



Minister for Climate Change and Sustainability  
Minister for Corrections and Justice Health  
Minister for Justice, Consumer Affairs and Road Safety  
Minister for Mental Health  
Member for Kurrajong

Mrs Giulia Jones MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA CITY ACT 2601

Dear Mrs ~~Jones~~ *Giulia*

I write in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No. 46 of 21 July 2020, which comments on the Victims Rights Legislation Amendment Bill (the Bill).

As you have identified, the Bill provides rights for victims to be given certain information about offenders. The majority of these rights mirror existing legislative entitlements, for example in relation to information that is provided to victims registered on the Adult and Youth Justice Victims Registers (under sections 215 and 215A of the *Crimes (Sentence Administration) Act 2005*). However, the Bill also establishes some new rights including the right to be provided with information about orders relating to an offender's mental health (Sections 16L and 16M). Rights that provide information to victims about mental health orders, where relevant, meet an identified gap in information for victims where an offender enters the mental health justice stream.

I note the Committee's concerns that the breadth of these new rights may lead to the :

- sharing of sensitive health information about offenders unnecessarily or without appropriate considerations for the right to privacy of offenders; and/ or
- disclosure of information to victims who are not be connected with the offender.

My response to these concerns is set out below.

### Section 16L: DPP to tell victims mental health orders

Section 16L provides that the DPP must inform a victim if a court requires an offender to submit to the jurisdiction of ACAT to have their mental health assessed (16L(1)); and if the Magistrates Court orders an offender be taken to an approved mental health facility (16L(2)). This right applies automatically to victims of an indictable offence, or any other offence where the victim has asked to be informed (16L(3)(a) and (b)).

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#### ACT Legislative Assembly

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This information is available to anyone who is present in Court during the relevant proceeding, and so is publicly accessible. It is important that this information can be shared with relevant victims of crime, who may not otherwise know the progress or outcome of a prosecution for of an offence which has impacted them.

In addition, section 18K(1)(c) of the Bill provides an over-arching protection when justice agencies are considering how to share information with victims under the Charter of Rights for Victims of Crime (the Charter). It states that the Legislative Assembly does not intend for victim rights to affect in any way the interpretation of any territory law. This acknowledges that the Charter sits within the context of other ACT legislative frameworks, and that these frameworks may impact how rights are upheld in practice, including those in relation to how information about offenders is disclosed to victims.

Therefore, no amendments to Section 16L are proposed. Any limitations on the privacy of offenders are considered to be justified, noting the information would generally reflect what has occurred during a public court hearing and noting the importance of informing victims and supporting their inclusion in the justice process.

#### Section 16M: ACAT to tell victims about mental health orders

Section 16M provides that if ACAT is considering making mental health orders for the offender, they must inform a victim that they are considering making the order and, where relevant, that the order has been made, and the nature and length of the order.

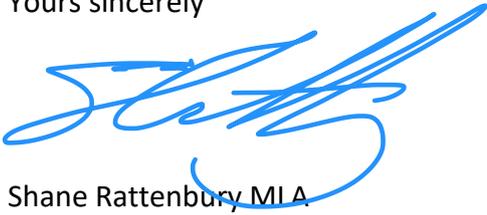
In response to the comments, I propose a minor amendment. The proposed amendment and Supplementary Explanatory Statement are attached for your information.

I propose to amend Section 16M to clarify that this victim right can be accessed by Registered Affected Persons under the *Mental Health Act 2015* (section 130, MH Act) only, not all victims of crime. This will:

- a) better link the right to existing legislative frameworks,
- b) ensure that information is only provided to victims who are Registered Affected persons under the MH Act,
- c) clarify that there are limitations on the disclosure of information to victims about mental health orders, as set out in the MH Act, for instance in relation to information about young offenders, and
- d) better align with the Mental Health Amendment Bill 2020 which proposes changes to the definition of forensic patient, impacting on the types of orders that Registered Affected Persons can access information about.

I thank the Committee for its report and careful consideration of the Bill. This has resulted in an amendment which confirms that victim rights are aligned with existing legislative frameworks and recognise circumstances where information that is shared with victims must be considered in the context of their safety and the privacy of offenders.

Yours sincerely



Shane Rattenbury M.L.A.  
Minister for Justice, Consumer Affairs and Road Safety

23/7/20