



Victims Legislation Amendment Bill.

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [10.21 a.m.]: I move:

That this bill be now read a second time.

The Victims Legislation Amendment Bill proposes three sets of reform to the rights of victims in New South Wales. The first reform proposes to amend the Crimes (Sentencing Procedure) Act 1999 to enable victim impact statements to be read out in court by victims of serious offences or their representatives. The second reform reintroduces amendments to the Victims Rights Act 1996 with respect to providing victims of crime with information about the prosecution of accused persons. Finally, the bill provides for an amendment to the Victims Support and Rehabilitation Act 1996 to provide counselling benefits to members of the immediate family of persons killed in a homicide involving the use of a motor vehicle.

The first proposed reform would give victims of crime the right to make a verbal statement to the court explaining how the crime affected them. At present a written victim impact statement can be received and considered in the Supreme and District Courts in relation to an offence that involves actual or threatened violence, including sexual assault, or the death of, or any physical bodily harm to, any person. Statements may also be received and considered in the Local and Children's Courts in relation to an offence that involves the death of any person.

The proposed reform would allow these victim impact statements to be read out to the court following a conviction, but prior to sentencing of the offender. The statements will still need to be tendered to the court in written form following a conviction and will be required to meet any existing rules concerning content. However, victims, or their representative on their behalf, would be given the opportunity to read their statements, either in whole or in part, to the court. The victim impact statement is about the impact of the crime on the victim. It is the victim's opportunity to participate in the criminal justice process by fully informing the court about the effects of the crime upon the victim. The proposal to allow the victim to read the impact statement to the court would enhance that process.

The second proposed reform has previously been introduced in the form of the Victims Rights Amendment Bill 2002. The bill was passed by the Legislative Assembly but not debated by the upper House before Parliament rose at the end of last year. The proposed reform stems from a report commissioned by the Government in September 2001. The former Governor, the Hon. Gordon Samuels, was commissioned to review and report on the adequacy of the New South Wales Director of Public Prosecutions' policy and guidelines in relation to charge bargaining and tendering of agreed facts. The review was to have particular regard to a number of matters, including whether the policy and guidelines ensure adequate consultation with victims of crime. It followed public concern about the degree of communication between the Office of the Director of Public Prosecutions [DPP] and victims of crime in several matters involving serious personal violence.

The report prepared by Mr Samuels was released in June 2002 and came after detailed consideration of submissions from victims, victims support groups, police, criminal lawyers and judges. Interviews were also conducted with key stakeholders, including the Director of Public Prosecutions, Mr Nicholas Cowdery, QC. The report concluded that the DPP's existing policies and guidelines do provide for adequate consultation with victims. It concluded that, while the existing framework was fundamentally sound, the flow of information to victims and witnesses of crime had to be a priority. A number of recommendations and observations were made in that respect. I have been advised by the Director of Public Prosecutions that all of the recommendations have been accepted.

The Samuels report also commented upon the Charter of Victims Rights, which is contained in part 2 of the Victim Rights Act 1996. Whilst not specifically recommending that the charter be amended, the report suggested there was room for improvement in respect of paragraph 6.5 of the charter. Presently, item 6.5 of the charter provides that a victim should, on request, be informed about certain aspects of criminal proceedings against the accused person, such as the charges laid against the accused, any decision to modify or not to proceed with charges, and the date and place of hearing of any charge laid against the accused.

Under the Victims Legislation Amendment Bill it would no longer be necessary for a victim to ask to be given this information. A victim would be informed of these aspects of the criminal proceedings as a matter of course. The proposed amendments to the charter would assist victims and the immediate family of victims by ensuring that they are informed in a timely manner in relation to the aspects of the criminal proceedings that I have just listed.

The amendments also make it clear that, where an accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm, mental illness or nervous shock, the victim should be consulted before any decision is made by the prosecution to modify or not proceed with the charges. This would include any decision for the accused to accept a plea of guilty to a less serious charge in return for a full discharge in relation to other charges.

It is proposed that the definition of a victim of crime in section 5 to the Act also be amended to provide that, if a person dies as a result of an act committed in the course of a criminal offence, the victim's family may nominate a representative for the purposes of the charter. This would enable the family to receive information provided in accordance with the charter, or to be consulted about a decision to modify or not proceed with charges against the accused. The proposed amendments also recognise that some victims of crime may not wish to be consulted in relation to some or all matters relating to the prosecution process. The Victims Advisory Board, which includes representatives of a number of victims support groups and relevant government agencies, and the Director of Public Prosecutions have indicated their support for the proposed legislation.

The last reform contained in the bill proposes to amend the Victims Support and Rehabilitation Act 1996 to enable the immediate family of someone who dies as the result of a homicide involving the use of a motor vehicle to apply to receive approved counselling services. Under the proposed amendments, counselling would be available in relation to motor vehicle accidents leading to a charge of murder or manslaughter under section 18 (1) of the Crimes Act 1900. At present, when a homicide occurs in New South Wales, members of the immediate family of the victim are eligible to apply to receive an initial period of up to 20 hours counselling from an approved counsellor under the approved counselling scheme. After the end of the initial 20 hours of counselling, further counselling is available at the discretion of the Director of Victims Services.

The scheme provides counselling benefits to a victim's spouse, including de facto partners who have cohabited with the victim for at least two years, a parent, guardian or step-parent of the victim, a child or step-child of the victim or some other child of whom the victim is the guardian, and a brother, sister, step-brother or step-sister of the victim. The approved counselling scheme provides free face-to-face counselling to victims of violent crimes that have occurred in New South Wales. The counsellors with the scheme are social workers, psychologists or psychiatrists who have proven experience of working with victims of crime.

However, these benefits are not currently available in cases where the homicide was caused by the owner or driver of a motor vehicle in the use or operation of the vehicle. The proposed reform would rectify this situation. It would ensure that the immediate family members of the victims of homicide involving the use of a motor vehicle would be able to access the same counselling benefits as are currently provided to the immediate families of other people who die as a result of an act of violence. The package of reforms contained in the bill proposes further support for victims of crime in dealing with the criminal justice system and the impact of crime on themselves and their families. I commend the bill to the House.

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