagement and obligations and introduces rights in the following areas:

- a) respectful engagement and protections related to safety and privacy,
- b) access to support, services and assistance,
- c) information about general administration of justice processes,
- d) information in relation to investigations, proceedings and decisions, and
- e) participation in proceedings.

Accountability framework

Linking rights to an accountability framework where a victim has a concern about a breached right, provides a robust victim rights framework.

Victim rights in the Charter (new part 3A of the VOC Act) are linked to an accessible and restorative process where a victim can raise a concern about a breached right and there is system of accountability when this occurs. The accountability framework for the Charter aims to meet two key outcomes:

- a) to provide an opportunity for victim concerns to be heard and acknowledged in a restorative framework, and
- b) to support changes to justice agency practice so that people are less likely to experience a breach of Charter rights in the future, and to monitor and evaluate how agencies are complying with victim rights and highlight where systemic issues are occurring.

The accountability framework for the Charter provides justice agencies with the ability to monitor their own compliance with the Charter; alongside a centralised system to support victims to resolve concerns in a supported and trauma-informed environment, and to provide systemic advocacy and monitoring through three key mechanisms:

1. Justice agency complaint resolution – A victim may choose to raise any issue directly with a justice agency who may address the complaint through internal complaints policies and processes (see new s18D and 18E). A justice agency must report on complaints raised that are recorded in writing because of their seriousness or where the victim has requested, in the agency’s annual report (see new s18I).
2. VOCC resolution of informal concerns - A victim may choose to raise a concern directly with the VOCC who can assist to resolve these concerns by asking a justice

agency to, with the victim's consent, provide any document that the justice agency can provide to the victim which is reasonably required to resolve the concern (see new s18F and 18G). The VOCC must report on concerns in the HRC annual report (see new s18J) and if the concern is unable to be resolved, the VOCC may refer the concern to a formal complaints entity and give the entity any information to assist in relation to the concern. This includes the ACT Human Rights Commission (HRC); the Ombudsman; the Integrity Commission; or any other entity authorised to investigate a complaint relating to the administration of justice.

3. Consideration of complaint by the ACT Human Rights Commission – A victim rights complaint may be raised with the ACT Human Rights Commission (HRC) and considered in line with how other service complaints are managed such as complaints about services for children and young people, or older people in the Human Rights Commission Act 2005 (HRC Act). This includes complaint investigation (Division 4.4, HRC Act), referral for conciliation (Division 4.3, HRC Act); and making reports and recommendations to an agency or the Minister, however it must not include adverse comments unless an agency has been given the opportunity to respond (Division 4.5, HRC Act). However, the impartiality of justice agency decision-making is protected in the proposed framework through the following provisions.
 - a) A justice agency not committing an offence if the agency does not comply with a requirement to participate in complaint consideration processes under the HRC Act.
 - b) The DPP need not comply with a provision of the HRC Act in relation to victim rights complaints if it considers this would prejudice the independence of the DPP or the prosecution of an offence. The DPP must report on each occasion it declines to participate in the agency's annual report (new s100B, HRC Act).

Development of the proposed approach

The ACT Government committed to a Charter of Rights for Victims of Crime (the Charter) in the Parliamentary Agreement for the ninth Legislative Assembly (PA 7.6). The Victims Advisory Board (VOC Act, s22B) provided advice to Government on the development of the Charter along with key stockholders. This Bill has been informed by extensive consultation with justice agencies, the Victims of Crime Commissioner (VOCC) and HRC, community members, including victims of crime and members of diverse groups, and legal sector professionals.

The Bill presents a balanced approach towards victim rights to ensure:

- a) victim rights meet the needs of victims of crime and do not raise expectations about entitlements,

- b) victim rights are specific, aligned with existing legislation and able to be implemented and upheld in practice by justice agencies,
- c) victim rights are balanced with the rights of the accused and offenders, and
- d) victim rights respect that at times, justice agencies are required to have discretion and independence in relation to victim engagement where this impacts on investigations and prosecutions.

Human Rights implications

This is a significant Bill which has been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (HR Act). During the Bill's development due regard was given to its compatibility with human rights as set out in the HR Act.

Human Rights Engaged

The Bill expands the HR Act to include victim rights, and many Charter rights support and promote human rights. The Bill promotes the following rights under the HR Act:

- Section 8 – Recognition and equality before the law
- Section 10 – Protection from torture and cruel, inhuman or degrading treatment
- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 16 – Freedom of expression
- Section 17 – Taking part in public life
- Section 18 – Right to liberty and security of person
- Section 21 – Right to a fair trial
- Section 27 – Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

The Bill may be seen to limit the following rights under the HR Act:

- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement

- Section 21 – Right to a fair trial

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society, and that one individual's rights may need to be weighed against another individual's rights.

Section 28 (1) of the HR Act provides that human rights may be subject only to reasonable limits and section 28 (2) provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected,
- b) the importance of the purpose of the limitation,
- c) the nature and extent of the limitation,
- d) the relationship between the limitation and its purpose, and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

An individual's rights and freedoms may, in some cases, be limited by this Bill on the basis that it is limiting the rights of an accused to uphold the rights of victims. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve a safe justice system for both victims of crime and accused persons. A full assessment of the Bill against section 28 of the HR Act is provided below.

Human Rights Promoted

Recognition and equality before the law

Section 8 of the HR Act provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. The Bill promotes this right through:

- Providing victims of crime with rights in the Charter supports victims to participate, and where appropriate, alongside accused persons and offenders in the justice process.
- The Charter provides victims with the right to being engaged respectfully with, and with appropriate regard to their personal situation, needs, concerns, rights and dignity (clause 29, new s14C (1)).
- The Charter provides a specific obligation for justice agencies to take into account and be responsive to particular diverse victim needs in relation to age; disability; gender identity;

race; religion; sex; sexuality; and parental, family, carer or kinship responsibilities (clause 29, new s14C (2)).

Protection from torture and cruel, inhuman or degrading treatment

Section 10 of the HR Act provides that no one may be treated in an inhuman or degrading way. The Bill promotes this right through:

- The Charter encourages respectful engagement with victims of crime, and recognises and establishes appropriate ways for justice agencies to interact with victims in order to minimise adverse outcomes and prevent trauma for victims (clause 23, new section 3AA(e)).
- The Charter encourages the provision of information, case updates and opportunities to participate and seek safety for victims in the justice system, engaging with victims as central to the justice process.

Protection of family and children

Section 11 (2) of the HR Act provides that ‘every child has the right to the protection needed by the child because of being a child, without distinction or discrimination or any kind’. Minors are entitled to special protection in recognition of their vulnerability because of their status as a child. This is not limited to the treatment within the family but extends to treatment by others and public authorities.⁵ The Bill promotes this right through:

- The definition of victim in the VOC Act (s6) that applies to the Charter recognises that a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim, is considered to be a victim.
- The definition of victim in the VOC Act (s6) that applies to the Charter provides that if a person mentioned for this definition is a child, then a guardian of the child is considered to be a victim in regards to accessing rights.
- The Charter includes a right to respectful engagement with child victims whereby as far as practicable, justice agencies are obligated to consider the child’s views, wishes and circumstances before engaging the child’s parent or carer as the victim in relation to victims rights; and engage the child in a way that is appropriate for a person of the child’s age who is not a victim (clause 29, new s14D).

Right to privacy and reputation

Section 12 of the HR Act provides that everyone has the right to not have his or her privacy interfered with unlawfully or arbitrarily. The Bill promotes this right through:

⁵ Department of Justice and Community Safety, *Guidelines for ACT Departments: Developing Legislation and Policy*, February 2010, p 27.

- The Objects of the VOC Act recognising that one of the key aims of the legislation is to contribute to upholding the safety, privacy and dignity of people adversely affected by crime (clause 23, new s3AA(b)).
- The Charter includes a right reflecting that a justice agency must not disclose personal information about a victim or a family member of the victim, unless the information is disclosed in a proceeding before a court or tribunal; under a territory law; or with the victim's consent (clause 29, new s14F).
- The accountability framework for the Charter includes the ability for the VOCC to ask for documents that would be available to a victim to assist in resolving a concern, and seeks the victim's consent before the VOCC refers an unresolved concern to a formal complaints body (clause 29, new s18G).

Freedom of movement

Section 13 of the HR Act provides that everyone has the right to move freely within the ACT, meaning that a person cannot be arbitrarily forced to remain in, or move to or from, a particular location. The Bill promotes this right through:

- Charter rights providing victims with information, where appropriate in the circumstances, about offender whereabouts (after sentencing) to assist in victims to move freely with a sense of safety (clause 29, new s16G-M).
- Charter rights including a right that victims have assistance to minimise exposure to and prevent contact with accused and defence when in a court or tribunal building for a proceeding for the offence (clause 29, new s14I).

Freedom of expression

Section 16 of the HR Act provides that everyone has the freedom to seek, receive and impart information and ideas of all kinds. The Bill promotes this right through:

- The Charter providing an obligation on justice agencies to seek victim views on certain actions and decisions in the course of a justice process, including in regards to certain prosecution actions (clause 29, new s16B, 16G, 17, 17B).
- The Charter reflecting existing legislative entitlements and provides an accountability framework for victims to participate, where eligible, to provide submissions in relation to bail decisions, inquiries on release on parole or licence proceedings, Victim Impact Statements, restorative justice processes, and statements to the ACT Civil and Administrative Tribunal (ACAT) on relevant mental health orders (clause 29, new s15B, 15F, 16 G, 17, 17A, 17D-G).

- The accountability framework for the Charter providing that victims can raise a concern or complaint and participate in resolution of these in relation to a breached Charter right (clause 5, new s41C in the HRC Act; clause 29, new s18D and 18F in the VOC Act).

Taking part in public life

Section 17 of the HR Act provides that every citizen has the right to take part in the conduct of public affairs, directly or through freely chosen representatives. The Bill promotes this right through:

- One of the Objects of the Act acknowledging the central role of victims in the criminal justice process (clause 23, new s3AA(a)).
- The Charter including victim rights to participate in justice processes and places an accountability mechanism on this to ensure that victims have access to entitlements and a complaints process where a breach occurs (clause 5, new s41C in the HRC Act; clause 29, new divisions 3A.6 and 3A.7 in the VOC Act).

Right to liberty and security of person

Section 18(1) of the HR Act provides that everyone has the right to liberty and security of person. The Bill promotes this right through:

- A key object of the VOC Act is to contribute to upholding the safety of people adversely affected by crime (clause 23, new s3AA(b)).
- A Charter right that seeks to minimise a victim's exposure to and contact with the accused and defence (clause 29, new s14I).
- A Charter right that minimises registered victims' exposure to and contact with the offender by providing an obligation for justice agencies to give registered victims information about how to do this (clause 29, new s14J).
- Ensuring that Charter rights do not have unintended consequences on the safety of victims, such as police not giving written confirmation to a victim of reporting an offence if this is likely to affect the safety of the victim or another person, for example in instances of family violence (clause 29, new s16 (2)).
- The Charter right that provides that justice agencies tell the victims about bail decisions if the victim has expressed a concern about the need for protection from violence or harassment by an accused person for the offence (clause 29, new s16C).
- The Charter right that provides that justice agencies tell registered victims of the intended transfer or release from imprisonment or detention or escapes from custody where a registered victim of an offender has expressed concern about their safety or the need for protection from the offender to a relevant justice agency (clause 29, new s16J).

- The Charter right that provides that justice agencies tell victims about breach of or changes to Intensive Corrections Orders (ICOs) if it is likely to affect the victim's safety or the victim has expressed concern about their safety or the need for protection from the offender to the adult offenders victims register unit (clause 29, new s16K).
- The Charter rights that provides that that a victim who is an affected person is told information in relation to a forensic patient that is necessary to the victim's safety and wellbeing (clause 29, new s16N).

Right to a fair trial

Section 21 of the HR Act provides that everyone is entitled to rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This Bill promotes this right through:

- The Objects of the VOC Act that acknowledge the central role of victims in the criminal justice process; acknowledge, promote and uphold the rights and interests of victims in the administration of justice; and recognise and establish appropriate ways for agencies involved in the administration of justice to interact with victims (clause 23, new s3AA).

Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

Section 27 of the HR Act provides that anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language. It also provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights. This Bill promotes this right through:

- Specifying that a justice agency must take into account and be responsive to the particular needs of a victim, particularly needs relating to race (clause 29, new s14C(2)(d)).
- Specifying that a justice agency must, unless the court directs otherwise, ensure a victim of an offence is provided with, or is able to access, any aid or adjustment for which the victim is eligible that is necessary to enable the victim to fully participate in the administration of justice for the offence. This includes examples such as assistance animals, an intermediary or support person or an interpreter or translator (clause 29, new s15A).

Human Rights Limited

Amendments in the Bill engage with and may be seen to limit the rights of accused persons and offenders in regards to privacy and reputation; freedom of movement; and fair trial.

These rights may be impacted in certain circumstances to uphold victim safety and participation in justice processes for the relevant offence.

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) (the UN Declaration) sets out non-binding principles for the treatment of victims. The UN Declaration notes that these must be implemented without prejudice to the rights of suspects and offenders.⁶ The *European Union's Minimum Standards on the Rights, Support and Protection of Victims of Crime* (2012) (EU Minimum Standards) recognise that these rights are without prejudice to the rights of the offender.⁷ The Victorian Law Reform Commission (VLRC) also notes that the rights in the Victorian Charter of Human Rights and Responsibilities “are not absolute and must be balanced against each other and against other public and private interests”.⁸

Privacy and reputation

The nature of the right affected

Section 12 of the HR Act states that everyone has the right to not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and not to have his or her reputation unlawfully attacked.

The right to privacy may be impacted for accused persons and offenders in the Bill in relation to Charter rights that interact with the Youth and Adult Victims Registers, and the Affected Persons Register, which provide information to Registered Victims of the offence about offenders, where appropriate in the circumstances (clause 29, new s14J, 16G-K, 16N). Additionally, victims may be told about orders relating to offenders' mental health by the DPP and the ACAT (clause 29, new s16L-M). Additional Charter rights which may impact on the privacy of accused persons and offenders are those that provide case updates and participation rights to victims during the investigation and prosecution process (clause 29, new s16A, 16C-D, 17, 17C).

While the majority of Charter rights are based on existing legislative provisions that provide victims with information about offenders where relevant, there are a minority of new Charter

⁶ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (adopted by General Assembly resolution 40/34 of 29 November 1985), Preamble, [1] and [2].

⁷ European Parliament, *Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*, Directive 2012/29/EU, 25 October 2012, Preamble [12].

⁸ VLRC, *The Role of Victims of Crime in the Criminal Trial Process: Report*, August 2016, Recommendation 2 at p. 35 (3.90).

rights that reflect new areas of practice which ask justice agencies to give additional information to victims about offenders.

More detail about how these Charter rights engage accused and offender's right to privacy, and how the Charter rights are appropriately limited to ensure the impact on accused rights are limited, is described in Table 1.

In addition, certain provisions in the Bill provide for agencies to share or receive personal information about victims of crime, which engages the right to privacy. For example the Bill includes:

- A requirement for the DPP to provide information in their annual report for each occasion on which the Director does not comply with a provision of the HRC Act in relation to participation in the accountability framework (clause 20, new s100B).
- A complaint that a victim makes to justice agency about a breach of a right may be recorded in writing (clause 29, new s18D) and justice agencies are required to include information about complaints received in their annual report (clause 29, new s18I). A victim is also required to give an agency information to assist in addressing the complaint as reasonably required (clause 29, new s18E (2)).
- The VOCC is required to report on concerns raised with them in their annual report also (clause 29, new s18J) and receive information from justice agencies in relation to that complaint (clause 29, new s18G (1)(b)) and if a complaint is passed on to another entity, provide information in relation that complaint (clause 29, new s18G (3)(b)).
- A victim may nominate a person to be the victim's representative to exercise some or all victim rights to receive some or all information required to be given to the victim in relation to victim rights (clause 29, new s18B). This may impact on an accused persons or victims' safety, privacy and reputation where another person receives that information in relation to the victim's case.

More detail about how these requirements for information-sharing are appropriately limited to ensure the impact on victim rights is limited is set out in Table 2.

The importance of the purpose of the limitation

The purpose of this limitation is to provide victims with information relevant to their personal safety and participation in the justice process. Information-sharing about accused persons and offenders, and the case, is key to assist victims to participate in justice processes and to assist victims of crime to make decisions about their personal safety. Ultimately this leads to better prosecution outcomes, improved rates of reporting crime, reduced re-traumatisation as people navigate the justice process, and improved individual and community safety.

Personal safety is a human right under the HR Act, as expressed through the right to life (s9); right to security of person (s18); protection from torture and cruel, inhuman or degrading

treatment (s10); and the right to privacy (s12). Victims of crime are also able to access these human rights alongside the rights of the accused. These are upheld and considered together - they are not mutually exclusive. The *Royal Commission into Institutional Responses to Child Sexual Abuse* noted that victims are central to the justice process and that those who are charged with criminal offences are expected to be brought to trial fairly, impartially and in the public interest; and criminal justice responses must be in the interests of society, including victims.⁹

Internationally and across Australian jurisdictions, community expectations are moving towards an understanding of increased victim participation in justice processes. This is evident in victim rights schemes across Australian states and territories, and with the introduction of reforms in the ACT including the Witness Intermediary Scheme and expansion of the ACT Restorative Justice Unit to sexual and family violence offences.

Information sharing about complaints that victims of crime may raise in relation to a Charter right being breached is also necessary to maintain the accountability framework for the Charter.

The relationship between the limitation and its purpose

Victim rights in the Charter ensure that the relationship between the limitation of the rights of the accused/offender and the purpose, to ensure greater safety and participation for victims, is well-balanced and clear. It does this through:

- a) Providing discretion for justice agencies – Charter rights provide that agencies have discretion in order to consider and weigh-up the privacy of offenders in relation to the safety of victims and the impact of victim participation on the outcomes of the justice process. For example, in several rights, justice agencies may only disclose information if it is believed to be appropriate in the individual circumstances of the case (for example, see clause 29, s16I). A justice agency exercising a function in relation to victims rights need not contact a victim if it is not possible or practicable in the circumstances (clause 29, s14E).
- a) Linking victim rights to existing legislative entitlements – The majority of rights are linked to existing legislative victim entitlements, whereby checks and balances are already in place to ensure that justice agencies are able to appropriately weigh-up the impacts of the provision on both the rights of the victim and accused or offender.
- b) Linking rights to victim safety – Several rights specifically state that information about a case or an accused or offender is only relevant to share with a victim where this information may impact on the victim’s safety or where the victim has expressed

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017, Recommendation 1a-c.

concern about their safety or the need for protection to the justice agency (clause 29, new s14I, 16C, 16J-K, 16N).

These safeguards have ensured that victim rights schemes have been operating in other Australian jurisdictions without concern about an unfair impact on the rights of the accused. These provision ensure that engagement with an accused person/offender’s right to privacy is not unlawful or arbitrary, and that information is only provided to the victim about an offender if it is relevant to their safety or participation in the justice process, on balance when considering the impact of providing this information on the offender.

A justice agency may weigh-up whether sharing information with a victim may impact on the rights of the accused or offender by considering various factors, including:

- the age of the offender and victim,
- any vulnerabilities of the offender or victim,
- whether or not the victim and offender were known to each other prior to the crime occurring,
- the seriousness of the crime that has occurred, for example whether it was a personal violence offence,
- the geographical location of where the victim and offender live, work or study, or
- if there is a risk of retributive violence to the offender.¹⁰

Table 1: Charter rights impacting on accused or offender’s right to privacy and reputation and the relationship between the limitation and its purpose

Victim right	Limitation in relation to accused or offender rights
Charter rights based on existing legislative provisions that provide victims with information about offenders from the Adult, Youth and Affected Persons Registers	
Justice agencies to tell victims information about inquiries for parole or release on licence, how the victim may make a submission, and provide information to assist the victim to make the submission (clause 29, new s16G).	This right is linked to entitlements in the <i>Crimes (Sentence Administration) Act 2005</i> (CSA Act), which sets out the types of limited information that may be provided to a victim (s124 and s296) and that this information may only be disclosed to a registered victim of an offender if the disclosure is appropriate in the circumstances (s216 and s216A).
Justice agencies to tell victims information about parole or release on licence decisions including the parole release date and, in general terms, parole obligations, and the	This right is linked to entitlements in the CSA Act which sets out the types of limited information that may be provided to a victim in relation to parole orders

¹⁰ *Venables v New Group Newspapers Ltd* [2001] 2 WLR 1038.

Victim right	Limitation in relation to accused or offender rights
general area where the offender will live while on parole or release (clause 29, new s16H).	for offenders (s133) and licences granted for release of offenders from imprisonment (s298).
Justice agencies to tell victims information about the offender in limited circumstances if the victim asks for the information and the agency is satisfied the disclosure is appropriate in the circumstances (clause 29, new s16I).	This right is linked to entitlements in the CSA Act which sets out that if an offender has been sentenced, information about het offender may be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (s216 and s216A).
Justice agencies to tell victims information about the intended transfer, release or escape from custody of an offender, and any condition of the release that may affect the victim’s safety (clause 29, new s16J).	<p>This right provides that a registered victim of the offender has expressed a concern about their safety or the need for protection from the offender to a relevant justice agency.</p> <p>This right is linked to entitlements in the CSA Act which sets out that if an offender has been sentenced, information about het offender may be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (s216).</p>
Justice agencies to tell victims who are on the Affected Person Register information in relation to a forensic patient, such as the information in a Mental Health Order, any other information necessary for the victim’s safety and wellbeing, and if the ACAT intends to hold a hearing in relation to the order (clause 29, new s16N).	This right is linked to entitlements available in the Affected Persons Register in the <i>Mental Health Act 2015</i> , s130.
Charter rights creating new areas of practice for information provision to victims	
Justice agencies to tell victims information about breach of, or change to, intensive corrections orders (clause 29, new s16K).	<p>This right provides that this information only be provided where the information is likely to affect the victim’s safety or the victim has expressed concern about their safety or the need for protection to a relevant justice agency.</p> <p>While this right is not mirrored in the CSA Act, breaches of or changes to ICOs can lead to changes in where an offender is located or whether they are in custody or the community. This information does not always, but can, impact on a victim’s safety, and it is in these circumstances only that an agency may consider providing this information to a victim.</p>

Victim right	Limitation in relation to accused or offender rights
<p>Justice agencies to tell victims about information about:</p> <ul style="list-style-type: none"> - the requirement for an offender to submit to the jurisdiction of ACAT under the <i>Crimes Act 1900</i>, - an order that an offender be taken to an approved mental health facility without requiring that the person submit to the jurisdiction of ACAT, - a mental health order that has been made and the nature and length of the order in relation to either of the above circumstances (clause 29, new s16L). 	<p>This right applies to victims of indictable offences only, recognising that in cases of more serious crime, victims may wish to know this information. Other victims can ask for this information on request.</p> <p>While this is a new victim entitlement, information is only provided to a victim where it is clearly relevant to the offence by which the victim was impacted.</p> <p>Victims of crime currently rarely receive information about offenders who enter in the justice mental health stream. This right is intended to address this while balancing the right to privacy for an offender.</p>
<p>Justice agencies to tell victims about information about an order related to an offender’s mental health that is being considered, and the nature and length of the order if it is made (clause 29, new s16M).</p> <p>These include forensic mental health orders, orders made under the <i>Mental Health Act 2015</i>, section 180 to release the offender from custody; and if an offender arrives at ACAT through a justice pathway.</p>	<p>While this is a new victim entitlement, information is only provided to a victim where it is clearly relevant to the offence by which the victim was impacted. This information is intended to help victims make decisions about their safety based on their knowledge about an order.</p> <p>Victims of crime currently rarely receive information about offenders who enter in the justice mental health stream. This right is intended to address this while balancing the right to privacy for an offender.</p>
Charter rights providing case updates to victims	
<p>Justice agencies to update victims about the status of investigations (clause 29, new s16A).</p>	<p>While these case updates may provide victims with information about a case that includes information impacting on or about the accused, both victims and offenders are participants of a justice case and have a right to this information.</p> <p>Justice agencies have discretion in the types of information provided through updates, and relevant policies and legislation will ensure only appropriate information about the case is shared. The purpose is to provide victims with an understanding of the case in general, not detailed information about accused persons.</p>
<p>Justice agencies to seek and consider victim views about certain prosecution actions (clause 29, new s16B).</p>	

Victim right	Limitation in relation to accused or offender rights
	This right is limited to victims of indictable offences, and other victims may ask for this information on request.
Justice agencies to provide victims with updates about bail decisions (clause 29, new s16C).	This right applies where a victim of an offence victim has expressed concern about the need for protection from violence or harassment by an accused person for the offence to the justice agency. This right is linked to an existing entitlement in the <i>Bail Act 1992</i> which outlines that victims should be given notice of bail decisions if they have expressed safety concerns (s47A).
Justice agencies to give victims information about the date, time and place of a hearing (clause 29, new s16D).	This information is usually public, and where other legislation does not permit sharing this information, for instance in relation to youth offenders, the right would not required to be upheld. Justice agencies are not required to provide this information if it would be thought to be not possible or practicable in the circumstances (as per clause 29, new s14E).
Justice agencies to give victims information about the outcomes of trials and appeals (clause 29, new s16F).	
Charter rights providing participation rights to victims	
A victim may be present in a courtroom for proceedings (clause 29, new s17C).	This right states that a victim of an offence may be present in the courtroom during a proceeding for the offence, unless the court directs otherwise. This recognises that there are matters where the proceedings may not be public.

Table 2: Requirements regarding information-sharing impacting on victims and the relationship between the limitation and its purpose

Requirements regarding information-sharing impacting on victims	Limitation in relation to victim rights
A requirement for the DPP to provide information in their annual report for each occasion on which the Director does not comply with a provision of the HRC Act (clause 20, new s100B).	The information that is authorised to be provided is details about the provision in the HRC Act provision with which the Director has not complied and the reason for not complying, for instance broadly speaking that it relates to the prosecution of an offence or the independence of the DPP. Information about the complaint or matter itself is not required to be reported on.
A complaint that a victim makes to justice agency about a breach of a right may be	Clause 29, new s18I sets out that the information that should be provided in a justice agency's

Requirements regarding information-sharing impacting on victims	Limitation in relation to victim rights
<p>recorded in writing (clause 29, new s18D) and justice agencies are required to include information about complaints received in their annual report (clause 29, new s18I). A victim is also required to give an agency information to assist in addressing the complaint as reasonably required (clause 29, new s18E (2)).</p>	<p>annual report in relation to victim rights complaints includes a statement of how many written complaints were received, the right to which each relates and whether the agency resolved the complaint (new s18I (1)). New s18I (2) specifies that the justice agency must not include any information that would identify a complainant or victim of an offence.</p>
<p>The VOCC is required to report on concerns raised with them in their annual report also (clause 29, new s18J) and receive information from justice agencies in relation to that complaint(18G(b)) and if a complaint is passed on to another entity, provide information in relation that complaint (18G(3)(b)).</p>	<p>Clause 29, new s18J sets out that the information the VOCC should include their annual report on concerns received should include how many were raised, the right in relation to which the concern was raised, whether the VOCC resolved the concern, and, if the VOCC referred the concern to another entity, the entity to which is was referred (new s18J (1)). It should not include any information that would identify a complainant or victim of an offence (new s18J (2)).</p> <p>While a justice agency must give information to the VOCC on request that is reasonably required to assist in resolving a concern (new s18G), a justice agency must not give the VOCC a document if the victim does not consent or the DPP considers it would prejudice the prosecution of an offence (new s18G (2)).</p> <p>If the VOCC is unable to resolve a victims rights concern they may refer the concern to another relevant complaints entity and give the entity any information the VOCC has in relation to the concern, but only with the victim’s consent (new s18G (3)).</p>
<p>A victim may also nominate a person to be the victim’s representative to exercise some or all victim rights, to receive some or all information required to be given to the victim in relation to victim rights (clause 29, new s18B). This may impact on an accused person’s safety, privacy</p>	<p>A victim must nominate a person to be their representative in writing, ensuring that there is appropriate consent given for information either in relation to all or some victim rights to be given to that person (clause 29, new s18B (1)(b)). A victim’s representative must also agree to this nomination (new s18B (3)).</p>

Requirements regarding information-sharing impacting on victims	Limitation in relation to victim rights
and reputation where another person receives that information in relation to the victim’s case.	

Less restrictive means reasonably available to achieve this purpose

The Charter expresses victim rights as legislative obligations, rather than a non-legislated policy, in order to bridge the gap between legal entitlements for victims and victim engagement practice, and introduce victim entitlements with an attached accountability framework.

As described above, safeguards are built into each Charter right to ensure that justice agencies have the appropriate discretion to weigh-up each right, and in what circumstances sharing information with a victim is appropriate and does not impinge on the privacy of the offender to the determinant of them. Each right is also carefully targeted whereby:

- a) Definition of victim of crime – Victims of crime are appropriately defined in alignment with the current definition, which includes the primary victim, a family member or dependent who has suffered harm as a result of the harm to the primary victim, and a homicide witness (s6, VOC Act).
- b) Victims of indictable offences – Justice agencies are obligated to uphold a minority of rights for victims of indictable offences only, and other victims on request, to recognise that those victims who are mostly likely to want information about an accused person and a case have been impacted by more serious crimes.
- c) Definition of Registered Victim – Information that is available to victims through the Victims Registers is governed by an existing body of legislation and practice that protects the privacy and rights of offenders.
- d) Linking the right and provision of information clearly to the relevant offence – Each Charter right is clearly linked to the offence which the victim experienced, to provide boundaries and frameworks within which information should be shared.

Justice agencies are vested with the power of the state to make decisions in the public interest. For example, each justice agency making decisions about the appropriateness of disclosures is likely to ensure that decisions are not “capricious”, “unjust” or “unreasonable”.¹¹ Decisions can be expected to be made in an environment that is free from bias, and while the outcome of each decision may not necessarily be predictable as each decision is made in relation to the particularities of an individual case, it can be predicted that

¹¹ Interference with a person’s right to privacy is arbitrary when it is “capricious, unpredictable or unjust or [is] unreasonable in the sense of not being proportionate to a legitimate aim sought” (*PJB v Melbourne Health* (Patrick’s case) [2011] VSC 327).

reasonable decisions will be made. Section 40B of the HR Act also provides protection in that it obligates public authorities to act consistently with human rights.

The Bill outlines that the Charter will be reviewed after the end of the third year of its operation to ensure that any implementation issues are considered and addressed after a period of operation.

Freedom of movement

Nature of the right affected

Section 13 of the HR Act outlines that everyone has the right to move freely with in the ACT.

Two Charter rights may impact on this by permitting a court to prohibit or attempt to stop an accused or offender from going within a certain distance of a specified place or contacting or going near a victim:

- a) Clause 29, new s14I: Where a victim is in a court or tribunal building for a proceeding for the offence, and the victim has expressed concern to a relevant justice agency about a need for protection from violence or harassment by an accused person for the offence, the relevant justice agency must minimise the victim's exposure to the accused, defence and a family member of supporting person of the accused, and ensure they are prevented from contacting or intimidating the victim.
- b) Clause 29, new s14J: Justice agencies to tell registered victims about how to minimise exposure to and prevent contact from the offender after the offender is sentenced.

The importance of the purpose of the limitation

The individual safety of community members is paramount where a crime has been committed. The purpose of the limitation is to protect the victim of crime from contact with the accused or offender where they choose this because of not feeling safety or another reason, within reason.

The relationship between the limitation and its purpose

Each right is limited in a reasonable and proportionate manner due to the following:

- a) Clause 29, new s14I: This right is linked to the provisions available to victims under the *Evidence (Miscellaneous Provisions) Act 1991*, which states that evidence may be taken or submissions received by audio-visual link or audio link in certain circumstances (s32). It also clearly defines contact as any form of physical contact or face-to-face oral communication, not communication via telephone or text.
- b) Clause 29, new s14J: This right is linked to existing legislative practice such as applying for a personal protection order under the *Personal Violence Act 2016*, asking that the offender be directed to stop calling or sending mail to the victim under the

Corrections Management Act 2007, or asking that a youth offender be directed to not contact the victim by phone or mail under the *Children and Young People Act 2008*. This right obligates agencies to tell victims about these available measures to address contact with the offender after sentencing or being transferred from imprisonment or detention, it does not obligate an agency to ensure that contact is prohibited, recognising that other rules exist around this.

Less restrictive means available to achieve this purpose

These Charter rights are appropriately framed to achieve the purpose of victim safety, within existing legislative frameworks.

Fair trial

Nature of the right affected

Section 21 of the HR Act states that everyone has the right to have criminal charges, and rights and obligations, recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Several victim rights in the Charter reflect existing legislative entitlements that victims have in proceedings, such as to present concerns in bail submissions (clause 29, new s17), make victim impact statements (clause 29, new s17A), be in a courtroom for a proceeding (clause 29, new s17C) and make a statement to ACAT in relation to mental health orders with appropriate leave as required (clause 29, new s17E).

The limitation of the right to a fair trial, if any, resulting from this Bill is highly likely to be reasonable and proportionate.

The importance of the purpose of the limitation

Providing victims with rights in the Charter highlights the importance of victims in the criminal trial process and uplifts their position in the process. The HRC states that: “The omission of victim rights in the [HR Act] means that the Act fails to explicitly recognise the rights that should, at a minimum, attach to a victim’s role as a witness in criminal proceedings. The criminal justice system cannot function without victims. The absence of explicit recognition of victim’s rights in the HR Act also fails to recognise their legitimate interests, as a ‘private’ victim and ‘public citizen’, in the outcome of criminal justice processes.”¹²

The UN Declaration indicates that there is agreement about basic rights for victims. Victims have certain interests which are well recognised by international human rights law, and

¹² ACT Human Rights Commission, Submission to consultations on the Charter of Rights for Victims of Crime, August 2018, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/7815/4457/2827/Charter_of_Rights_for_Victims_Submission_ACT_Human_Rights_Commission.pdf, p. 7.

certain measures to protect those interests have been accepted as reasonable limitations on the rights of an accused.

The relationship between the limitation and its purpose

Victim and accused rights will be upheld and considered together, they are not mutually exclusive. The interests of victims will be considered as a reasonable limit on the rights of the accused, without detracting from fair trial rights of an accused person or convicted offender.

The right to a fair trial has been found to include a “triangulation of interests” which include those of the accused, the victim and their family, and the public.¹³ As utilised in the HRC’s reference on victims in the HR Act¹⁴, in 2008, former Attorney-General Simon Corbell stated that “while the right to a fair trial is a central pillar of the criminal justice system, for too long now maintaining the balance of fairness in the prosecution of sexual assault has been heavily weighted against the complainant”.¹⁵

The European Court of Human Rights also observed that “principles of fair trial require that the interests of the defence are balanced against those of witnesses and victims called upon to testify, in particular where life, liberty or security of person is at stake”.¹⁶ The European Court of Human Rights notes that “a witness may have interests which can limit the right of an accused to fair trial”¹⁷, and that a state has a positive duty to protect a victim from real and immediate risk.¹⁸ A fair trial is the obligation of the court and essential to the administration of justice, it is not just a ‘right’ to be protected.

Less restrictive means available to achieve this purpose

Victim rights in the Charter largely mirror obligations in existing legislative frameworks and in some instances, are not administrative responsibilities of justice agencies but judicial decisions of the courts.

¹³ *Bowden et al*, 558; *Ragg v Magistrates’ Court of Victoria and Corcoris* [2008] VSC 1 (24 January 2008) (Bell J).

¹⁴ Victim and Witness Rights under the ACT Human Rights Act 2004: A Practical guide for the justice sector on the Human Rights Act (ACT) 2004, ACT Human Rights Commission, <https://hrc.act.gov.au/wp-content/uploads/2015/03/Web-Version-Victims-Guide-Final.pdf>.

¹⁵ Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 3 July 2008, 2667 (Simon Corbell, Attorney-General).

¹⁶ 4 PS v Germany (2003) 36 EHRR 61 [22].

¹⁷ *Doorson v Netherlands* (1999) 22 EHRR 330 at [70]; *MK v Australia* (1997) 24 EHRR CD59; *SN v Sweden* (2004) 39 EHRR 13 at [52].

¹⁸ *Osman v United Kingdom* (1999) 29 EHRR 45; *Opuz v Turkey* (2010) 50 EHRR 28. See also *Edwards v United Kingdom* (2002) 35 EHRR 19; *Van Colle v Chief Constable of the Hertfordshire Police* (2009) 1 AC 255.

Victims Rights Legislation Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Victims Rights Legislation Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

Victims Rights Legislation Amendment Bill 2020

Detail

Part 1 – Preliminary

Clause 1 – Name of Act

This clause specifies the name of the Act as the *Victims Rights Legislation Amendment Bill 2020*.

Clause 2 – Commencement

This clause provides that the Act will commence on 1 January 2021.

Clause 3 – Legislation Amended

This clause names the legislation amended by this Act:

- *Human Rights Commission Act 2005*
- *Victims of Crime Act 1994*.

Part 3 – Human Rights Commission Act 2005

Clause 4 – Disability and community services commissioner’s functions

New section 21 (1) (c) (v)

This clause adds victims rights complaints to the types of complaints that the Disability and Community Services (DACs) Commissioner can deal with under their functions.

Clause 5 – New section 41C

This clause inserts a new section into the *Human Rights Commission Act 2005* (HRC Act), which outlines the nature and procedures around victims rights complaints.

This section applies if a person who is a victim engages with a justice agency and believes the agency has not complied with their victims rights.

In this case, the person may complain to the HRC about the justice agency’s conduct (this is a “victims rights complaint”). Other procedures if a victim has concerns about conduct in relation to rights also exist within the VOC Act (see clause 29, section 18D for making justice agency complaints to a justice agency, and section 18F for raising victims rights concerns to the Victims of Crime Commissioner (VOCC)).

This section also outlines that, if the VOCC refers a person’s victims rights concern to the HRC under the VOC Act (section 18G (3)), the victims rights concern is taken to be a victims rights complaint made by the person to the HRC under the HRC Act.

This section clarifies that a person does not need to have made a justice agency complaint or raised a victims rights concern before making a victims rights complaints to the HRC under the HRC Act.

Clause 6 – What complaints may be made under this Act?

New section 42 (1) (eb)

This clause includes the new category of ‘victims rights complaint’ about the conduct of a justice agency in the list of complaints that can be made under the HRC Act.

Clause 7 – Who may make a complaint under this Act?

Section 43 (1)

This clause ensures that ‘conduct’, as well as an act or service, can be complained about under the HRC Act. This is to ensure that complaints about justice agency conduct can be dealt with by the HRC in the same way as complaints about an act or service.

Clause 8 – Section 43 (1), new note

This clause adds a new note to the section of the HRC Act about who can make complaints. The note clarifies that if a person’s victims rights concern is referred to the HRC, the person is taken to have made a victims rights complaint. This is consistent with new section 41C of the HRC Act.

Clause 9 – Consideration without complaint or appropriate complainant

Section 48 (1) (a)

This clause outlines that a victim right complaint may be considered by the HRC on its own initiative (a commission-initiated consideration) if it appears to be an act, service or conduct which a person could make but has not made under the Act; or any other matter related to the commission’s functions, for example if it relates to an issue of public interest or safety.

Clause 10 – Section 48 (2)

This clause adds “victims rights complaint” to the types of complaints that the HRC may consider on its own initiative if the person who made the complaint could not have made it under s 43 (1)(a-d) or the HRC does not approve the person under 43 (1)(e) to make the complaint for the aggrieved person.

Clause 11 – Referral of advocacy matters

Section 51A (1)

This clause rectifies a wording error in the HRC Act. Previously, section 51A (1) referred to a “children and young people complaint”, when the correct term is “children and young people service complaint”. This clause corrects that wording by adding the word “service”.

Clause 12 – Referral to appropriate statutory office-holder

Section 52A (1) (a)

Similarly to clauses 12 and 14 above, this section ensures that ‘conduct’, as well as an act or service, is included in the types of matters that could potentially be referred to an appropriate statutory office-holder by the HRC.

This is to ensure that complaints about justice agency conduct can be dealt with by the HRC in the same way as complaints about an act or service.

Clause 13 – Compulsory attendance at conciliation
Section 59 (4)

Section 59 states that the HRC may require a party to attend conciliation, and a person commits an offence if attendance is required and they do not attend. This does not apply if the person has a reasonable excuse not to attend as required.

A reasonable excuse in relation to a justice agency may include examples such as a view that participating would impinge on the investigation or prosecution of an offence, a proceeding, or the necessary independence of the judiciary.

This clause states that the offence provision also does not apply in relation to victims rights complaints.

Clause 14 – Power to ask for information, documents and other things
Section 73 (5)

Similarly to clause 13 above, this clause exempts justice agencies from having committed an offence if they fail to provide the HRC with information relevant to a consideration in relation to a victims rights complaint.

Clause 15 – Section 73 (7)

Similarly to clauses 13 and 14 above, this clause exempts justice agencies from having committed an offence if they fail to provide the HRC with a document or other thing for a consideration in relation to a victims rights complaint.

Clause 16 – Requiring attendance
Section 74 (4)

Similarly to clauses 13, 14 and 15 above, this clause exempts justice agencies from having committed an offence if they fail to attend before an interviewer to answer questions relevant to the consideration of a victims rights complaint.

Clause 17 – Section 74 (6)

Similarly to clause 16 above, this clause exempts justice agencies from having committed an offence if they fail to continue to attend before an interviewer to answer questions relevant to the consideration of a victims rights complaint.

Clause 18 – Section 74 (8)

Similarly to clauses 16 and 17 above, this clause exempts justice agencies from having committed an offence if they fail to answer a question when attending before an interviewer to answer questions relevant to the consideration of a victims rights complaint.

Clause 19 – Responding to recommendations

New section 85 (1A)

Similarly to clauses 13-18 above, this clause exempts justice agencies (where the matter in question is a victims rights complaint) from having committed an offence if:

- a final report, a third-party report or HRC-initiated report recommends that a justice agency take action within a stated time; and
- the justice agency has been given a copy of the report; and
- the justice agency fails to tell the HRC in writing about the action the justice agency has taken in relation to the recommendation within 45 days after the later of the following:
 - the end of the stated time or any further period allowed by the HRC;
 - three weeks after the day the justice agency is given the report.

Clause 20 – New section 100B

This clause inserts a new section into the HRC Act which outlines that the DPP need not comply with a provision of the HRC Act that relates to a victims rights complaint if the DPP considers that compliance would prejudice the independence of the DPP or the prosecution of an offence.

If the DPP does not comply with a provision of the HRC Act, the DPP must tell the HRC that they have not complied, the provision not complied with, and the reason for not complying.

The DPP must include in its annual report under the *Annual Reports (Government Agencies) Act 2004* the information mentioned in the paragraph above, for each occasion on which they do not comply with a provision of the HRC Act.

Clause 21 – Dictionary, note 2

This clause inserts the DPP into a list of terms that the HRC Act's dictionary notes are defined in the *Legislation Act 2001*.

Clause 22 – Dictionary, new definitions

This clause inserts references to definitions of 'justice agency' and 'victims rights complaint' into the dictionary of the HRC Act.

Part 4 – Victims of Crime Act 1994

Clause 23 – New section 3AA

This clause amends the objects of the VOC Act. The purpose of the objects of the VOC Act is to outline the purpose of the legislation and assist to resolve any uncertainty in relation to how clauses are interpreted. The clause does not create new rights or obligations.

The clause states that the objects of the VOC Act are to:

- Acknowledge the central role of victims in the criminal justice process (noting that this does not detract from the central role of accused persons in the criminal justice process),
- Contribute to upholding the safety, privacy and dignity of people adversely affected by crime,
- Help victims deal with the effects of criminal offences,
- Acknowledge, promote and uphold the rights and interests of victims in the administration of justice,
- Recognise and establish appropriate ways for agencies involved in the administration of justice to interact with victims in order to minimise adverse outcomes and prevent unnecessary further trauma for victims, and
- Establish requirements for monitoring and reviewing victims rights.

Clause 24 – Part 2

This clause omits part 2 of the VOC Act, which includes the former Objects of the Act, *Governing Principles for the treatment of victims of crime in the administration of justice*, compliance with principles, and important concepts (which includes explanations of the terms ‘victim’, ‘guardian’, ‘harm’, and ‘legally incompetent person’).

This is to make way for a new objects clause (see new section 3AA above), new terms to be explained including ‘administration of justice’ and ‘justice agency’, and to replace the governing principles with the Charter in new part 3A.

Clause 25 – New sections 7 and 8

This clause inserts two new sections into part 2A of the VOC Act, to define the terms ‘administration of justice’ and ‘justice agency’.

7 Meaning of administration of justice

This provision defines *administration of justice* as including the provision of services by a justice agency.

8 Meaning of justice agency

This provision defines ‘justice agency’, in the VOC Act, as any of the following entities:

- the adult offenders victims register unit (the director-general of the administrative unit responsible for maintaining a register of victims of offenders under the *Crimes (Sentence Administration) Act 2005*, section 215),

- the affected person register unit (the director-general of the administrative unit responsible for maintaining the affected person register under the *Mental Health Act 2015*, part 7.2,
- the chief police officer, noting that an additional clause outlines that the chief police officer can delegate these responsibilities to a police officer,
- the corrective services unit (the director-general of the administrative unit responsible for the *Corrections Management Act 2007*),
- a court or tribunal when acting in an administrative capacity, noting that this does not include a Registrar or ACAT member when acting in a judicial capacity
- the director of public prosecutions,
- a referring entity, when acting in an administrative capacity
- the restorative justice unit (the director-general of the administrative unit responsible for the *Crimes (Restorative Justice) Act 2004*)
- the sentence administration board, when acting in an administrative capacity
- the victims of crime commissioner,
- the victim support unit (the director-general of the administrative unit responsible for this Act),
- the youth justice unit (the director-general of the administrative unit responsible for maintaining a register of victims of young offenders under the *Crimes (Sentence Administration) Act 2005*, section 215A), and
- an entity prescribed by regulation.

However, a justice agency does not include the below, noting that they do not need to comply with victim rights although they should have regard to victims rights (see section 18A).

- the Chief Justice, a judge or associate judge, or
- the Chief Magistrate, a magistrate or any office that must be occupied by a magistrate.

Clause 26 – Section 11 (d)

This clause removes ‘governing principles’ from the description of the VOCC’s functions, and substitutes ‘victims rights’. This is because this Bill removes governing principles from the VOC Act and replaces them with the legislated victims rights in the Charter.

Clause 27 – Section 11 (e)

This clause brings the functions of the VOCC in connection with the administration of justice in line with the Charter, by outlining that the VOCC has a role to ensure victim rights concerns that are raised with the VOCC are dealt with promptly and effectively, and to promote the prompt and effective resolution of victims rights complaints made to the HRC and other complaints about victims rights made to other entities.

Clause 28 – Section 12

This clause omits former section 12 of the VOC Act, which deals with how the VOCC handles concerns and complaints. This is to align with the new mechanism to process concerns and complaints that is introduced in relation to the Charter.

Clause 29 – New part 3A

Part 3A Victims rights

This part sets out the Charter of Rights for Victims of Crime.

Division 3A.1 Preliminary

14 Object – pt 3A

This provision outlines that the object of this part of the VOC Act is to ensure that, in the administration of justice, engagement with victims is governed by victims rights.

14A Meaning of victims rights

This provision defines victim rights as victim rights referred to under divisions 3A.2 to 3A.6 of the VOC Act. This provision notes that victim rights are not exhaustive and victims have a range of rights under other ACT laws, including under the *Human Rights Act 2004*, part 3AA.

14B Definitions – pt 3A

This section provides definitions for a variety of terms used in Part 3A of the VOC Act.

Division 3A.2 Victims rights—respect, privacy and safety

14C Respectful engagement with victims

This right provides that a justice agency must engage with a victim respectfully and with appropriate regard to the victim's personal situation, needs, concerns, rights and dignity. A justice agency must also take into account, and be responsive to, the particular needs of a victim, particularly needs relating to any of the following specific factors: age; disability; gender identity; race; religion; sex; sexuality; or parental, family, carer or kinship responsibilities.

These categories align with certain protected attributes in the *Discrimination Act 1991*.

14D Respectful engagement with child victims

This right provides that if a primary victim is a child, a justice agency must, as far as practicable, consider the child's views, wishes and circumstances before engaging the child's parent or carer as the victim in relation to victims rights; and engage the child in a way that is appropriate for a person of the child's age who is not a victim.

This right recognises that it is not always possible in practice or consistent with other legislative frameworks to speak with a child victim before an adult by including the words 'where practicable'.

14E Contact with victims

This right provides that a justice agency that is exercising a function in relation to victims rights that requires the agency to contact a victim must contact the victim. However, the agency is not required to contact a victim if the victim has asked not to be contacted after the agency has told the victim about each required contact and the rights to which it relates; the justice agency is aware the victim has already been contacted in relation to the function; or it is not possible or practicable in the circumstances to contact the victim.

Examples of where another agency may have contacted a victim includes where agencies have information-sharing arrangements whereby the agency who has access to the information provides it to another agency who has contact with the victim, to provide the information to them.

Examples of where it may not be possible or practicable in the circumstances to contact the victim include that the victim cannot be found after reasonable steps have been taken to find the victim; the proceedings progress too quickly for the victim to be contacted; or a justice agency is not aware of a victim or cannot reasonably find a victim's contact details.

Contact means in oral or written form, whether electronically or in hard-copy.

This right is intended to ensure that upholding all rights in the Charter is undertaken where practicable and realistic. It also balances a victim's responsibility to provide up-to-date contact details to an agency if they wish to be contacted.

14F Victims' privacy

This right provides that a justice agency must not disclose personal information about a victim or a family member of the victim, unless that information is disclosed in a proceeding before a court or tribunal, under an ACT law, or with the victim's consent. Personal information includes a person's home address and contact details, place of employment, or the educational institution that a person attends.

14G Storage and return of victims' property

This right provides that if a victim's property is held by a justice agency for the purpose of investigating or prosecuting a criminal offence, the property must be handled and stored in a lawful, respectful and secure manner, and returned to the victim as soon as practicable after it is no longer needed for that purpose.

However, the property must not be returned to the victim if the victim's possession of the property would be an offence, or if the property need not be returned to the victim directly. For example, it may be returned to an agency to return to the victim.

This right is aligned with *Court Procedures Rules 2006* and notes that property must be stored and returned in accordance with this legislation.

14H Victims' appearance at preliminary or committal hearings

This right provides that the DPP must not require a victim to appear at a preliminary hearing or a committal hearing unless a court directs the victim to appear or the DPP considers the victims' appearance necessary in the interests of justice.

14I Minimising victims' exposure to accused etc

This right applies if a victim is in a court or tribunal building for a proceeding for the offence and has expressed concern to a relevant justice agency about the need for protection from violence or harassment by an accused person for the offence. In this case, the relevant justice agency (the DPP, or a court or tribunal when acting in an administrative capacity) must, as far as practicable, minimise the victim's exposure to the accused, defence witnesses, and family members of or anyone supporting the accused.

Contact includes any form of physical contact and face-to-face communication but does not include oral communication by telephone or written communication.

14J Minimising registered victims' exposure to offenders etc

This right applies if an offender is sentenced, or transferred or released from imprisonment or detention.

The youth justice unit (Youth Victims Register) or the adult offenders victims register unit (Adult Victims Register) must, as soon as practicable, tell each registered victim of the offender about actions the victim may take to minimise their exposure to, and prevent contact from, the offender.

Actions might include applying for a personal protection order under the *Personal Violence Act 2016*, asking that the offender be directed to stop calling or sending mail to the victim under the *Corrections Management Act 2007*, or asking that a youth offender be directed to not contact the victim by phone or mail under the *Children and Young People Act 2008*.

Division 3A.3 Victims rights—access to support, services, legal and financial assistance

15 Referral of victims to support services

This right provides that the Chief Police Officer (Police) must, as soon as practicable, refer a victim of an offence to a service that provides support or assistance suitable to the victim and the victim's circumstances. As soon as practicable may include after a person reports an offence to police and after police become unaware an offence has been committed. However, a referral need not be made if it would not be appropriate in the circumstances, for example if the victim does not consent to the referral.

15A Provision of aids or adjustments to victims

This right provides that a justice agency must, unless the court directs otherwise, ensure a victim of an offence is provided with, or is able to access any aid or adjustment for which the victim is eligible that is necessary to enable the victim to fully participate in the administration of justice for the offence (for example, an assistance animal, intermediary or support person, or interpreter or translator) wherever practicable and in line with legislation that governs access to these aid and adjustments.

The agency must also ensure a victim is provided with any special requirement they are entitled to in relation to a proceeding for the offence under the *Evidence (Miscellaneous Provisions) Act 1991*. As an example of where this right may apply, it may relate to relevant justice agencies making an application for access to special measures where appropriate, as access to aids and adjustments in the courtroom are decisions of the judiciary.

15B Victim may request referral of offences to restorative justice

This right provides that a victim of an offence may at any stage during the criminal justice process, ask a justice agency whether the offence may be referred for restorative justice, and ask a referring entity under the *Crimes (Restorative Justice) Act 2004* to refer the offence for restorative justice.

15C Reimbursement and financial assistance for victims

This right provides that a victim who is required to attend court to give evidence as a witness in a criminal proceeding may be able to claim, from the DPP, reimbursement of expenses incurred or income lost in attending court.

This right also provides that a victim may apply for financial assistance under the *Victims of Crime (Financial Assistance) Act 2016*.

Finally, this right provides that a victim who suffers loss or incurs expense as a direct result of the commission of an offence, or has property stolen, may ask the DPP to apply for a reparation order under the *Crimes (Sentencing) Act 2005*.

Division 3A.4 Victims rights—information about administration of justice processes

15D Police to tell victims about administration of justice processes after offence reported

This right provides that Police must, as soon as practicable, give victims information about the administration of justice processes that result from reporting an offence, for example charging and prosecuting an alleged offender, giving evidence and the burden of proof in a proceeding, or a victim's role in a proceeding as a witness for the prosecution.

This right applies to victims of indictable offences, and all other victims upon request.

15E DPP to give information to victim witnesses

This right provides that if a victim of an offence is required to attend court to give evidence as a witness for the prosecution in a proceeding for the offence, the DPP must, within a reasonable period before the witness is to give evidence, tell the victim about, or where to find information about the hearing or trial process; and the role, rights and responsibilities of witnesses.

15F Police and DPP to give victims information about victim impact statement

This right provides that Police and the DPP must, within a reasonable period before a victim of an offence would be able to make a victim impact statement, tell the victim:

- who may make a victim impact statement;
- that a victim impact statement may be made orally or in writing;
- what information a victim impact statement must and may include;
- how a victim impact statement may be used in court during a proceeding (including that a copy of the victim impact statement will be given to the offender;

- that the victim may be cross-examined about the contents of the victim impact statement; and
- that the court must consider the victim impact statement in deciding how the offender should be sentenced.

15G DPP to tell victims about decisions to discontinue prosecution and review of decisions

This right applies if the DPP decides to charge a person with one or more offences in relation to a victim. In this case, the DPP must tell the victim which of their decisions in relation to the charges are automatically reviewed.

If the DPP decides to discontinue the prosecution of one or more of the charges, it must (as soon as practicable) tell the victim how the victim may request a review of the decision. However, the DPP is only required to do this if it will result in the person no longer being prosecuted for any charge in relation to the victim, and if the decision will not be automatically reviewed.

This right aligns with the DPP's internal policy in relation to review of decisions to discontinue a prosecution.

15H Justice agencies to tell victims about victims register etc

This section provides that the Youth Victims Register or Adult Victims Register must, as soon as practicable after an offender is sentenced for an offence, tell each victim whether, and if so how, the victim may become registered on the victims register; the rights of registered victims to information about offenders who are sentenced; and the role of victims in relation to the release of offenders from imprisonment under a parole order or on licence.

The victims register is the register of victims of offenders kept under the *Crimes (Sentence Administration) Act 2005*, section 215; or the register of victims of young offenders kept under the *Crimes (Sentence Administration) Act 2005*, section 215A.

15I Justice agencies to tell victims about justice agency complaints and victims rights concerns

This right applies if a victim tells a justice agency that the victim believes the agency has not complied with their victims rights, or is otherwise dissatisfied with the justice agency's services in relation to their victims rights.

In this case, the justice agency must, as soon as practicable, tell the victim how the victim may do one of the following:

- make a justice agency complaint (to the agency);
- in the case where the victim believes the agency has not complied with their victims rights, they may raise a concern with the VOCC or make a complaint to the HRC; or
- if another entity has power to deal with the matter, to make a complaint about the matter to that other entity. If, for example, the matter related to corrupt conduct, then the victim might be able to make a complaint to the Integrity Commission, or if the

matter related to a member of the police, then the victim might be able to make a complaint to the Australian Commission for Law Enforcement Integrity.

Providing this information assists in a victim or a nominated representative participating in the complaint process if they wish to.

Division 3A.5 Victims rights—information about investigations, proceedings and decisions

16 Police to give written confirmation to victims reporting offences

This right provides that if a victim of an offence reports the offence to a police officer, Police must, as soon as practicable, give the victim written confirmation of the report, including a summary of the details reported by the victim; and the name and contact details of the police officer who took the report and another police officer the victim may contact about the report.

However this does not apply if giving written confirmation of the report is likely to affect the safety of the victim or another person. Police also need not give a victim written confirmation of a report under this section if the victim has asked not to be contacted or it is not possible or practicable in the circumstances to contact the victim (see s 14E).

This right applies to victims of indictable offences, and all other victims upon request.

Written confirmation can mean electronically or in hard-copy.

16A Police to update victims about status of investigations

This right provides that if Police are investigating an offence, they must give a victim of the offence an update about the status of the investigation as soon as practicable after a change in the status of the investigation or at least every 6 weeks. However, if the victim wishes to be updated less frequently, Police may update the victim at another time agreed between Police and the victim.

If Police consider that giving the victim an update about the status of the investigation would prejudice the investigation or any other investigation, Police must not tell the victim about the status of the investigation but must tell the victim as much as possible about the progress of the investigation.

A change in the status of an investigation, for an offence, includes a person being charged with the offence or a warrant being issued for the arrest of a person accused of committing the offence.

This right applies to victims of indictable offences, and all other victims upon request.

16B DPP to consider victims' views about dealing with charges

This right applies if a person has been charged with an offence and the DPP is considering one of the following proposed actions in relation to the charge:

- substantially modifying the case in a proceeding for the charge (including by accepting a guilty plea for a lesser charge or discontinuing prosecution of the charge);
- applying to the ACAT for an assessment order in relation to the person in relation to the charge. The DPP may take this action, under section 35 of the *Mental Health Act*

2015, if they believe on reasonable grounds that it may not be appropriate to prosecute the person as a result of considerations relating to the offence itself and to the person's apparent mental health issues.

In this case, the DPP must, as soon as practicable and before taking the proposed action, seek and consider the victim's views about the proposed action. However, this does not apply if the DPP considers that it would prejudice the prosecution of the offence.

This right applies to all victims of indictable offences, and all other victims upon request.

16C Police and DPP to update victims about bail decisions

This right applies if a victim of an offence has expressed concern to Police or the DPP about the need for protection from violence or harassment by an accused person for the offence.

In this case, Police or the DPP must, as soon as practicable, tell the victim if a court or an authorised officer makes a decision about a grant of bail, or reviews a bail decision, in relation to the accused person; or if bail is granted to the accused person and a condition is imposed on the grant of bail to protect the victim or a family member of the victim. This right is aligned with entitlements in the *Bail Act 1992 s 47A*.

This right is the responsibility of Police or the DPP depending on the circumstances in which bail is reviewed or made. Responsibility may be clarified between agencies through an information-sharing agreement.

16D DPP to tell victims about hearings

This right applies if a person has been charged with an offence and a court has set a hearing date for the charge.

In this case, the DPP must, as soon as practicable after the hearing date has been set, tell a victim of the offence the date, time and place of the hearing.

16E DPP to tell victims about reparation orders

This right applies if an offender is convicted or found guilty of an offence against an ACT law but the court has not yet sentenced or made a non-conviction order for the offender.

In this case, the DPP must tell a victim of the offence that a court may make a reparation order against the offender under the *Crimes (Sentencing) Act 2005* or another ACT law. If the DPP decides not to apply for the order, they must tell the victim of the decision and the reason for it (unless the DPP considers it would prejudice the prosecution of an offence).

16F DPP to tell victims about outcomes of trials and appeals

This right provides that the DPP must, as soon as practicable after a proceeding for an offence has ended, tell victims about the outcome of the proceeding, including any sentence imposed by the court on the offender; and, if the offender appeals a decision of the proceeding, the nature and outcome of the appeal.

This right applies to victims of indictable offences, and all other victims upon request.

16G Justice agencies to tell victims about inquiries for parole or release on licence

This right applies if the Sentence Administration Board (SAB) intends to start an inquiry into an application for parole or release on licence of an offender under the *Crimes (Sentence Administration) Act 2005*, chapter 7 (Parole) or part 13.1 (Release on licence).

In this case, the Youth Victims Register, Adult Victims Register or SAB must, as soon as practicable, tell a victim of an offender about the inquiry, and tell the victim how they may:

- make a submission to the SAB;
- tell the SAB about any concern in relation to the inquiry; and
- ask the SAB not to give the submission or concern to the offender or another person.

This right also provides that the Youth Victims Register, Adult Victims Register or SAB must also give the victim information about the offender and information about any assistance available to the victim to make a submission or tell the SAB about a concern, to assist the victim to make a submission or share a concern.

16H Justice agencies to tell victims about parole or release on licence decisions

The relevant justice agencies in this right are the Youth Victims Register, the Adult Victims Register and the SAB.

This right provides that if the SAB decides to make, or refuse to make, a parole order for an offender, the relevant justice agency must, as soon as practicable, take reasonable steps to tell the relevant victims of that offender about:

- the SAB's decision; and
- if the SAB decides to make a parole order for the offender:
 - the offender's parole release date; and
 - in general terms, the offender's parole obligations.

This right also provides that if the Executive makes a decision to grant, or refuse to grant, an offender a licence to be released from imprisonment, the relevant justice agency must, in writing and as soon as practicable, take reasonable steps to tell the relevant victims about:

- the Executive's decision; and
- if the Executive grants a licence to the offender:
 - the offender's licence release date; and
 - in general terms, the offender's release on licence obligations.

This right also provides that the relevant justice agency may tell a victim the general area where the offender will live while on parole or release.

All of these entitlements are in line with those in the *Crimes (Sentence Administration) Act 2005*.

16I Justice agencies may give information about offenders to registered victims

This right provides that the Youth Victims Register or Adult Victims Register may tell a registered victim of an offender information about the offender if the victim asks the relevant justice agency for the information; and the relevant justice agency is satisfied the disclosure is appropriate in the circumstances.

16J Justice agencies to tell victims about transfer etc of offenders

This right applies if:

- an offender is to be transferred or released from imprisonment or detention, or escapes from custody; and
- a registered victim of the offender has expressed concern about their safety or the need for protection from the offender to a relevant justice agency, or the justice agency believes the offender's transfer, release or escape is likely to affect the victim's safety.

In this case, the Youth Victims Register or Adult Victims Register must, as soon as practicable, tell the victim if the offender is to be transferred or released from imprisonment or detention—of the transfer or release and any condition of the release that may affect the victim's safety; and if the offender escapes from custody—of the escape.

However, this does not apply if the Youth Victims Register or Adult Victims Register is satisfied the disclosure is not appropriate in the circumstances.

16K Adult offender victims register unit to tell victim about intensive correction orders

This right applies if an offender is subject to an Intensive Correction Order (ICO) and has breached any of the ICO obligations; or if the SAB has decided to suspend, cancel, amend or discharge the offender's ICO, or reinstate the offender's previously cancelled ICO.

In this case, the Adult Victims Register must, as soon as practicable, tell a registered victim of the offender about the breach, suspension, cancellation, amendment, discharge or reinstatement of the offender's ICO if it is likely to affect the victim's safety or if the victim has expressed concern about their safety or the need for protection from the offender to the adult offenders victims register unit.

16L DPP to tell victims about court requirements and orders relating to offender's mental health

This right provides that if a court requires an offender to submit to the jurisdiction of the ACAT under the *Crimes Act 1900*, part 13 (Unfitness to plead and mental impairment) or the *Crimes Act 1914* (Cwlth), part 1B (Sentencing, imprisonment and release of federal offenders), the DPP must, as soon as practicable, tell a victim of the offence about the requirement.

This right also provides that if the Magistrates Court orders that an offender be taken to an approved mental health facility without requiring that the person submit to the jurisdiction of the ACAT, the DPP must, as soon as practicable, tell a victim of the offence about the order.

This right applies to victims of indictable offences, and all other victims upon request.

16M ACAT to tell victims about mental health orders etc

This right deals with situations where ACAT is considering making or makes one of the following orders:

- a mental health order if section 16L(1) or (2) applies to the offender;
- a forensic mental health order;
- an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.

If the ACAT is considering making one of these orders, this right provides that, as soon as practicable, the ACAT must tell a victim of the offender that the ACAT is considering making the order.

If the ACAT makes one of these orders this right provides that, as soon as practicable, the ACAT must tell a victim of the offender that the order has been made, and the nature and length of the order.

It is noted that the ACAT need not give the information in this section directly to the victim if another justice agency has done this.

16N Affected person register unit to tell victims about person register etc

This right provides that the Affected Person Register Unit must tell a victim who is an affected person because of an offence committed, or alleged to have been committed, by a forensic patient:

- about the Affected Person Register; and
- the rights of a registered affected person; and
- if the victim is a registered affected person:
 - when the victim's information will be removed from the register; and
 - if a mental health order has been made in relation to the forensic patient:
 - the information mentioned in the *Mental Health Act 2015*, section 134 (2) in relation to the forensic patient; and
 - any other information about the forensic patient necessary for the victim's safety and wellbeing; and
 - if the ACAT intends to hold a hearing in relation to the order.

Division 3A.6 Victims rights—participation in proceedings

17 Justice agency to present victims' concerns about protection in bail submissions

This right provides that if a court or an authorised officer is considering whether to grant bail to, or is reviewing a bail decision for, an accused person, the Police or the DPP must ask a victim of the accused person whether the victim has any concerns about the need for protection from violence or harassment by the accused person. If the victim has expressed

concern about the need for protection from violence or harassment by the accused person, then the Police or the DPP must tell the court or authorised officer about the concern.

This right is the responsibility of Police or the DPP depending on the circumstances in which bail is reviewed or made. Responsibility may be clarified between agencies through an information-sharing agreement.

17A Victims may make victim impact statements

Victims of an offence may be eligible to make a victim impact statement (VIS) under the *Crimes (Sentencing) Act 2005*, part 4.3. This right provides that the DPP must ensure that no one other than the eligible victim decides whether or not to make a VIS.

17B Corrective services unit to consider victims' views about pre-sentence report or intensive correction assessment

This right applies to a victim of an indictable offence (or any other victim upon request) if a court has ordered that a pre-sentence report or an intensive correction assessment be prepared in relation to the offender. In this case, in preparing the report or assessment, ACT Corrective Services must seek and consider the victim's concerns about the need for protection from violence or harassment by the offender.

17C Victims may be in courtroom for proceedings

This right provides that a victim of an offence may be present in the courtroom during a proceeding for the offence, unless the court directs otherwise.

17D Victims may make submissions for parole or release on licence inquiries

This right applies if the SAB intends to start an inquiry into an application by an offender for parole by or release on licence of an offender under the *Crimes (Sentence Administration) Act 2005*, chapter 7 or part 13.1 respectively.

In this case, a victim of an offence to which the offender's application relates may make an oral or written submission to the SAB about the granting of parole or a licence for the offender, including the likely effect on the victim, or on the victim's family, if parole or the licence were to be granted. The victim may also tell the SAB, orally or in writing, about any concern of the victim or the victim's family about the need to be protected from violence or harassment by the offender.

Under this right, the SAB must ensure, as far as practicable, that a submission is not given to a stated person if a victim who makes a submission asks the SAB to not give the submission to the stated person; and a judicial officer of the SAB considers there is a substantial risk that doing so would endanger the victim or anyone else.

If the SAB intends to give the victim's submission to a particular person after being asked not to, then the SAB must tell the victim of that intention in the interests of transparency.

17E Victims may give statement to ACAT for mental health orders etc

This right applies if the ACAT is considering making one of the following orders for an offender:

- a mental health order;
- a forensic mental health order;
- an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.

In this case, a victim who is a registered affected person for an offence committed or alleged to have been committed by the forensic patient, or another victim with the leave of the ACAT, may appear and give evidence at the hearing or provide a statement to the ACT in relation to the order.

17F Affected person register unit to assist victims to participate in order hearings

This right applies if the ACAT is considering making an order in relation to a forensic patient. In this case, the Affected Person Register Unit must:

- for a victim who is a registered affected person in relation to the forensic patient:
 - offer to assist the victim to participate in any hearing in relation to the order, and
 - if the victim accepts the offer, assist the victim to participate in the hearing.
- for any other victim in relation to a mental health order in relation to 16L(1) and 2), a forensic mental health order or an order under the *Mental Health Act 2015* section 180, to tell the victim how they may:
 - apply to the ACAT for leave to participate in any hearing in relation to the order, and
 - if leave is granted, participate in the hearing.

In relation to this right, to participate in a hearing in relation to an order includes appearing and giving evidence, or providing a statement to the ACAT.

17G Victims may participate in restorative justice

This right provides that a victim of an offence may take part in a process of restorative justice under the *Crimes (Restorative Justice) Act 2004* in relation to the offence if the victim is an eligible and suitable victim under the *Crimes (Restorative Justice) Act 2004*.

Division 3A.7 Implementing victims rights

Subdivision 3A.7.1 Complying with victims rights

18 Justice agencies must comply with victims rights

This section provides that a justice agency must comply with all victims rights that apply to a victim when engaging with them. If complying with a particular right would support a victim, despite the right not applying to the victim, a justice agency should, as far as practicable, comply with the right in relation to the victim. In considering whether complying with a right would support a victim, the justice agency should have regard to the individual needs of the victim and their circumstances.

18A Other entities should have regard to victims rights

This section provides that an entity that is not a justice agency should have regard to victims rights when engaging with a victim. This includes non-government organisations and government policy areas that engage with victims.

18B Victims' representatives

This section provides that a victim may nominate a person, in writing, to be the victim's representative to exercise some or all victims rights, to receive some or all information required to be given to the victim in relation to victims rights; and/or to make a justice agency complaint, raise a victims rights concern or make a victims rights complaint for the victim.

A victim may nominate anyone to be their representative, including a relative or friend; or an officer or employee of an organisation whose functions include the provision of information, support or services to victims (for example, a victim liaison officer or a victim support agency).

If a victim nominates a representative, and the nominee agrees to be the victim's representative, the representative must be given the information they are allowed to be given and that would otherwise be provided to the victim directly, in relation to victims rights.

Each justice agency may have its own policies and procedures which relate to this right being upheld in practice.

18C Justice agencies to tell victims about administration of justice processes

This section provides that a justice agency must make the following information available to a victim in a way the victim understands:

- victims rights and how a victim may make a justice agency complaint, raise a victims rights concern or make a victims rights complaint if the victim believes a justice agency has not complied with their victims rights;
- how to report an offence to a police officer and the administration of justice processes that result from making a report;
- any services that provide support or assistance, including legal and financial assistance, that are available to the victim;
- hearing and trial processes, including the role, rights and responsibilities of witnesses;
- restorative justice options that are available to victims, including the referral process, and that there are eligibility and suitability requirements for restorative justice under the *Crimes (Restorative Justice) Act 2004*.

In practice, this requirement would be fulfilled if person were able to find links to this information on the websites of other justice agencies from any justice agency website. This is not an obligation under the Charter, however complements the specific obligations for an agency to provide certain information to certain victims at certain points in the justice process by acknowledging that making this information generally available also assists in

encouraging victims to report crime, understand and participate in just processes, and create a more accessible justice system.

Subdivision 3A.7.2 Complaints and concerns about victims rights

18D Victim may make justice agency complaints to justice agencies

This section applies if a victim engages with a justice agency and either believes the agency has not complied with their victims rights, or is otherwise dissatisfied with the justice agency's services in relation to victims rights.

In this case, the victim may make a complaint to the agency about the agency's conduct (a "justice agency complaint"). A complaint may be made orally or in writing. The justice agency must record an oral complaint in writing if the agency considers the complaint of a sufficiently serious nature to be recorded in writing, or if the victim asks the agency to record the complaint in writing. A justice agency complaint may be withdrawn at any time by the victim or their representative.

18E Justice agencies to deal with justice agency complaints

This section provides that if a victim makes a victims rights complaint to a justice agency, the agency must give the victim information about the process that will be used for resolving the complaint, and take all reasonable steps to resolve the complaint as soon as practicable. The victim must give the justice agency any document or information that the victim can provide and which is reasonably required by the justice agency to resolve the complaint.

18F Victims may raise victims rights concerns with commissioner

This section applies if a victim engages with a justice agency and believes the agency has not complied with their victims rights.

In this case, the victim may raise a concern (a "victims rights concern") with the VOCC about the justice agency's conduct. A victims rights concern may be raised orally or in writing, and may be withdrawn at any time by the victim or their representative.

18G Commissioner to deal with victims rights concerns

This section provides that if a victim raises a victims rights concern with the VOCC, the VOCC must give the victim information about the process that will be used for resolving the concern, and take all reasonable steps to resolve the concern as soon as practicable.

The justice agency must, on request, give the VOCC any document or information that the justice agency could provide to the victim and which is reasonably required by the VOCC to resolve the concern.

However, a justice agency must not give the VOCC a document or information if the victim does not consent, or if the DPP considers that it would prejudice the prosecution of an offence.

Subsection 3 provides that, if the VOCC is unable to resolve a victims rights concern, they may, with the victim's consent, refer the concern to a relevant complaints entity and give the entity any information they have in relation to the concern.

A relevant complaints entity means any of the following:

- the Human Rights Commission (HRC);
- the Ombudsman;
- the Integrity Commission;
- any other entity authorised to investigate a complaint relating to the administration of justice.

Division 3A.8 Miscellaneous

18H Justice agencies to make victims rights guidelines

This section provides that each justice agency must make and publish written guidelines on the agency's website to:

- assist the agency to comply with victims rights; and
- establish appropriate processes and procedures to enable the agency to respond to and resolve justice agency complaints.

This section also provides that these guidelines must be made and published not later than 12 months after the day this section commences.

This section contains a subsection which outlines that the provisions around timeframes for the guidelines will expire after 12 months, once they are no longer relevant (i.e. once the required dates have passed).

18I Justice agencies to include justice agency complaints in annual report

This section provides that a justice agency must include the following in the agency's annual report:

- a statement of how many written justice agency complaints were made to the agency in the year; and
- for each written complaint made, the right in relation to which the complaint was made and whether the agency resolved the complaint.

However, the justice agency must not include any information that would identify a complainant or a victim of an offence.

Written complaints include complaints made orally and recorded in writing by the agency.

18J Commissioner to include victims rights concerns in annual report

Similar to 18I above, this section provides that the VOCC must include the following in the HRC's annual report:

- a statement of how many victims rights concerns were raised with the VOCC in the year; and
- for each concern raised:
 - the right in relation to which the concern was raised;

- whether the VOCC resolved the concern; and
- if the VOCC referred the concern under section 18G (subsection 3), the entity to which the concern was referred.

However, the VOCC must not include any information that would identify a complainant or a victim of an offence.

18K Legal rights not affected

This section provides that the Legislative Assembly does not intend by anything in Part 3A to:

- create in any person any legal right or give rise to any civil cause of action; or
- affect in any way the interpretation of any ACT law; or
- affect in any way the operation of any ACT law, including a law that deals with the same subject matter as a victims right; or
- affect the validity, or provide grounds for review, of any judicial or administrative act or omission.

This clause also notes that nothing prevents a contravention of the VOC Act from being the subject of disciplinary proceedings against an official.

18L Review of victims rights

This section provides that the Minister must review the operation of Part 3A of the VOC Act as soon as practicable after the end of its third year of operation. The Minister must then present a report of the review to the Legislative Assembly within 12 months after the day the review is started.

This section outlines that these provisions for review expire 5 years after the day they commence.

Clause 30 – New section 29A

This clause outlines that the Chief Police Officer may delegate a function under this legislation to a police officer.

Clause 31 – Dictionary, note 2

This clause adds four terms to the list of those defined in the *Legislation Act 2001* dictionary: ‘chief police officer’, ‘Executive’, ‘indictable offence’, and ‘sentence administration board’.

Clause 32 – Dictionary, definition of *administration of justice*

This clause establishes a new definition of ‘administration of justice’ in the dictionary of the VOC Act. The new definition references section 7 of the VOC Act.

Clause 33 – Dictionary, new definitions

This clause inserts new defined terms into the VOC Act.

Clause 34 – Dictionary, definition of *governing principles*

This clause omits the definition of ‘governing principles’ from the VOC Act dictionary, as the previous governing principles have been replaced with the victims rights in part 3A.

Clause 35 – Dictionary, new definitions

This clause inserts new defined terms into the dictionary of the VOC Act.