

**2016**

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

**PROTECTION OF RIGHTS (SERVICES) LEGISLATION AMENDMENT  
BILL 2015  
Amendments to be moved by the Attorney-General**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

**Presented by  
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Attorney-General**



# PROTECTION OF RIGHTS (SERVICES) LEGISLATION AMENDMENT BILL 2015

## Purpose of the Bill

The *Protection of Rights (Services) Legislation Amendment Bill 2015* amends the *Human Rights Commission Act 2005*, the *Public Trustee Act 1985*, the *Domestic Violence Agencies Act 1986*, the *Guardianship and Management of Property Act 1991* and the *Victims Support Act 1994* to establish a restructured Human Rights Commission (HRC) and expanded Public Trustee and Guardian. It also repeals the *Public Advocate Act 2005*.

These changes aim to improve the protection of all Canberrans' human rights through streamlined governance arrangements and better coordination of processes for handling complaints, conducting investigations into systemic matters affecting rights and raising awareness of rights.

These amendments implement a new model for agencies involved in statutory rights protection following a review by the Justice and Community Safety (JACS) Directorate of the current structure of the statutory office holders (SOHOs) within the justice portfolio that are engaged in the protection of rights. The SOHOs involved in the review were the Commissioners from the HRC, the Public Advocate, the Victims of Crime Commissioner and the Public Trustee.

## Background

The *Protection of Rights (Services) Legislation Amendment Bill 2015* (the Bill) was introduced into the Legislative Assembly on 19 November 2015.

Clause 17 inserted proposed new section 21(1)(ab) to vest new complaint handling functions in the Disability and Community Services Commissioner including complaints about:

- i. services for children and young people;
- ii. disability services;
- iii. services for older people;
- iv. matters in relation to which the Public Advocate and Victims of Crime commissioner exercise functions;
- v. non-compliance with the governing principles under the *Victims of Crime Act 1994* by agencies involved in the administration of justice; and
- vi. complaints about the actions of a guardian or manager.

These new complaints handling functions were designed to ensure that the Commission had jurisdiction to oversight services in relation to vulnerable community groups being brought into the expanded HRC.

The Bill followed extensive consultation with Commissioners, staff, community advocacy groups, the legal profession and the public.

However, ongoing consultation after the introduction of the Bill has identified implications of vesting the victims of crime complaints handling function in the Disability and Community Services Commissioner for the way the Victims of Crime Commissioner advocates for victims.

One issue identified is that new section 21(ab)(iv) may allow the Disability and Community Services Commissioner to take complaints about the services delivered by the Victims of Crime Commissioner and Public Advocate, which would have created conflicts of interest between the independent Commissioners.

Victims of crime concerns and complaints that are handled by the Victims of Crime Commissioner are done so through advocacy rather than a formal investigation process. A formal process may slow down the process and limit the range of options available to the Commissioner to assist victims who may often require urgent assistance.

This may also change the range of methods the Victims of Crime Commissioner can use to promote and protect the rights of victims including advocating for compliance with the governing principles for administration of justice agencies under the Victims of Crime Act.

Therefore, in consultation with the Victims of Crime Commissioner, the Government has decided to postpone a move to vest formal victims of crime complaints in the Disability and Community Services Commissioner for consistency with the other complaint provisions under the Human Rights Act.

Similar issues were identified about the function of the Disability and Community Services Commissioner including handling complaints about matters in relation to which the Public Advocate has a function. Although this function exists in the Public Advocate Act (s 11(c)(i)) discussions with the Public Advocate and Commissioners highlighted that the current process is less formal than the process under the Human Rights Commission Act and indicated that it generally occurs through advocacy.

The Assembly amendments therefore omit or oppose clauses from the Bill that would have vested these new complaints handling functions in the Disability and Community Services Commissioner.

### **Human rights considerations**

The amendments do not raise any human rights considerations, as the amendments maintain the existing mechanisms by which the Victims of Crime Commissioner and the Public Advocate promote and protect rights.

## Clause notes

**1 Clause 17**  
**Proposed new section 21 (1) (ab) (iv) and (v)**  
**Page 13, line 5—**

Amendment 1 omits new sections 21(1)(ab)(iv) and. (v) from clause 17. These sections give the Disability and Community Services Commissioner the functions of handling complaints about matters in relation to which the victims of crime commissioner and public advocate have functions.

**2 Clause 28**  
**Page 18, line 12—**

Amendment 2 opposes clause 28 which provides when someone may complain about a service for victims of crime.

This amendment is consequential on amendment 1 which removes the sections which would have vested complaints handling functions for victims of crime in the Disability and Community Services Commissioner.

**3 Clause 29**  
**Page 19, line 7—**

Amendment 3 opposes clause 29 which provides for a new type of complaint, being a victims of crime service complaint.

This amendment is consequential on amendment 1 which has the effect of maintaining the processes for resolving concerns of victims of crime under the *Victims of Crime Act 1994*.

**4 Clause 30**  
**Page 19, line 11—**

Amendment 4 opposes clause 30 which provides that a person can make a victims of crime service complaint.

This amendment is consequential on amendment 1 which has the effect of maintaining the processes for resolving concerns of victims of crime under the Victims of Crime Act.

**5 Clause 31**  
**Page 19, line 18—**

Amendment 5 opposes clause 31 which provides for Commission initiated complaints on behalf of victims of crime.

This amendment is consequential on amendment 1 which has the effect of maintaining the processes for resolving concerns of victims of crime under the Victims of Crime Act.

**6 Clause 43**  
**Proposed new dictionary definition of *victims of crime service complaint***  
**Page 23, line 11—**

Amendment 6 consequentially omits the new definition of victims of crime service complaint from the dictionary to the Act.

**7**      **Schedule 1, part 1.3**  
**Amendment 1.22**  
**Page 42, line 4—**

Amendment 7 omits clause 1.22 in part 1.3 to schedule 1 of the Bill to maintain the existing functions of the Victims of Crime Commissioner of ensuring concerns and formal complaints about non-compliance with the governing principles are dealt with promptly and effectively in s 11(d) of the Victims of Crime Act.