Justice Legislation (Strengthening Victims' Rights) Amendment Bill 2026

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Justice Legislation (Strengthening Victims' Rights) Amendment Bill 2026 (the Bill).

In my opinion, some of the amendments are not compatible with the human rights protected by the HR Act for the reasons outlined in this statement. In my further opinion, the remainder of the amendments are compatible with human rights for the reasons outlined in this statement.

Overview of the Amendments

The objectives of the amendments are to:

- make clarifying and consequential amendments to the Bill;
- make technical and consequential amendments to the *Bail Act 1980* (Bail Act), including to capture the new dangerous driving-related offences in the Breach Bail, Go to Jail reforms.

Please refer to the Explanatory Notes for an overview of the amendments.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)

Clarifying and consequential amendments to the Bill

Amendments 3, 4, 6 and 7 are clarifying and consequential in nature and do not limit any human rights.

Amendment 5 limits the *right to privacy and reputation* (section 25 of the HR Act) by allowing the Victims' Commissioner to request the Director of Public Prosecutions or the Police Commissioner to provide information relevant to the offence for the purposes of the Victims' Commissioner preparing a Community Impact Statement (CIS).

Right to privacy and reputation (section 25)

(a) the nature of the right

The *right to privacy and reputation* (section 25) protects a person's right to unlawful and arbitrary interference with their privacy, family, home, or correspondence and not to have their reputation unlawfully attacked.

The right to privacy and reputation will be limited as information provided by the Police Commissioner or Director of Public Prosecutions in relation to a request from the Victims' Commissioner may include a copy of sensitive and confidential personal information relating to offenders, witnesses and other persons connected with the offence.

(b) the nature of the purpose of the limitation to be imposed by the amendment if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to facilitate the effective and efficient operation of the CIS framework by ensuring that the Victims' Commissioner has access to relevant information necessary to prepare an evidence-based CIS that accurately reflects the collective and community-wide impacts of offending and assists the court in sentencing.

(c) the relationship between the limitation to be imposed by the amendment if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendment will achieve its purpose because it clarifies the Victims' Commissioner's ability to request relevant information from the Police Commissioner or Director of Public Prosecutions to give the Victims' Commissioner.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendment

Consideration was given to relying on existing mechanisms. However, an amendment was considered necessary to provide clarity and certainty to the operation of the CIS framework.

The proposed provision which allows for information to be requested from the Police Commissioner or Director of Public Prosecutions is tailored and limited to the CIS framework.

In these circumstances, there are no less restrictive and reasonably available ways to achieve the purpose of the amendment.

(e) the balance between the importance of the purpose of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the importance of the purpose of the amendment outweighs the impact on the right to privacy and reputation. Given the importance of ensuring the Victims' Commissioner has access to relevant information necessary to undertake their function under the CIS framework, I consider the limitations on rights are reasonable and demonstrably justifiable.

(f) any other relevant factors

Not applicable.

Consequential amendments to the *Bail Act 1980*

Amendment 2 lists the offences in sections 334I, 334J, 334K and 334L of the Criminal Code as prescribed offences in schedule 1 of the Bail Act from 1 March 2027.

The amendments engage and limit the same human rights as the high degree of confidence test and the offence of committing particular offences while on bail, unlawfully at large or failing to appear (section 29AA offence) established by the *Breach Bail, Go to Jail and Other Legislation Amendment Act 2026* (Breach Bail Act), including:

- the right to liberty (section 29);
- rights in criminal proceedings (section 32); and
- the right to humane treatment when deprived of liberty (section 30).

By listing the offences in sections 334I, 334J, 334K and 334L of the Criminal Code as prescribed offences under schedule 1 of the Bail Act, the amendments ensure that adults who commit these offences are captured by the bail reforms introduced by the Breach Bail Act. This includes the high degree of confidence test and the section 29AA offence.

Consistent with the reasoning on pages 2 to 4 of the Statement of Compatibility for the Breach Bail Act, those aspects of the framework are incompatible with human rights.

The high degree of confidence test increases the likelihood of pre-trial detention, limiting the right to liberty and the practical enjoyment of the presumption of innocence. The section 29AA offence requires at least one year of imprisonment to be served wholly in a corrective services facility, regardless of the circumstances of the offence or defendant. As a result of this requirement on courts to impose a minimum period of imprisonment, and the increased likelihood of imprisonment, the offence limits the right to liberty. To the extent that the high degree of confidence test and the section 29AA offence result in increased imprisonment rates, it may engage the right to humane treatment when deprived of liberty.

The purpose of the amendments is to ensure that new dangerous driving-related offences created by the *Criminal Code (Dangerous Driving) and Other Legislation Amendment Act 2026* (Dangerous Driving Act), when committed by adults, are captured by the recent bail reforms introduced by the Breach Bail Act. The Dangerous Driving Act already ensures those offences are captured by the relevant bail reforms when committed by children through their inclusion as Adult Crime, Adult Time offences under section 175A of the *Youth Justice Act 1992*. These amendments ensure the equivalent framework applies when those offences are committed by adults.

I acknowledge that the amendments extend the application of a framework that has already been recognised as incompatible with human rights and that, as a result, the human rights of a wider group of persons will be limited. However, the amendments are consequential in nature and do not introduce a new policy or a new form of incompatibility. Rather, they ensure that adults who commit the new dangerous driving offences remain subject to the bail reforms introduced by the Breach Bail Act.

The high degree of confidence bail threshold in section 16AA of the Bail Act and the section 29AA offence are already subject to time-limited override declarations. Those declarations apply to the operation of these amendments, which do not insert or re-enact an override or extend the existing overrides' duration. On that basis, no further override declaration and no further Statement about Exceptional Circumstances is required under section 38 of the HR Act.

I am of the view that the current situation with respect to the prevalence of serious repeat offending committed while on bail, and the very high risk of serious harm posed to members of the community by that offending, presents an exceptional crisis situation constituting a threat to public safety such that the addition of the new dangerous driving offences within the scope of the override declarations in sections 16AA and 29AA of the Bail Act is justified.

Conclusion

In my opinion, part of the amendments is not compatible with the human rights protected by the HR Act. In my further opinion, the remainder of the amendments are compatible with human rights because, although it may limit the right to privacy and reputation, the limitation is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
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