



New South Wales

Victims Legislation Amendment Bill 2003

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Crimes (Sentencing Procedure) Act 1999* to enable victims of serious crimes (or their representatives) to read out victim impact statements in court,
- (b) to amend the Charter of Victims Rights set out in the *Victims Rights Act 1996*:
 - (i) to require victims of crime to be informed in a timely manner of certain aspects of criminal proceedings against an accused person, and
 - (ii) to require victims of a serious crime that involves sexual violence, or that results in actual bodily harm, mental illness or nervous shock to the victim, to be consulted before any decision of the prosecution to modify or not to proceed with charges against the accused person is taken,

- (c) to amend the *Victims Support and Rehabilitation Act 1996* to enable the immediate family of a person who is killed in a motor accident to apply for payments for approved counselling services under the Act if the person's death apparently occurred in the course of the commission of an offence of murder or manslaughter.

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* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Victims Rights Act 1996* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendment to the *Victims Support and Rehabilitation Act 1996* set out in Schedule 3.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999

Schedule 1 [2] inserts new section 30A into the *Crimes (Sentencing Procedure) Act 1999*. The proposed section allows written victim impact statements that may be received and considered by a court in sentencing proceedings under current provisions of the Act to be read out in court by a victim to whom the statement relates, or a member of the immediate family, or other representative, of the victim. (Under the Act, victim impact statements may be given only in relation to serious offences, for example, those that result in death of or actual physical bodily harm to a person, or that involve an act of actual or threatened violence or an act of sexual assault.)

Schedule 1 [1] makes a consequential amendment.

Schedule 2 Amendment of Victims Rights Act 1996

Schedule 2 [2] replaces item 6.5 of the Charter of Victims Rights. At present item 6.5 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, the date and place of hearing of any charge laid against the accused, and the outcome of any criminal proceedings and the sentence (if any) imposed.

Under proposed item 6.5 (1), a victim does not need to make a request to be given this information. Instead, as a matter of course, the victim should be informed of these aspects in a timely manner.

Proposed item 6.5 (2) provides that if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm, mental illness or nervous shock to the victim, the victim should be consulted before any decision is made by the prosecution to modify or not to proceed with the charges, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges. The victim need not be consulted if the victim does not wish to be consulted, or if the whereabouts of the victim cannot be ascertained after reasonable inquiry.

Schedule 2 [1] amends section 5 of the *Victims Rights Act 1996*, which specifies who is a victim of crime for the purposes of the Act. Section 5 provides that if a person dies as a result of an act committed, or apparently committed, by another person in the course of a criminal offence, a member of the person's immediate family is also a victim of crime for the purposes of the Act.

The proposed amendment enables the members of the immediate family of a person who dies as the result of such an act to nominate a representative for the purposes of the Charter of Victims Rights (for example, to receive information provided under the Charter, or to be consulted about a decision to modify or not to proceed with charges against the accused person).

Schedule 3 Amendment of Victims Support and Rehabilitation Act 1996

Schedule 3 amends the definition of *victim* in section 21 of the *Victims Support and Rehabilitation Act 1996* to enable members of the immediate family of a person who is killed in a motor accident to apply for payments for approved counselling services under the Act if the person's death apparently occurred in the course of the commission of an offence of murder or manslaughter. The Act at present excludes the payment of compensation (including for counselling services) in connection with motor accidents.



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Victims Legislation Amendment Bill 2003

No. , 2003

A Bill for

An Act 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, to amend the *Victims Rights Act 1996* to provide victims of crime with information about the prosecution of accused persons, and to amend the *Victims Support and Rehabilitation Act 1996* to provide payment for counselling services for family members of certain persons killed by the use of motor vehicles.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Victims Legislation Amendment Act 2003</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	7
The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Victims Rights Act 1996 No 114	10
The <i>Victims Rights Act 1996</i> is amended as set out in Schedule 2.	11
5 Amendment of Victims Support and Rehabilitation Act 1996 No 115	12
The <i>Victims Support and Rehabilitation Act 1996</i> is amended as set out in Schedule 3.	13 14

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999

(Section 3)

[1] Section 28 When victim impact statements may be received and considered

Omit “filed” from section 28 (4) (a). Insert instead “given”.

[2] Section 30A

Insert after section 30:

30A Reading out victim impact statements in court

- (1) If a victim impact statement has been duly received by a court, a victim to whom it relates, or a member of the immediate family, or other representative, of the victim, is entitled to read out the whole or any part of the statement to the court.
- (2) The statement may be read out at such time as the court determines after it has convicted, but before it sentences, the offender.

Schedule 2 Amendment of Victims Rights Act 1996 1
(Section 4) 2

[1] Section 5 Meaning of victim of crime 3

Insert after section 5 (3): 4

- (4) If a person dies as a result of the act concerned and there is 5
more than one member of the person's immediate family, 6
members of the immediate family may nominate a 7
representative for the purposes of the Charter of Victims 8
Rights. 9

[2] Section 6 Charter of rights for victims of crime 10

Omit item 6.5. Insert instead: 11

6.5 Information about prosecution of accused 12

- (1) A victim should be informed in a timely manner of the 13
following: 14
- (a) the charges laid against the accused or the reasons for 15
not laying charges, 16
 - (b) any decision of the prosecution to modify or not to 17
proceed with charges laid against the accused, 18
including any decision to accept a plea of guilty by the 19
accused to a less serious charge in return for a full 20
discharge with respect to the other charges, 21
 - (c) the date and place of hearing of any charge laid against 22
the accused, 23
 - (d) the outcome of the criminal proceedings against the 24
accused (including proceedings on appeal) and the 25
sentence (if any) imposed. 26
- (2) A victim should be consulted before a decision referred to in 27
paragraph (b) above is taken if the accused has been charged 28
with a serious crime that involves sexual violence or that 29
results in actual bodily harm, mental illness or nervous shock 30
to the victim, unless: 31
- (a) the victim has indicated that he or she does not wish to 32
be so consulted, or 33
 - (b) the whereabouts of the victim cannot be ascertained 34
after reasonable inquiry. 35

Schedule 3 Amendment of Victims Support and Rehabilitation Act 1996

(Section 5)

Section 21 Special payments for approved counselling services

Omit “but does not include a person who is the victim of an act of violence arising in the circumstances described in section 24 (2), (3) or (4).” from the definition of *victim* in section 21 (1).

Insert instead:

but does not include a person who is the victim of an act of violence:

- (e) arising in the circumstances described in section 24 (2), unless the person is a family victim of the act and the act apparently occurred in the course of the commission of the offence of murder or manslaughter, or
- (f) arising in the circumstances described in section 24 (3) or (4).