

CRIMES (SENTENCING PROCEDURE) AMENDMENT (VICTIM IMPACT STATEMENTS) BILL 2008

Bill introduced on motion by Mr Barry Collier, on behalf of Mr David Campbell.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.26 a.m.]: I move:

That this bill be now agreed to in principle.

The Government has a proud record of supporting the needs of victims of crime, and of ensuring that victims have a voice and are able to participate in the criminal justice process. That is why the Government introduced legislation in 1997 providing for victim impact statements. The provisions governing victim impact statements are found in division 2 of part 3 of the Crimes (Sentencing Procedure) Act 1999. Victim impact statements enable victims of crime and their families to convey to the court the harm they have suffered as a result of an act of violence. Such statements are submitted to the court after an offender has been convicted and before an offender is sentenced.

The Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008 seeks to refine and strengthen the system for victim impact statements by providing further rights and protections to victims. I will now outline the key amendments contained in the bill. The bill will amend the definition of "personal harm" in section 26 of the Crimes (Sentencing Procedure) Act by replacing the term "mental illness or nervous shock" with the term "psychological or psychiatric harm". The effect of this change will be, firstly, to update the terminology used in the Act. The term "nervous shock" is outdated and does not reflect common, modern legal terms.

The second effect of the change will be to broaden the nature of the harm suffered by a victim or his or her family that may be documented in a victim impact statement. The current wording of the Act operates to prevent a victim impact statement documenting harm that is an exacerbation of an existing psychological condition or harm that does not reach the threshold of a diagnosed mental illness or psychiatric disorder. The third effect of the change is to make the terminology in the Crimes (Sentencing Procedure) Act consistent with that in the Victims Rights Act 1996 and the Victims Support and Rehabilitation Act 1996, which were both amended in 2006 to include the more modern terminology.

The bill will amend sections 26 and 27 of the Crimes (Sentencing Procedure) Act to enable a witness to a sexual offence to provide a victim impact statement. Currently, a witness to other offences covered by division 2 of part 3 of the Act may provide a victim impact statement, and it is anomalous that a witness to an act of sexual assault cannot provide a victim impact statement. This bill will fix that anomaly. The bill will amend section 27 of the Crimes (Sentencing Procedure) Act to replace the term "sexual assault" with "prescribed sexual offence". The term "prescribed sexual offence" will have the same meaning it has in the Criminal Procedure Act 1986. This amendment will clarify that a victim impact statement is not limited to the offence of "sexual assault" in section 611 of the Crimes Act 1900, but may be provided in relation to other offences of a sexual nature, such as indecent assault, persistent sexual abuse of a child, child prostitution and pornography, and child abduction offences.

The bill will amend section 30 of the Crimes (Sentencing Procedure) Act to make it clear that a victim impact statement may include photographs, drawings and other images. Photographs and drawings may potentially be a better and more effective way for some victims and their families to convey the harm they have suffered as a result of a crime. For instance, a young child from a deceased victim's family may express their grief in drawings, or the victims of an assault may wish to submit photographs of themselves before and after the assault. Photographs and drawings may also complement words contained in a written statement. In relation to incapacity, the bill will insert a more detailed section 30A (2) in the Crimes (Sentencing Procedure) Act. Proposed new section 30A (2) will provide that if a primary victim is incapable of providing information for a victim impact statement by reason of their age, impairment or other incapacity then a representative of the victim, such as a family member or a person with parental responsibility for the victim, may act on their behalf. The new section makes it clear that children are covered by the provision.

In relation to closed-circuit television, the bill will insert new sections 30A (3) and 30A (4) into the Crimes (Sentencing Procedure) Act to give victims an entitlement to read out their victim impact statements via closed-circuit television [CCTV] if they were entitled to give evidence via CCTV during the trial. Victims are currently entitled to give evidence by CCTV in relation to prescribed sexual offences. Vulnerable persons, such as a child or an intellectually impaired person, may also give evidence by CCTV. If people are entitled to give evidence by CCTV, there is no reason they should not be entitled to read out their victim impact statement via CCTV. Victims of crime should not be exposed to additional trauma or difficulty by having to read out their victim impact statements in a courtroom in front of the offender.

This bill has the support of the courts, the Office of the Director of Public Prosecutions, the Law Society of New South Wales, and the New South Wales Bar Association. Importantly, the bill has the strong support of groups representing victims of crime, including Enough is Enough, the Homicide Victims Support Group and the Victims of Crime Assistance League. Some of the changes in this bill are the direct result of issues that were raised with the Attorney General by these victims groups. I acknowledge their role in working to bring about these important changes. I commend the bill to the House.