

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**ACTS REVISION (VICTIMS OF CRIME) BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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Attorney General**

**AUSTRALIAN CAPITAL TERRITORY****ACTS REVISION (VICTIMS OF CRIME) BILL 1994****OUTLINE**

This Bill, and the Victims of Crime Bill, implement some of the key recommendations of the ACT Community Law Reform Committee to improve the delivery of justice to victims of crime in the ACT. In particular, the Bill will facilitate the exchange of information, at vital stages of the criminal justice process, between the victim and the officers of the criminal justice system by means of formal mechanisms. These mechanisms are the bail hearing, the use of victim impact statements in sentencing and the parole hearing.

**Financial Considerations:**

Any additional demands placed on the agencies of the criminal justice system will be absorbed within the current budget allocation at this stage.

**PART I - PRELIMINARY****Short title and  
Commencement  
Clauses 1 and 2**

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and commencement of the Bill, which is to be on a day fixed by the Minister by notice in the Gazette, or in six months, whichever occurs first.

**PART II - AMENDMENTS OF THE BAIL ACT 1992****Introduction**

The amendments to the Bail Act contained in this Bill are designed to facilitate the exchange of information between the victim and court or police officer determining a bail application where the victim has expressed concern about the release of the offender. This exchange will enable the bail decision to take into account the concern of the victim and will ensure that the victim who has such a concern is informed of the decision.

**Principal Act  
Clause 3**

This clause refers to the Bail Act 1992 as the Act which will be amended by Part II of the Bill.

**Interpretation  
Clause 4**

Clause 4 will amend the interpretation clause of the Bail Act, principally by stating which victims of crime are entitled to provide and receive information at the time of a bail hearing.

A 'victim' is defined in terms of his or her relationship to the offence. In most cases, the victim will be the person who suffers harm as a direct result of the commission of the offence or through assisting a police officer in attempting to prevent the commission of the offence. If the person directly victimised dies as a result of the commission of the offence, a 'victim' for the purposes of this Part of the Bill is a person who was financially or psychologically dependant on the person who died.

As this will be beneficial legislation, it is intended that the qualification of 'dependence' will be interpreted broadly. 'Dependence' is intended to include inter-dependence, such as might exist between a parent and a son or daughter. This would mean, for example, that the parent of a person who died as a result of the commission of a crime would be a victim for the purposes of this Part of the Bill.

The 'harm' suffered by the victim who comes within this Bill is broadly defined to include (and therefore is not limited to) physical injury, mental injury or emotional suffering (including grief), pregnancy, economic loss and substantial impairment of rights according to law.

**Criteria for granting  
bail to adults  
Clause 5**

Clause 5 amends section 22 of the Bail Act to make it clear that the court or officer making a decision about bail must consider the possibility of the accused person harassing the victim, if the court or officer has information about that possibility.

**Victim's concern about  
the need for protection  
Clause 6**

This clause will insert a new section 23A into the Bail Act. That section will provide that where the prosecutor becomes aware that the victim is concerned about the need for protection from violence or harassment by the accused person, the prosecutor shall tell the court about that concern. The prosecutor may become aware of the concern, for example, because the victim has told the prosecutor or the police. The court, being aware of the concern of the victim, must take it into account in making the bail decision.

**Conditions on which bail  
may be granted to adults  
Clause 7**

Clause 7 will remove the words 'or injury' from subparagraph (4)(a)(ii) of section 25 of the Bail Act. This is because the Bail Act as amended by this Bill will define 'harm' broadly, including 'physical injury' and 'emotional injury', making the addition of 'or injury' after the word 'harm' unnecessary.

**Notice to victim of bail  
decisions  
Clause 8**

Clause 8 will insert a new section 27A into the Bail Act. That section will require that the victim be informed of a bail decision and any conditions on the grant of bail where the court or officer is

aware that the victim has expressed concern about the release of the offender.

**Notice to victim of bail decisions**  
Clause 9

Clause 9 will insert a new section 46A into the Bail Act. Where a bail decision is reviewed, that section will provide that the court or police officer conducting the review must inform a victim who has expressed concern about the need for protection from the offender of the decision made as a result of the review.

### **PART III - AMENDMENTS OF THE CRIMES ACT 1900**

**Introduction**

The amendments to the Crimes Act provided for by this Bill will provide a statutory framework for the tender of victim impact statements.

**Principal Act**  
Clause 10

This clause refers to the Crimes Act 1900 as the Act which will be amended by this Part of the Bill.

**Interpretation**  
Clause 11

Clause 11 will insert a definition of 'victim' into Part XII of the Crimes Act. That definition is the same as that which will be inserted into the Bail Act. It will only apply to references to the victim in Part XII, which concerns sentencing of the offender.

**Victim Impact Statements**  
Clause 12

Clause 12 will insert a new section 429AB into the Crimes Act. That section will require a court which is determining the sentence of a convicted offender to take into account any victim impact statement tendered.

If no statement is tendered, the court cannot draw any adverse inference from that circumstance concerning the harm suffered by the victim.

A victim impact statement is a statement signed by the victim setting out the full effects - physical, psychological, financial and social - suffered by a victim as a result of a crime. It enables the court to fully understand the effects of the crime on the victim.

A victim impact statement will not be required to be prepared for all offences. The section only applies to those offences for which the maximum penalty is a term of imprisonment for a term of at least 5 years.

Before the prosecutor can tender a victim impact statement to the court, the prosecutor must have provided the defence counsel, or the accused if he or she is unrepresented, with a copy of the statement. Also, the victim must have consented in writing to the tender.

The defence is given a specific right of cross-examination on the material contained within a victim impact statement.

#### **PART IV - AMENDMENTS OF THE PAROLE ACT 1976**

##### **Introduction**

The amendments to the Parole Act which will be brought about by this Bill are designed to facilitate the exchange of information between the victim and Parole Board where the victim has expressed concern about the release of the offender. This exchange will enable the parole decision to take into account the concern of the victim and will ensure that the victim who has such a concern is informed of the decision reached by the Parole Board.

##### **Principal Act Clause 13**

Clause 13 refers to the Parole Act 1976 as the Act which will be amended by this Part of the Bill.

##### **Interpretation Clause 14**

This clause will amend the interpretation section of the Parole Act.

Paragraph (a) will amend an oversight which occurred during the ACT's transition to self-government.

Paragraph (b) inserts new definitions of 'harm' and 'victim', which are identical to the definitions to be inserted into the Bail Act. It also defines who will be considered a 'child' for the purpose of notification of a parole decision, being a person who is not yet 18 years of age.

##### **Release on parole Clause 15**

Clause 15 will insert new subsections into section 20 of the Parole Act. The new provisions will make it clear that where the Parole Board, when making a decision about parole, is aware of any concern expressed by the victim about the need for protection from violence or harassment by the person who will be subject of any parole order, that concern must be taken into account. It will also provide that where a victim has expressed concern, the victim must be informed of the Board's decision concerning Parole and, if applicable, the date on which the release will occur.

Clause 15 also amends section 20 of the Parole Act to make it gender neutral in its terminology.