

2020

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

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

SUPPLEMENTARY EXPLANATORY STATEMENT

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

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INTRODUCTION

This supplementary explanatory statement relates to the Government amendments to the Victims Rights Legislation Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Government amendments and help inform debate on them. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

This statement is to be read in conjunction with the Government amendments and the Bill. It is not, and is not intended to be, a comprehensive description of the Bill and the Government amendments.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The purpose of the Government amendments is to clarify the intended operation of the victim right to information about an offender's mental health orders, in relation to an offence to which they have been impacted as a victim.

The amendments will provide that victims who are eligible for information about offender's mental health orders under Section 16M is limited to victims who are Registered Affected Persons (under section 130 of the *Mental Health Act 2015*) in relation to offences committed or alleged to have been committed by forensic patients. This ensures that this information that is provided about offenders is appropriately targeted to relevant victims only.

Two additional notes at 16M have also been included to:

- a) clarify that Section 134 of the *Mental Health Act 2015* sets out circumstances under which information about mental health orders can be disclosed to Registered Affected Persons, for instance that there are limitations and considerations in relation to information being disclosed about young offenders; and
- b) clarify that a victim can only be a registered affected person in relation to an offender who is a forensic patient.

CONSULTATION ON THE PROPOSED APPROACH

This minor and technical amendment is in response to a comment of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role).

CONSISTENCY WITH HUMAN RIGHTS

The victim right to certain information about an offender's mental health orders may limit an offender's rights to privacy and reputation (section 12, *Human Rights Act*

2004). However, access to this information is important for victims to make decisions about their safety based on their knowledge about a mental health order and the offender's whereabouts. It also supports opportunities for victims to participate in the justice process such as providing submissions to ACT Civil and Administrative Tribunal hearings, where allowed.

Constraining access to information about offender's mental health orders to Registered Affected Persons under the *Mental Health Act 2015*, ensures the disclosure of this information is tailored to relevant victims only within the circumstances and limitations set out in that Act.

CLAUSE NOTES—GOVERNMENT AMENDMENTS

Amendment 1 Clarifying eligibility for Registered Affected Persons

Clause 30

Proposed new section 16M(1)

Page 43, line 3

This amendment removes 'a victim of the offender' and replaces this with 'a registered affected victim of the offender'. This clarifies that eligibility for this right is limited to Registered Affected Persons.

Amendment 2 Clarifying eligibility for Registered Affected Persons

Clause 30

Proposed new section 16M(2)

Page 43, line 11

This amendment removes 'a victim of the offender' and replaces this with 'a registered affected victim of the offender'. This clarifies that eligibility for this right is limited to Registered Affected Persons.

Amendment 3 New note linking the provision of information to the *Mental Health Act 2015*

Clause 30

Proposed new section 16M(2), proposed new note

Page 43, line 15

This amendment inserts a note under Section 16M that states that the *Mental Health Act 2015* sets out the circumstances under which information in relation to a forensic patient is disclosed to a registered affected person. This includes the ability to share

information if it is necessary for the person's safety and wellbeing. However, identifying information about a child or young person may only be given in certain circumstances.

Amendment 4 New note clarifying the definition of *offender*

Clause 30

Proposed new section 16M(3), definition of *offender*

Page 43, line 19

Section 43(3) sets out that an offender includes a person who is arrested in connection with an offence; in relation to whom there are sufficient grounds on which to charge the person in connection with an offence; or who is charged in connection with an offence.

This amendment inserts a note clarifying that a victim can only be a registered affected person in relation to an offender who is a forensic patient.

Amendment 5 New definition of *registered affected victim*

Clause 30

Proposed new section 16M(3), new definition of *registered affected victim*

Page 43, line 19

This amendment inserts a definition of *registered affected victim* of an offender, which means a victim who is a registered affected person for an offence committed or alleged to have been committed by the offender.