

Justice Legislation (Strengthening Victims' Rights) Amendment Bill 2026

Statement of Compatibility

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

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

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill reforms the victim impact statement (VIS) regime under the *Penalties and Sentences Act 1992* (PS Act) and establishes a framework to permit the use of community impact statements (CIS). Please refer to the Explanatory Notes for an in-depth overview of the Bill.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019* (HR Act))

The following human rights are relevant to the Bill:

- Clause 12 - right to privacy and reputation (section 25)
- Clauses 12, 16 - right to a fair hearing (section 31)
- Clauses 12, 16 - rights in criminal proceedings (sections 32(2)(c) and 32(2)(g))
- Clause 12 - protection of families and children (section 26)

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act) Measures to allow victims to provide unredacted VISs to the court

(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 Bill allows for unredacted VISs to be tendered and become part of the court record, which will be accessed by certain parties or presented in open court. This risks reputational harm to the defendant or third parties if uncharged offences or unsubstantiated claims are included in the VIS.

Rights in criminal proceedings (section 32) includes the right to be tried without unreasonable delay. The Bill limits this right because tendering an unredacted VIS may require the prosecution and defence to provide submissions on admissibility and weight to be given to the material in a VIS to assist the court in a sentencing proceeding. This may lead to lengthier adjournments and delays to sentencing proceedings.

The right to protection of families and children (section 26) provides that children and families are entitled to be protected by society and the State. The Bill limits this right because the children and families of the parties could be negatively affected by the disclosure of sensitive or distressing information which may be contained in an unredacted VIS. It is ultimately up to the victim to decide what to include in their VIS.

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

The purpose of allowing unredacted VISs to be provided to the court is to enhance the therapeutic benefit to the victim when preparing and providing a VIS. The purpose promotes victims' right to freedom of expression under section 21 of the HR Act.

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

The Bill will achieve its purpose because victims will no longer feel censored, disrespected or dismissed through the redaction or editing process. Under the Bill, judicial officers will be responsible for deciding which aspects of a VIS to consider, rather than victims having to dilute or moderate their statements themselves.

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

Consideration was given to an alternative proposal to require prosecutors to consult with victims regarding any proposed redactions to a VIS and reasons for suggested redactions. However, this would not be as effective at achieving the purpose because, in practice, negotiations are likely to occur between prosecution and defence and prosecutors would retain discretion to redact a VIS against the victim's wishes. Therefore, victims would still have their freedom of expression limited and would not gain the therapeutic benefit of freely sharing their experience of harm with the court.

Rather, allowing victims to submit an unredacted VIS is considered the most effective way to enhance the therapeutic benefit of preparing a VIS because it prioritises and respects victims' desires to communicate their experiences of harm in the way that best meets their needs.

The Bill includes appropriate safeguards, such as providing that a VIS must not contain anything offensive, threatening, intimidating, or harassing. It also provides prosecutors with a limited ability to remove this type of content in a VIS. The Bill provides that the sentencing court must not refuse to receive the VIS if it contains irrelevant material or inadmissible evidence but must disregard this material.

Significantly, while judicial officers must have regard to the harm to a victim included in a VIS (under sentencing guidelines under section 9(2)(c)(i) of the PS Act), they retain their discretion to determine what information is relevant and appropriate to consider in making a sentencing decision.

To support these legislative amendments, the following non-legislative measures are proposed:

- updated guidance materials for victims to assist in preparing a VIS, including clear information about admissibility and risks of cross-examination or appeal if certain information is included; and
- updated guidance materials for prosecutors and defence lawyers regarding the process for making submissions about the admissibility and weight of information in a VIS. This guidance will focus on minimising delays to proceedings and avoiding further trauma for victims.

(e) the balance between the importance of the purpose of the Bill 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 outweighs the importance of the human rights which will be limited. The amendments empower victims and acknowledge the importance of victims' experiences; in particular, the ability to freely express the harm they have suffered, as part of the sentencing process. Further, the existence of safeguards, including the preservation of judicial discretion, ensure that the limits do not go further than is necessary.

Given the importance of promoting the therapeutic benefits of the VIS regime, I consider the limitations on rights are reasonable and demonstrably justifiable.

(f) any other relevant factors

Not applicable.

Measures to limit the cross-examination of a victim on their VIS, and members of an affected community on their CIS, for the purposes of sentencing

(a) the nature of the right

Rights in criminal proceedings include, as a minimum guarantee, the right of a person charged with a criminal offence to examine, or have examined, witnesses against the person (section 32(2)(g)).

The right to a fair hearing (section 31(1)) encompasses the principle of equality of arms, which involves each side being given the opportunity to contest all the arguments and evidence adduced by the other party.

The Bill limits these rights by providing that a person who prepared a VIS, or members of an affected community who contributed submissions or personal statements to a CIS, must not be cross-examined on the contents of their VIS or provided to a CIS unless the court is satisfied the content may materially affect the sentence the court may impose in the sentencing proceeding; and it is in the interests of justice for the victim to be cross-examined.

Importantly, judicial officers retain their discretion to determine what information is relevant and appropriate to consider in making a sentencing decision.

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

The purpose of the amendments is to enhance the therapeutic benefit of the VIS regime and the CIS model which are intended to inform the sentencing court of harm caused, or likely harm caused, to a victim or affected community by certain offences, in a way that is trauma-informed for victims.

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

The limitation will achieve the purpose because it will protect victims from the trauma of unnecessary cross-examination on their VIS or statements attached to a CIS. These protective measures will clearly enhance the therapeutic benefits of the VIS regime and support a trauma-informed approach to the CIS model.

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

Alternatives to the proposed amendments do not achieve the purpose to the same extent because they do not entirely remove the risk of a re-traumatising cross-examination.

Cross-examination on a VIS is not to be used as a “fishing expedition” and is not justified where the statement discloses nothing relevant to the offence, sentencing considerations, or the complainant’s credibility (*R v Demos* [2012] QCA 165; *R v BBU* [2009] QCA 385; *R v Grimley* [2017] QCA 291).

The Bill does not create a blanket prohibition against cross-examination. The Bill legislates a threshold test for allowing cross-examination on a VIS or CIS which aligns with the existing threshold established in Queensland jurisprudence for ordering a re-trial, on appeal, to facilitate cross-examination on a VIS.

Accordingly, the contents of a VIS or CIS may be cross-examined where the content may materially affect the sentence the court may impose, and it is in the interests of justice for the cross-examination to take place. These tests will continue to be applied at the discretion of the judge or magistrate using their expertise.

- (e) the balance between the importance of the purpose of the Bill, 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 outweighs the importance of the human rights which will be limited. Cross-examination of a victim on their VIS or content contributed to a CIS is antithetical to the purpose of the amendments which is to enhance the therapeutic benefits of the VIS regime and implement a CIS model that is trauma-informed.

The fair hearing rights identified are of central importance to the criminal justice system, and for this reason, the Bill retains the discretion of the court to allow cross-examination where it may materially affect the outcome of the sentencing decision, and it is in the interests of justice to do so. In this way, any impact on those rights is minimised and where material unfairness might arise, the court is able to deal with this effectively by allowing for cross-examination to occur.

Accordingly, given the importance of promoting the therapeutic benefit of the VIS regime and supporting a trauma-informed CIS model, I consider the limitations on rights are reasonable and demonstrably justifiable.

- (f) any other relevant factors

Not applicable.

Measures to allow a CIS to be provided to the court

- (a) the nature of the right

The right to a fair hearing (section 31) protects the right to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right, which extends to sentencing proceedings, will be limited by the Bill because sentencing courts may rely on CISs prepared by a government-appointed statutory office holder which contain contested or broad assertions about community or social impacts that are difficult for the offender to challenge effectively, and which may not be directly attributable to the defendant or the specific circumstances of the case.

The rights in criminal proceedings protected under section 32 include a number of minimum guarantees which must be given to those who have been charged with a criminal offence.

The right to be tried without unreasonable delay, protected by section 32(2)(c) will be limited as there may be an increased likelihood of adjournments.

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

The purpose of the amendments is to provide sentencing courts with structured, independent and authoritative information about the collective and community-wide impacts that are not adequately captured through individual VISs or ordinary sentencing submissions.

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

The Bill will achieve the purpose because it addresses a gap in the current framework by allowing for the provision of information about the community-wide impacts of offending. Under the Bill, a CIS may be provided for certain offences, including child exploitation material (CEM)-related offences, which characteristically affect communities or groups of people beyond the individual victims identified in the proceeding, where individual victims cannot be identified, or victims cannot, or choose not, to make a VIS.

Allowing information about the collective and community-wide impacts of certain types of offending will provide courts with structured, independent and authoritative information to assist when determining sentence, in line with existing sentencing guidelines to consider the nature and seriousness of an offence, and any damage, injury or loss caused by the offender.

The Child Death Review Board noted in its report, *In Plain Sight: Review into System Responses to Child Sexual Abuse*, that possession and distribution of CEM offences in Queensland do not appear to be captured as offences for which a person may make a VIS, as they may not be considered offences against the person.

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

Consideration was given to alternative proposals to introduce stricter legislative standards on the permissible content of CISs.

However, the model adopted in the Bill is intended to provide the Victims' Commissioner with statutory oversight of the CIS framework to determine which matters are appropriate for a CIS to be provided, in line with the statutory definition of a CIS. The Victims' Commissioner will have an editorial function by ensuring that sources of research and data that are referenced are reputable and appropriate, relevant community stakeholders are consulted, and community and individual views are clearly identified in a CIS.

The Victims' Commissioner may consult with the affected community or the prosecutor to determine what, if any, details are appropriate to be included in a CIS. This may include considering timing, as a CIS will likely only be provided to the prosecutor after the offender has been found guilty or a plea of guilty has been entered.

The Victims' Commissioner may have regard to any information the Victims' Commissioner considers relevant in preparing the CIS, but the Bill enables flexibility in the way in which the Commissioner decides to engage with relevant stakeholders.

In this way, the Bill provides an appropriate balance between strict legislative guidance/standards for the CIS and ensuring flexibility for the scheme to operate in various contexts while still retaining protections to ensure fairness.

The amendment requires the prosecutor to provide the CIS to the sentencing court and defendant as soon as practicable after the sentencing court convicts an offender for the offence. This is intended to allow the defendant to have the opportunity to make submissions about the CIS.

Sentencing courts are only required to consider relevant material contained in the CIS and retain discretion regarding how much weight to give that material. The Bill clarifies that the sentencing court may receive any irrelevant material or inadmissible evidence in a CIS but must disregard that content in imposing a sentence for the offence.

(e) the balance between the importance of the purpose of the Bill, 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 outweighs the importance of the human rights which will be limited and there are sufficient safeguards in place to mitigate these limitations.

Given the importance of including community wide impacts of certain types of offending for consideration in sentencing proceedings, I consider the limitations on rights are reasonable and demonstrably justifiable.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Bill is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Deb Frecklington MP
Attorney-General and Minister for Justice and Minister for Integrity