

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Crimes (Sentencing Procedure) Act 1999 as follows:

(a) to extend the circumstances in which a court may receive a victim impact statement,

(b) to allow a victim to read out his or her victim impact statement to the court by means of closed-circuit television arrangements or other special arrangements in appropriate cases,

(c) to provide that photographs, drawings and other images may be included in a victim impact statement,

(d) to make it clear that a victim impact statement may be prepared on behalf of a child by a parent or other person having parental responsibility for the child,

(e) to make other minor and consequential changes to that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Crimes (Sentencing Procedure) Act 1999 (the principal Act) set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Extension of circumstances in which victim impact statement may be given

At present, the principal Act provides that a court may receive and consider a victim impact statement in proceedings for certain serious offences involving death, the infliction of actual physical bodily harm, sexual assault or an act of actual or threatened violence.

The amendments extend the availability of victim impact statements to any case involving a prescribed sexual offence (within the meaning of the Criminal Procedure Act 1986). This includes not only the offence ordinarily referred to as sexual assault, but other sexual offences such as indecent assault, persistent sexual abuse of a child, sexual servitude, child prostitution and pornography and also kidnapping and child abduction offences. See Schedule 1 [2], [5] and [7]. Schedule 1 [4] and [6] make consequential amendments.

The amendments will also ensure that a witness to such an offence who suffers personal harm as a direct result of the offence will be treated as a victim of the offence for the purposes of the provisions. See Schedule 1 [3].

Reading of victim impact statements to court

At present, certain persons can give evidence in criminal proceedings by means of closed-circuit television or other special arrangements. These arrangements are available to a complainant in a sexual assault case and to children and intellectually impaired persons.

The amendments will enable a victim to whom those arrangements for giving evidence are available to read a victim impact statement to the court in accordance with those same arrangements. See Schedule 1 [11].

Content of victim impact statements

The amendments make it clear that a victim impact statement may include photographs, drawings and other images (for example, photographs of the victim before the offence occurred), subject to any requirements imposed by the regulations.

See Schedule 1 [8].

Victim impact statements for children

At present, the principal Act provides that if a primary victim of an offence is incapable of providing information for a victim impact statement, the victim impact statement can be prepared by a member of the victim's immediate family or other representative of the victim. The amendments make it clear that this applies to children, by providing that any victim who is incapable of preparing a statement (by reason of age, impairment or otherwise) may have a statement prepared on his or her behalf. In addition, the amendments make it clear that a person having parental responsibility for a victim (who may not necessarily be a member of the victim's immediate family) may also prepare a statement on behalf of a victim. See Schedule 1 [9]. Schedule 1 [10] makes a consequential amendment.

It continues to be the case that a court cannot receive a victim impact statement unless satisfied that the victim to whom the statement relates does not object to the statement being given to the court.

Other amendments

At present, the principal Act allows a victim of an offence who has suffered personal harm to provide a victim impact statement. The amendment updates the definition of personal harm, in a manner consistent with the Victims Rights Act 1996, so that it includes psychological or psychiatric harm (instead of mental illness or nervous shock). See Schedule 1 [1].

Schedule 1 [12] enables the making of savings and transitional regulations as a consequence of the proposed Act.

Schedule 1 [13] provides that the amendments apply to victim impact statements lodged after the commencement of the amendments.