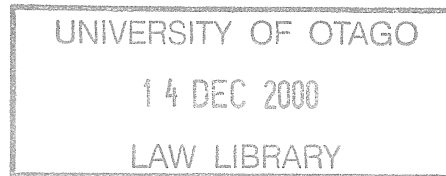


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No 112



House of Representatives

Supplementary Order Paper

Tuesday, 5 December 2000

Victims' Rights Bill

—
Proposed amendments

Hon Phil Goff, in Committee, to move the following amendments:

Clause 1

To omit subclause (2) (lines 3 and 4 on page 2).

Clause 2

To omit this clause (lines 5 and 6 on page 2).

Parts 1 and 2

To omit these Parts (which appear on pages 2 to 7), and substitute the following Parts:

Part 1

Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose of Act

The purpose of this Act is to improve provisions for the treatment and rights of victims of crimes.

4 Interpretation

In this Act, unless the context otherwise requires,—

accused or person accused of the offence, in relation to a victim, means a person accused of the crime or offence that affected the victim

crime or offence, in relation to a victim,—

(a) means an offence against any enactment—

- (i) through or by means of which the victim suffered physical or emotional harm, or loss of, or damage to, property; or
 - (ii) that resulted in the death of a member of the immediate family of the victim; and
- (b) includes any alleged offence (whether or not any person is convicted of the offence) that has affected the victim in 1 or both of the ways referred to in **paragraph (a)**

hospital has the same meaning as in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992

offender, in relation to a victim,—

- (a) means a person convicted of the crime or offence that affected the victim; and
- (b) in **sections 11 to 14**, includes a person found guilty of, or who pleads guilty to, that crime or offence

support person, in relation to a victim, means—

- (a) a parent, or a legal guardian, of the victim;
- (b) another close relative of the victim, including a person who has a relationship in the nature of marriage with the victim;
- (c) a welfare guardian of the victim, or manager of the property of the victim, appointed under the Protection of Personal and Property Rights Act 1988;
- (d) an attorney appointed by the victim under a power of attorney described in section 95 of the Protection of Personal and Property Rights Act 1988 if—
 - (i) the matter is one relating to the personal care and welfare of the victim in relation to which the attorney is authorised to act under the power of attorney; and
 - (ii) the occasion for the attorney to act has arisen under section 98(3) of that Act

victim—

- (a) means a person who, through or by means of a crime or offence, suffers—
 - (i) physical or emotional harm; or
 - (ii) loss of, or damage to, property; and
- (b) if a crime or offence results in a person's death, includes each member of the immediate family of that person

victim impact statement—

- (a) means oral or written information prepared for submission or submitted to a judicial officer under **section 11**; and

- (b) includes any recording, summary, or transcript of oral information, and any copy or summary of written information, prepared for submission or submitted to a judicial officer under **section 11**.

Compare: 1987 No 173 s 2

- 5 Crown bound**
This Act binds the Crown.

Part 2

Provisions relating to treatment and rights of victims generally

Principles guiding treatment, and access to services, of victims

- 6 Treatment**
Any person who deals with a victim (for example, any barrister or solicitor, judicial officer, member of the police, other officer of the Court, or other official) should—
 - (a) treat the victim with courtesy and compassion; and
 - (b) respect the victim's dignity and privacy.

Compare: 1987 No 173 s 3

- 7 Access to services**
A victim or member of a victim's family who has welfare, health, counselling, medical, or legal needs should have access to assistance that is responsive to those needs.

Compare: 1987 No 173 s 4

Information to be given to victims

- 8 Information about services and remedies**
 - (1) A victim must, as soon as practicable after the victim comes into contact with an agency, be given information by the personnel of the agency about services or remedies (including protection against unlawful intimidation) available to the victim through the agency.
 - (2) In this section, **agency** means—
 - (a) the Accident Compensation Corporation;
 - (b) the Department of Child, Youth and Family Services;
 - (c) the Department for Courts;
 - (d) the Department of Work and Income;
 - (e) any hospital and health service (as defined in section 2 of the Health and Disability Services Act 1993);
 - (f) the New Zealand Police.
 - (3) That information may be given to a support person of a victim if the victim—
 - (a) cannot receive it; or

(b) is not, or may not be, capable alone of understanding it.

Compare: 1987 No 173 s 5

9 Information about proceedings

(1) A victim must, as soon as practicable, be given information about the following matters:

- (a) the progress of the investigation of the offence:
- (b) the charges laid, or the reasons for not laying charges:
- (c) the victim's role as a witness in the prosecution of the offence:
- (d) the date and place of—
 - (i) the first appearance in court, in connection with the offence, of the person accused of the offence:
 - (ii) any preliminary hearing relating to the offence:
 - (iii) any defended hearing, or trial, relating to the offence:
 - (iv) any hearings set down for sentencing for the offence:
 - (v) any hearings of appeals against conviction of the offence or relating to the sentence imposed, or to be imposed, for the offence:
- (e) the outcome of the proceedings (including any proceedings on appeal).

(2) A victim must be given that information by the prosecuting authority or, as the case requires, officers of the Court.

(3) That information may be given to a support person of a victim if the victim—

- (a) cannot receive it; or
- (b) is not, or may not be, capable alone of understanding it.

Compare: 1987 No 173 s 6

Victim's address not usually to be disclosed

10 Victim's address not usually to be disclosed

A victim's address must not be disclosed in court unless—

- (a) the victim consents to it being disclosed, or discloses it himself or herself:
- (b) the judicial officer directs that to exclude it would be contrary to the interests of justice.

Compare: 1987 No 173 s 9

Victim impact statements

11 Victim impact statements in sentencing of offender

(1) The prosecuting authority must make appropriate administrative arrangements to ensure the judicial officer sentencing the offender is given information about—

- (a) any physical or emotional harm suffered by the victim through or by means of the offence; and

- (b) any loss of, or damage to, property suffered by the victim through or by means of the offence; and
 - (c) any other effects of the offence on the victim.
- (2) That information must be given to the judicial officer—
- (a) by the prosecuting authority, either orally or in writing; or
 - (b) if a request is made by or on behalf of the victim, and the judicial officer permits,—
 - (i) by the victim orally; or
 - (ii) by 1 person named by the victim and reading a written statement of the victim.

Compare: 1987 No 173 s 8

12 Distribution of victim impact statements

- (1) A member of the police, officer of the Court, probation officer, or prosecuting authority who shows an offender a written victim impact statement must not give the offender a copy of it to keep.
- (2) Each person (other than the victim concerned, and any member of the police, officer of the Court, probation officer, or prosecuting authority) who receives or makes any copy or copies of a written victim impact statement must, at the end of the proceedings, return the copy or copies to an officer of the Court, unless the Court orders otherwise on an application by any person for the purpose.

13 Court may withhold victim impact statement from offender

- (1) The Court may, if it thinks fit to do so, on its own initiative or on an application by any person for the purpose, order that an offender not be given or shown all or any part of a written victim impact statement if, in the opinion of the Court,—
- (a) the statement or part identifies, or is likely to lead to the identification of, the victim concerned, and withholding it from the offender is unlikely to prejudice the offender; or
 - (b) withholding the statement or part from the offender is necessary in order to protect the physical safety, emotional welfare, and privacy of the victim concerned.
- (2) If the Court makes an order under **subsection (1)** in respect of an offender and a statement or part of a statement, the statement or part—
- (a) must be shown to the counsel for the offender, but neither the counsel for the offender nor any member of the police, officer of the Court, probation officer, or prosecuting authority, may disclose it to the offender;
 - (b) may be taken into account by the Court in sentencing the offender, but the Court must, when assessing the

weight (if any) to be given to it for that purpose, take into account that the offender has had no chance to respond to it or challenge it.

- (3) This section does not limit **section 14**.

14 Court may give directions or impose conditions on disclosure and distribution of victim impact statements

- (1) The Court may, on its own initiative or on an application by the prosecuting authority for the purpose, give any directions, or impose any conditions, that—
- (a) relate to the disclosure and distribution of a victim impact statement; and
 - (b) may be necessary to protect the victim's physical safety, emotional welfare, and privacy.
- (2) Under **subsection (1)**, the Court may—
- (a) give directions or impose conditions about the copying of the statement, including the number of copies that may be made:
 - (b) give directions to, or impose conditions on, the people to whom the statement may be disclosed or distributed:
 - (c) direct that the whole or any part of the statement not be disclosed or distributed, either generally or to a specified person:
 - (d) impose any conditions on the disclosure or distribution of the whole or any part of the statement:
 - (e) direct that the whole or any part of the statement not be published, either generally or by a specified person:
 - (f) impose any conditions on the publication of the whole or any part of the statement:
 - (g) give any directions, and impose any conditions, about any other matters to do with the disclosure and distribution of the statement that the Court considers necessary or appropriate in the circumstances.
- (3) **Subsection (2)** does not limit **subsection (1)**.

Victim's views on application for order prohibiting permanently publication of name of accused or offender

15 Victim's views on application for order prohibiting permanently publication of name of accused or offender

- (1) This section applies to a victim if the person accused of the offence or, as the case requires, the offender applies to a court under section 140 of the Criminal Justice Act 1985 for an order or further order—
- (a) prohibiting the publication of his or her name, address, or occupation, or of any particulars likely to lead to the his or her identification; and
 - (b) having effect permanently.

- (2) If this section applies to a victim, the prosecuting authority—
 - (a) must make all reasonable efforts to ascertain any views the victim has on the application; and
 - (b) must inform the Court of any views it ascertains in accordance with **paragraph (a)**.

Part 3

Provisions relating to rights of victims of certain offences

Sections 17 to 26 apply only to victims of certain offences

16 Application of sections 17 to 26

Sections 17 to 26 each apply to a victim only if the offence is one of—

- (a) sexual violation or other serious assault or injury; or
- (b) another kind that, because of its circumstances or nature, has led to the victim fearing on reasonable grounds for his or her safety.

Victim's views about release on bail of accused or offender

17 Victim's views about release on bail of accused or offender

The prosecuting authority—

- (a) must make all reasonable efforts to ascertain any fears a victim to whom this section applies has about the release on bail of the person accused of the offence or, as the case requires, the offender; and
- (b) must inform the judicial officer of any fears it ascertains in accordance with **paragraph (a)**.

Compare: 1987 No 173 s 10

*Sections 21 to 24 apply only to victim who asked for notice
and gave his or her address*

18 Application of sections 21 to 24

Sections 21 to 24 each apply to a victim to whom this section applies only if the victim has—

- (a) asked the New Zealand Police to ensure he or she is given notice under that section; and
- (b) given the New Zealand Police his or her current address (whether a postal address, e-mail address, fax number, or telephone number).

Duties of police in relation to notice under sections 21 to 24

19 Police to give information about right to ask for notice and appointment of representative

- (1) As soon as practicable after a victim comes into contact with the New Zealand Police, the Commissioner of Police must

determine whether or not this section applies to the victim in accordance with **section 16** and, if it does,—

- (a) must make all reasonable efforts to inform the victim that he or she has the right to ask to be given notice under any of **sections 21 to 24**; and
 - (b) must, in the circumstances stated in **subsection (2)**, make all reasonable efforts to inform a support person of the victim that a representative of the victim may be appointed under **section 25**.
- (2) The circumstances referred to in **subsection (1)(b)** are that the Commissioner knows, or ought reasonably to know, that the victim is not, or may not be, capable alone of—
- (a) asking for, receiving, or understanding, notice under any of **sections 21 to 24**; and
 - (b) appointing a representative under **section 25**.
- (3) **Subsection (1)(b)** does not limit **subsection (1)(a)**.

Victim's address to be forwarded in certain cases

20 Victim's address to be forwarded in certain cases

- (1) The Commissioner of Police must forward the current address of a victim to whom this section applies to the chief executive of the Department of Corrections if the victim has—
- (a) asked for notice under **section 22 or section 23**; and
 - (b) given that address to the New Zealand Police.
- (2) The Commissioner of Police must forward the current address of a victim to whom this section applies to the Director-General of Health if the victim has—
- (a) asked for notice under **section 24**; and
 - (b) given that address to the New Zealand Police.
- (3) The chief executive of the Department of Corrections must forward the current address of a victim to whom this section applies to the Director-General of Health if—
- (a) that address has been forwarded to that chief executive under **subsection (1) or subsection (4)**; and
 - (b) the offender is admitted to and detained in a hospital following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under an arrangement under section 46 of that Act.
- (4) The Director-General of Health must forward the current address of a victim to whom this section applies to the chief executive of the Department of Corrections if—
- (a) that address has been forwarded to that Director-General under **subsection (2) or subsection (3)**; and
 - (b) the person accused of the offence or, as the case requires, the offender is removed to a penal institution

under section 47 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

- (5) An address required to be forwarded under this section must be forwarded as soon as practicable after the requirement arises.

Notice of certain matters to be given to victims of certain offences

21 Notice of release on bail of accused or offender

The Commissioner of Police must give a victim to whom this section applies notice, as soon as practicable, of any release on bail of the person accused of the offence or, as the case requires, the offender, for example, release on bail—

- (a) until the hearing of proceedings:
- (b) during an adjournment of proceedings:
- (c) until sentencing:
- (d) until determination of an appeal against conviction or sentence.

22 Notice of offender's release or escape

The chief executive of the Department of Corrections must give a victim to whom this section applies—

- (a) reasonable prior notice of the offender's impending release from penal custody, or release to or from home detention; and
- (b) notice, as soon as practicable, of the offender's escape from penal custody or home detention.

Compare: 1987 No 173 s 11

23 Notice of hearing on offender's parole, home detention, or conditions on final release

The chief executive of the Department of Corrections must give a victim to whom this section applies reasonable prior notice of the date of the offender's—

- (a) parole hearing:
- (b) hearing for release to home detention on an application under section 103A of the Criminal Justice Act 1985:
- (c) hearing to consider conditions on final release.

Compare: 1987 No 173 s 11

24 Notice of discharge, leave of absence, or escape of compulsorily detained accused or offender

- (1) Without limiting sections 16 and 18, this section applies to a victim only if the person accused of the offence or, as the case requires, the offender is compulsorily detained in a hospital (whether or not under an enactment referred to in any of

paragraphs (a) to (d)) and was, when his or her compulsory detention began,—

- (a) subject to an order made under the proviso to section 171(3) of the Summary Proceedings Act 1957; or
 - (b) subject to an order made under any of sections 115(1) or (2)(a), 118(1), or 121(2)(b)(ii) or (11) of the Criminal Justice Act 1985; or
 - (c) remanded to a hospital under section 115(4) of that Act; or
 - (d) detained following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under an arrangement under section 46 of that Act.
- (2) The Director-General of Health must give a victim to whom this section applies—
- (a) reasonable prior notice of any impending discharge of the person or offender; and
 - (b) reasonable prior notice of any leave of absence granted to the person or offender by the Minister of Health under section 50 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; and
 - (c) notice, as soon as practicable, of any escape by the person or offender.
- (3) If the offender was, when his or her compulsory detention began, detained following an application or under an arrangement referred to in **subsection (1)(d)**, and the offender becomes no longer liable to detention for the sentence imposed for the offence, then—
- (a) **subsection (2)** no longer applies; but
 - (b) the Director-General of Health must give the victim notice, as soon as practicable, that the offender is no longer liable to detention for the sentence imposed for the offence.

Compare: 1987 No 173 s 11A

Representatives for notice

25 Representatives for notice

- (1) A victim to whom this section applies may, for any reason he or she thinks fit, appoint any other person (the **representative**) to receive on the victim's behalf, and ensure the victim is given and understands, any notice to be given to the victim under any of **sections 21 to 24** (the **information**) and, if the victim does so,—
- (a) the references to the victim's current address in **sections 18(b) and 20** must be read as references to the representative's current address; and
 - (b) the information must be given to the representative, rather than to the victim; and

- (c) the representative must make all reasonable efforts to receive on the victim's behalf, and ensure the victim is given and understands, the information.
- (2) The appointment must be by a written notice that—
 - (a) identifies the information to which the appointment relates; and
 - (b) if the representative is appointed for a limited period only, states that period and when it starts; and
 - (c) includes the representative's consent to the appointment; and
 - (d) is given both to the representative and to the person or people who are to give the victim the information to which the appointment relates.
- (3) A victim's support person (A) may appoint himself or herself, or another support person of the victim, as representative of the victim, on behalf of the victim, in accordance with **subsection (2)**, if—
 - (a) the victim is not, or may not be, capable alone of appointing a representative; and
 - (b) no representative of the victim has been appointed (whether in reliance on this subsection or not); and
 - (c) A has discussed the appointment proposed with the victim and with each other support person of the victim who A knows, or ought reasonably to know, is another support person of the victim.
- (4) The appointment of a representative may be terminated by notice in writing given—
 - (a) by the victim to both the representative and the person or people who are to give the victim the information to which the appointment relates; or
 - (b) by the representative to both the victim and the person or people who are to give the victim the information to which the appointment relates.
- (5) A notice appointing, or terminating the appointment of, a representative, takes effect—
 - (a) as soon as it has been given to everyone to whom it is required to be given under **subsection (2)(d)** or **subsection (4)**; or
 - (b) if it has been given to each of those people, on any later date stated in it as the date on which it takes effect.

Submissions on parole, home detention, and conditions on final release

26 Victim may make submissions on parole, home detention, and conditions on final release

A victim to whom this section applies may make submissions to a Parole Board or a District Prisons Board, in accordance with **section 106A** of the Criminal Justice Act 1985.

Part 4
Miscellaneous provisions

Complaints and other ways in which rights may be enforced

27 Complaints

A victim or person who considers that he or she is entitled to be accorded a right under any of **sections 8 to 11, 15 to 26, and 29**, and that he or she has not been accorded the right, may complain to—

- (a) the person or people who, under the relevant section, are required to accord the victim or person the right:
- (b) an Ombudsman, in accordance with the Ombudsmen Act 1975 if, under that Act, the victim or person is entitled to make a complaint in relation to the matter:
- (c) the Police Complaints Authority, in accordance with the Police Complaints Authority Act 1988, if—
 - (i) the person or people required, under the relevant section, to accord the victim or person the right are members of the police; and
 - (ii) under that Act, the victim or person is entitled to make a complaint in relation to the matter:
- (d) the Privacy Commissioner, in accordance with the Privacy Act 1993, if—
 - (i) the matter involves, or may involve, an action that is, or appears to be, an interference with the privacy of the victim or person; and
 - (ii) under that Act, the victim or person is entitled to make a complaint in relation to the matter.

28 Other ways in which rights may be enforced

- (1) Except as provided in **subsection (2)**, neither **section 27** nor this section limits the ways in which rights conferred by any of **sections 8 to 11, 15 to 26, and 29** may be enforced.
- (2) No person (for example, the Crown in right of New Zealand) may be required (for example, by any court, tribunal, or other body) to pay any money (whether by way of damages, compensation, or otherwise) to any other person in respect of any breach of any of **sections 8 to 11, 15 to 26, and 29**.

Return of property held as evidence

- 29 Return of property held as evidence**
Law enforcement agencies that hold property of a person (other than an offender) for evidentiary purposes must return it to the person as soon as practicable after they no longer need to hold it for those purposes.
Compare: 1987 No 173 s 7

Director-General of Health may delegate duties

- 30 Director-General of Health may delegate duties**
- (1) The Director-General of Health may delegate any of his or her duties under **section 20(4) and section 24** to any person who—
- (a) holds the office of Director or Deputy Director of Mental Health, pursuant to section 91 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) is a Director of Area Mental Health Services appointed under section 92 of that Act.
- (2) The delegation—
- (a) must be in writing and signed by the Director-General:
 - (b) must specify the duties delegated, and the person or persons to whom they are delegated (the **delegates**):
 - (c) does not prevent the Director-General from performing the duties delegated, or affect his or her responsibility for actions of the delegates:
 - (d) is revocable at will by written notice to the delegates:
 - (e) may be made subject to any terms and conditions stated in it the Director-General thinks fit:
 - (f) may permit some or all of the delegates to delegate further the duties delegated, subject to any terms and conditions stated in it the Director-General thinks fit.
- (3) A delegate—
- (a) may perform the duties delegated in the same manner and with the same effect as if they had been conferred or imposed on the delegate directly by this Act; but
 - (b) must perform them (and may further delegate them to the extent that the delegation permits) only in accordance with any terms and conditions stated in the delegation.

Amendments

- 31 Amendments**
The Acts specified in the **Schedule** are amended in the manner indicated in that schedule.

*Repeal***32 Victims of Offences Act 1987 repealed**

The Victims of Offences Act 1987 (1987 No 173) is repealed.

Schedule

To omit the Schedule (pages 8 and 9), and substitute the following Schedule:

Schedule
Enactments amended

s 31

Bail Act 2000 (2000 No 38)

Repeal section 8(3) and substitute:

- “(3) When considering an application for bail, any views of a victim of an offence of a kind referred to in **section 16 of the Victims' Rights Act 2000**, conveyed in accordance with **section 17** of that Act, must be taken into account.”

Criminal Justice Act 1985 (1985 No 120)

Add to section 103B(3)(e) the words “, in accordance with **section 106A**”.

Repeal section 106A and substitute:

- “**106A Right of victims to be heard at parole hearings, home detention hearings, and hearings to consider conditions on final release**
- “(1) The Parole Board or a District Prisons Board (as the case may be) must have regard to any submissions made by the victims of the offender in determining any application or considering any matter to which any of the following sections applies:
- “(a) section 99 (jurisdiction of Parole Board where offender to be released at final release date):
- “(b) section 101 (jurisdiction of District Prisons Boards where offender to be released at final release date):
- “(c) section 103B (determination of application for release to home detention):
- “(d) section 104 (matters to be considered when determining release on parole).
- “(2) A victim's submissions to the Board may be written or oral, or written and oral.
- “(3) A victim's submissions to be given orally may, if a request for the purpose is made by or on behalf of the victim and the Board permits, be given orally on behalf of the victim by 1 person named by the victim.
- “(4) Despite anything in section 107(5), the offender may be shown a copy or summary of any of the victim's written submissions, or a recording, summary, or transcript or of any oral submissions by or on behalf of the victim, but the offender is not entitled to be given the victim's address or to keep a copy, recording, summary, or transcript of any of those submissions.

Criminal Justice Act 1985 (1985 No 120)—continued

- “(5) A victim may require that his or her oral submissions, or oral submissions on his or her behalf, be heard at a place identified by the Board that is a place other than the prison where the Board is to hear any oral submissions by or on behalf of the offender.
- “(6) Despite section 133(1), at a meeting of a District Prisons Board to hear oral submissions by or on behalf of a victim, 2 members is a quorum.
- “(7) In this section, **victim** means,—
- “(a) in the case of an application for release to home detention under section 103, a victim as defined in **section 4 of the Victims' Rights Act 2000**; but
 - “(b) in every other case, a victim of an offence of a kind referred to in **section 16** of that Act.”

Insert, before section 139(1):

- “(1AA) The purpose of this section is to protect persons upon or with whom an offence referred to in subsection (1) or subsection (2) has been, or is alleged to have been, committed.”

Insert, after section 139(1):

- “(1A) However, the court must make an order referred to in subsection (1)(b), permitting any person to publish the name of a person upon or with whom any offence referred to in subsection (1) has been or is alleged to have been committed, or any name or particulars likely to lead to the identification of that person, if—
- “(a) that person—
 - “(i) is aged 16 years or older (whether or not he or she was aged 16 years or older when the offence was, or is alleged to have been, committed); and
 - “(ii) applies to the court for such an order; and
 - “(b) the court is satisfied that that person understands the nature and effect of his or her decision to apply to the court for such an order.”

Insert, after section 139(2):

- “(2A) However, a court must order that any person may publish the name of a person convicted of an offence against section 130 or section 131 of the Crimes Act 1961, or any name or particulars likely to lead to the person's identification, if—
- “(a) the victim (or, if there were 2 or more victims of the offence, each victim) of the offence—
 - “(i) is aged 16 years or older (whether or not he or she was aged 16 years or older when the offence was, or is alleged to have been, committed); and
 - “(ii) applies to the court for such an order; and
 - “(b) the court is satisfied that the victim (or, as the case requires, each victim) of the offence understands the

Criminal Justice Act 1985 (1985 No 120)—continued

nature and effect of his or her decision to apply to the court for such an order; and

- “(c) no order or further order has been made under section 140 prohibiting the publication of the name, address, or occupation, of the person convicted of the offence, or of any particulars likely to lead to that person’s identification.

“(2B) An order made under **subsection (2A)** in respect of the name of a person, or of any name or particulars likely to lead to the identification of a person, ceases to have effect if—

- “(a) the person applies to a court for an order or further order under section 140 prohibiting the publication of his or her name, address, or occupation, or of any particulars likely to lead to his or her identification; and

- “(b) the court makes the order or further order under section 140.”

Insert, after section 140(4):

“(4A) When determining whether to make any such order or further order in respect of a person accused or convicted of an offence and having effect permanently, a court must take into account any views of a victim of the offence conveyed in accordance with **section 15 of the Victims’ Rights Act 2000.**”

Official Information Act 1982 (1982 No 156)

Add, to the definition of **official information** in section 2(1):

- “(k) does not include information contained in a victim impact statement (as defined in **section 4 of the Victims’ Rights Act 2000**)”

Privacy Act 1993 (1993 No 28)

Omit from the Fifth Schedule the words “Victims of Offences Act 1987” in each place where they appear, and substitute in each case the words “**Victims’ Rights Act 2000**”.

Explanatory note

This Supplementary Order Paper sets out proposed amendments to the Victims' Rights Bill (the Bill). The Bill is to repeal and replace the Victims of Offences Act 1987 (the Act).

The proposed amendments would replace almost all of the Bill; and include—

- a new Part 1 (including new sections 2 to 5)—preliminary provisions:
- a new Part 2 (including new sections 6 to 15)—provisions relating to the treatment and rights of victims generally:
- a new Part 3 (including new sections 16 to 26)—provisions relating to the rights of victims of certain offences:
- a new Part 4 (including new sections 27 to 31) and a new Schedule—provisions about complaints and other ways in which rights may be enforced, a provision about the return of property held as evidence, a provision about the Director-General of Health delegating his or her duties under the Bill, a provision effecting amendments, and a provision repealing the Act.

In general terms, the main amendments proposed to the Bill are—

Principles recast as rights

- to recast the principles in the Act relating to the treatment of victims (except those stated in sections 3 and 4 of the Act) as duties particular agencies must perform:

Support persons

- to provide that information to be given to a victim may be given as well to a support person of the victim if the victim cannot receive it or is not, or may not be, capable alone of understanding it (*new sections 8(3) and 9(3)*):

Category of victims entitled to ask for notice of certain matters extended

- to ensure that notice of certain matters (under *new sections 21 to 24*) may be asked for not just (as under the Act) by a victim of an offence of sexual violation or other serious assault or serious injury but also by a victim of an offence of another kind that, because of its circumstances or nature, has led to the victim fearing on reasonable grounds for his or her personal safety (*new section 16*):

New Zealand Police required to give information to certain victims and support persons

- to require the New Zealand Police to inform certain victims that they may ask for notice under *new sections 21 to 24*, and to inform support persons of certain victims that representatives of those victims may be appointed (*new section 19*):

Representatives for notice

- to provide for a victim (or, if a victim is not, or may not be, capable, a support person of the victim) to appoint a representative to ask for and receive on the victim's behalf, and ensure the victim is given and understands, notice under any of *new sections 21 to 24* (*new section 25*):

Extension of category of victims whose fears about release on bail of accused or offender to be considered

- to require prosecuting authorities to make all reasonable efforts to ascertain, and to inform judicial officers of, any fears victims have about the release on bail of an accused or offender not just (as under the Act) if the offence is one of sexual violation or other serious assault or serious injury but also if the offence is of another kind that, because of its circumstances or nature, has led to the victim fearing on reasonable grounds for his or her personal safety (*new sections 16 and 17, and 31, and new Schedule—new section 8(3) of the Bail Act 2000*):

Victim impact statement may be read by person named by victim if judicial officer permits

- to provide that, if a request is made by or on behalf of a victim, and the judicial officer sentencing the offender permits, a victim impact statement may be given not by the victim but by 1 person named by the victim and reading a written statement of the victim (*new section 11(2)(b)(ii)*):

Offenders not to be given copy of victim impact statement to keep

- to provide that members of the police, officers of the Court, probation officers, or prosecuting authorities who show an offender a written victim impact statement must not give the offender a copy of the statement to keep (*new section 12(1)*):

Victim impact statements generally to be returned to Court at end of proceedings

- to require everyone (other than the victim concerned, and any member of the police, officer of the Court, probation officer, or prosecuting authority) who receives or makes a copy or copies of a victim impact statement to return the copy or copies to an officer of the Court at the end of the proceedings, unless the Court orders otherwise (*new section 12(2)*):

Court may order that victim impact statement be withheld from offender

- to empower the Court in certain cases, if it thinks fit, to order that a victim impact statement be withheld from an offender (though not also from counsel for the offender) (*new section 13*):

Victim's views on offender's application for name suppression to be considered

- to require prosecuting authorities to make all reasonable efforts to ascertain, and to inform the Court of, any views a victim has on an application by an accused or offender for an order (under section 140 of the Criminal Justice Act 1985) prohibiting, permanently, the publication of the name, address, or occupation of the accused or offender, or any particulars likely to lead to his or her identification (*new sections 15 and 31, and new Schedule—new section 140(4A) of the Criminal Justice Act 1985*):

Complaints and other ways in which rights may be enforced

- to make clear how rights under the Bill may be enforced (*new sections 27 and 28*):

Amendments to Criminal Justice Act 1985

- to amend section 103B(3)(e) of the Criminal Justice Act 1985 to make clear how it relates to *new section 106A* of that Act (*new section 31 and new Schedule*):
- to repeal section 106A of the Criminal Justice Act 1985 (which relates to the right of victims to be heard at parole hearings, home detention hearings, and hearings to consider conditions on final release), and substitute a *new section 106A* that provides, in a *new subsection (3)*, that a victim's submissions to be given orally may, if a request for the purpose is made by or on behalf of the victim and the Parole Board or District Prisons Board permits, be given orally on behalf of the victim by 1 person named by the victim (*new section 31 and new Schedule*):
- to amend section 139 of the Criminal Justice Act 1985 so that it includes, in a *new subsection (IAA)*, a statement of purpose (*new section 31 and new Schedule*):
- to amend section 139 of the Criminal Justice Act 1985 so that, in a *new subsection (IA)*, it requires the Court to make an order permitting publication of identifying details of a person on or with whom a specified sexual offence has been or is alleged to have been committed if the person is aged 16 years or older and applies for the order, and the Court is satisfied that the person understands the nature and effect of his or her decision to apply for the order (*new section 31 and new Schedule*):
- to amend section 139 of the Criminal Justice Act 1985 so that, in a *new subsection (2A)*, it requires the Court to make an order permitting publication of identifying details of a person convicted of a specified sexual offence if the victim (or, if there were 2 or more victims of the offence, every victim) of the offence is aged 16 years or older and applies for the order, and the Court is satisfied that the victim (or, as the case requires, each victim) understands the nature and effect of his or her decision to apply for the order (*new section 31 and new Schedule*):
- to amend section 139 of the Criminal Justice Act 1985 so that, in a *new subsection (2B)*, it provides that an order made under *new subsection (2A)* in respect of identifying details of a person ceases to have effect if the person applies for an order under section 140 of the Criminal Justice Act 1985 prohibiting the publication of those details, and the Court makes the order under section 140 (*new section 31 and new Schedule*):

Amendment to Official Information Act 1982

- to ensure that information in a victim impact statement is not official information as defined in section 2(1) of the Official Information

Act 1982, and so may not be requested under that Act (*new section 31 and new Schedule*).
