

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

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### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [3.44 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### **Leave not granted. Leave not granted.**

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 where appropriate. This 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 courts 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 the victims. I will outline the key amendments contained in the bill. The bill amends the definition of persons harmed 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". I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

#### **Leave granted. Leave granted.**

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 The term "nervous shock" is outdated and does not reflect common, modern legal terms;

secondly, to broaden the nature of the harm suffered by a victim or their 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; and

thirdly, 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.

#### **Witness to an act of sexual assault**

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.

#### **"Prescribed sexual offence"**

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, including indecent assault,

persistent sexual abuse of a child, child prostitution and pornography, and kidnapping and child abduction offences.

#### **Photographs and drawings**

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 victim 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.

#### **Incapacity**

The bill will insert a more detailed section 30A(2) in the Crimes (Sentencing Procedure) Act.

The 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.

#### **CCTV**

The bill will insert new sections 30A(3) and (4) into the Crimes (Sentencing Procedure) Act to give victims an entitlement to read out their victim impact statement 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 a person is entitled to give evidence by CCTV, there is no reason why 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 statement 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 the Victims of Crime Assistance League, Enough is Enough, and the Homicide Victims Support Group.

I commend the bill to the House.