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

VICTIMS OF CRIME AMENDMENT BILL 2023

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Tara Cheyne MLA
Minister for Human Rights
and
Shane Rattenbury MLA
Attorney-General**

VICTIMS OF CRIME AMENDMENT BILL 2023

This Explanatory Statement relates to the *Victims of Crime Amendment Bill 2023* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Bill is not a Significant Bill. Significant Bills are Bills that have 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*.

The Statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE BILL

The Bill will amend the *Victims of Crime Act 1994* (the Victims of Crime Act) to modify provisions relating to giving updates to victims of crime during an investigation.

The Bill implements recommendation 2 of the Final Report of the Board of Inquiry into the Criminal Justice (the Final Report),¹ provided to the Chief Minister on 31 July 2023. The drafting of the amendments reflects precisely the wording of the amendments proposed in recommendation 2 of the Final Report.

OVERVIEW OF AMENDMENTS

The Bill proposes the following amendments to the Victims of Crime Act:

- a. to provide the police are not required to provide an update about a change in the status of the investigation if doing so would prejudice the matter generally; and
- b. amend the circumstances that constitute a change in status of an investigation to expressly include when police decide to charge a person or issue an arrest warrant.

Not require police to provide an update about a change in the status of the investigation if doing so would prejudice the matter generally

Currently, police are required to give an update to a victim unless doing so would prejudice the investigation or any other investigation. The amendment allows the police to also consider whether giving an update would prejudice the matter generally before deciding whether to give an update, and to not give an update where doing so would prejudice the matter generally.

¹ [ACT-Board-of-Inquiry-Criminal-Justice-System-Final-Report-31-July-2023.pdf](#)

Amend the circumstances that constitute a change in status of an investigation to include when police decide to charge a person or issue an arrest warrant.

Currently, police are required to give updates about changes in the status of an investigation, expressly including where the police have charged an alleged offender or obtained a warrant for the alleged offender's arrest, as soon as practicable after that change occurs. The amendment will require police to provide an update as soon as practicable after a change in status of an investigation of an offence, expressly including when police decide to charge a person with an offence or issue a warrant for the arrest of a person accused of committing the offence.

CONSULTATION ON THE PROPOSED APPROACH

The amendments proposed in the Bill implement recommendation 2 of the Final Report. The Victims of Crime Commissioner, ACT Policing (ACTP), the ACT Office of the Director of Public Prosecutions (ACT DPP), and Parliamentary Counsel's Office were consulted in the preparation of this Bill.

CONSISTENCY WITH HUMAN RIGHTS

The amendments in the Bill balance the rights and interests of the community and offenders within the Territory's *Human Rights Act 2004* (Human Rights Act).

Under human rights law most rights are not absolute. Section 28 of the Human Rights Act sets out the circumstances in which rights protected under the Human Rights Act may be subject to reasonable limitations. Section 28 of the Human Rights Act requires that any limitation on a human right must be prescribed by law, pursue a legitimate objective, and be rationally connected and proportionate to that objective. The criteria in section 28 are drawn from international law.² A Bill which reasonably limits human rights will be compatible with the Human Rights Act.

RIGHTS ENGAGED

The Bill engages the following rights under the Human Rights Act:

- Section 12 – Right to privacy and reputation (*limited*)
- Section 18 – Right to security of person (*promoted*)

RIGHTS PROMOTED

Section 18 – Right to security of person

Require police to update victims as soon as practicable after police decide to make a change in the status of the investigation.

² See, also, UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, [E/CN.4/1985/4](#).

The right to security of person obliges government to take appropriate measures to protect individuals from foreseeable threats to life or bodily integrity from public authorities or private individuals.

The Victims of Crime Act currently requires police to give updates to victims about changes in the status of an investigation, including where a person has been charged or a warrant for the arrest of the person has been obtained, once that change in status has occurred.

The Bill requires police to give victims updates about changes in the status of an investigation at an earlier time, specifically when police decide to lay charges or obtain an arrest warrant.

This allows victims to take action, including seeking assistance from relevant authorities and organisations, where they have safety concerns, enhancing the victim's right to security of person. As such the Bill promotes the right to security of person.

RIGHTS LIMITED

Section 12 – Right to privacy and reputation

Require police to update victims as soon as practicable after police decide to make a change in the status of the investigation

As amended, this victims' right will require police investigating an offence to give a victim of the offence an update about the status of the investigation as soon as practicable after police decide to make a change in the status of the investigation or at least every 6 weeks. Changes to the status of the investigation expressly include circumstances in which the police have decided there is sufficient evidence to charge an alleged offender or request the issue of an arrest warrant for the alleged offender. This means victims will be notified of the impending charge and arrest before the alleged offender has been charged or arrested.

However, if police consider that notifying the victim of the anticipated change in the status of the investigation would prejudice the investigation, the matter generally, or any other investigation, police must not update the victim about the change in status of the investigation but must tell the victim as much as possible about the progress of the investigation.

The nature of the right affected

Section 12 of the Human Rights 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. This is a right that may be subject to permissible limitations providing the criteria set out in section 28 of the Human Rights Act are met.

The right of a victim (under the Victims of Crime Act) to receive updates about changes to the status of the investigation, including notifying the victim as soon as practicable after

police decide to charge or obtain an arrest warrant for an alleged offender, engages and limits the alleged offender's right to privacy and reputation.

The victim's right in section 16A of the Victims of Crime Act is amended to require police to give updates to victims at an earlier stage. However, this does not expand the information victims are entitled to receive from the police.

The importance of the purpose of the limitation

The purpose of this limitation on alleged offenders' right to privacy is to provide victims with information relevant to their personal safety at an earlier stage. The right to receive the information relating to alleged offenders will 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.

The limitation pursues the legitimate objective of protecting the rights of others. Personal safety is a human right under the Human Rights Act, as expressed through the right to life (section 9), the right to security of person (section 18), the protection from torture and cruel, inhuman or degrading treatment (section 10); and the right to privacy (section 12). Victims of crime are able to access these human rights alongside the rights of the alleged offender. These are upheld and considered together – they cannot be treated as mutually exclusive.

The *Royal Commission into Institutional Responses to Child Sexual Abuse* noted that victims are central to the justice process; that those who are charged with criminal offences are expected to be brought to trial fairly, impartially and in the public interest; and that criminal justice responses must be in the interests of society, including victims.³

Internationally and across Australian jurisdictions, community expectations have moved towards a greater understanding of the need for 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.

The relationship between the limitation and its purpose

The measure is rationally connected to (that is, is likely to be effective to achieve) its legitimate objective of protecting the rights of victims. The right of victims (under the Victims of Crime Act) to receive certain information from the police affects the nature of the victim's experience of the criminal justice process. The measure allows victims to take

³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017, Recommendation 1a-c.

action, including seeking assistance from relevant authorities and organisations, where they have safety concerns, enhancing the victim's right to security of person.

Proportionality

The measure is proportionate to the protecting the legitimate objective of protecting the rights of victims and is the least rights restrictive approach.

The right to receive updates is carefully targeted:

a) Definition of victim of crime

Victims of crime are defined in the Victims of Crime Act, and are limited to persons who have suffered harm as a result of an offence (section 6).

b) Victims of indictable offences

The right in section 16A of the Victims of Crime Act only applies to victims of indictable offences.

c) Linking the right and provision of information clearly to the relevant offence

The right in section 16A of the Victims of Crime Act is clearly linked to the offence relevant to the victim. This provides limits on the information that can be shared.

Section 40B of the Human Rights Act also provides protection for alleged offenders by requiring public authorities to consider and act consistently with human rights, including the right to privacy. This assists to ensure police will act and make decisions about disclosures to victims in an environment that is free from bias and in accordance with the specific circumstances of the individual case.

VICTIMS OF CRIME AMENDMENT BILL 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Victims of Crime Amendment Bill 2023**. In my opinion, having regard to the Bill and 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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Shane Rattenbury MLA
Attorney-General

Victims of Crime Amendment Bill 2023

Detail

Clause 1 Name of Act

This clause provides that the name of the Act is the *Victims of Crime Amendment Act 2023* (the Amendment Act).

Clause 2 Commencement

This clause provides for the commencement of the Amendment Act. The Amendment Act commences on the day after its notification day.

Clause 3 Legislation Amended

This clause identifies the legislation that will be amended is the *Victims of Crime Act 1994* (the Victims of Crime Act).

Clause 4 Sections 16A(3)

This clause inserts the words ‘the matter generally’ after ‘prejudice the investigation’ in section 16A(3) of the Victims of Crime Act.

Section 16A(1) requires police to give an update to a victim about a change in the status of an investigation, which includes when police decide to charge a person or the issue of an arrest warrant for a person in relation to the matter (see section 16A(4)), as soon as practicable after that change unless doing so would prejudice ‘the investigation or any other investigation’.

The amendment to section 16A(3) would require police to give an update to a victim about a change in the status of an investigation as soon as practicable after that change unless doing so would prejudice ‘the matter generally’.

The effect of this amendment is that, if giving an update to victim would prejudice proceedings or anything else related to the investigation or proceedings, the police are not required to give the victim an update. That is, it broadens the circumstances where ACTP will not be required to update a victim due to their concerns.

Some victims, particularly in the family violence context, do not report the crime and/or do not wish to press charges. Notwithstanding the victim’s attitude, there are circumstances where it is highly desirable and appropriate for police to bring charges and for the ACT DPP to commence a prosecution. In those circumstances, there is a risk that, if police form the view that there is sufficient evidence to charge a suspect who is not in police custody and inform the victim of the decision to charge, the victim may ‘tip off’ the suspect, causing them to abscond or actively evade police.

However, the point at which a decision to charge or obtain an arrest warrant is made may be after the investigation is complete in which case the ensuing court proceedings may be at risk of being prejudiced. The amendment to section 16A(3) to include ‘the matter generally’ addresses this issue.

Clause 5 Section 16A(4)

This amendment repeals the existing inclusive description of ‘change in the status of an investigation’ and replaces it with a new inclusive description.

Section 16A(1) requires police to give an update to a victim as soon as practicable after a change in the status of an investigation.

Section 16A(4) currently provides that a change in the status of an investigation includes where police have charged a person with the offence or have been issued a warrant for the arrest of a person accused of committing the offence.

This amendment will change the actions expressly included in section 16A(4) so that a change in the status of the investigation includes ‘when police decide’ to charge a person with the offence or to issue a warrant for the arrest of the person accused of committing the offence.

The effect of this amendment is that police will expressly be required to give updates to victims at an earlier point in time. Specifically, police will be required to give updates as soon as practicable after they decide to charge a person or obtain an arrest warrant. Ensuring victims are notified before a charge is laid or an arrest is made will better prepare victims who may be required to provide evidence in court. It also provides an opportunity for victims to raise or reiterate any safety concerns they hold. The provision is intended to operate beneficially for victims.

As the circumstances outlined in section 16A(4) are inclusive, the obligation in section 16A(1) extends to other changes in the status of an investigation. In other words, the requirement for police to give an update to a victim as soon as practicable after other changes in the status of the investigation is retained. This includes where police have charged a person, have been issued with an arrest warrant for a person, or have arrested a person, unless the exception in section 16A(3) applies.