

CRIMES (SENTENCING PROCEDURE) AMENDMENT (VICTIM IMPACT STATEMENTS—MANDATORY CONSIDERATION) BILL 2014

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Bill introduced on motion by Mr John Robertson, read a first time and printed.

Second Reading

Mr JOHN ROBERTSON (Blacktown—Leader of the Opposition) [10.07 a.m.]: I move:
That this bill be now read a second time.

I introduce the Crimes (Sentencing Procedure) Amendment (Victim Impact Statements—Mandatory Consideration) Bill 2014. The change I propose to make to the law today is simple but profound, that is, to put victim impact statements at the heart of our system of sentencing. If this bill is passed, judges will have no choice—they must take into account a victim's impact statement when considering what is an appropriate sentence. Let there be no doubt that it will include homicide cases. The laws in New South Wales languish behind the times and fail to meet community expectations. That disconnect was on display when Thomas Kelly's killer received a shockingly light four-year sentence. People across New South Wales reacted to that sentence with sheer disbelief when they listened to radio, watched television or checked news websites. I remember I was gobsmacked at how little worth the court appeared to place on a human life. If we allow such a decision to be repeated we risk permanent erosion of public faith in our judicial system.

The Kelly family had made a tender, heartbreaking statement to the court about the impact of having their precious 18-year-old son Thomas taken away from them. Ralph Kelly told the court that the grief of losing a son, "... never leaves. It hurls you against a wall and you're destroyed again". Kathy Kelly told the court, "Every day I'm here without my beautiful Thomas life gets more and more sad. Did I not protect him? Did I fail him?" Justice Stephen Campbell acknowledged those statements while sentencing Kieran Loveridge. I quote a relevant extract from his judgement:

I could not help noticing that when the statements were read in court many of the larger number present were moved to tears by the accounts given ...

He said further:

It also needs to be understood that I am constrained by law in the use that I make of the victim impact statements ... I am not entitled to take their attitude as to the proper sentence into account.

Today this Parliament can chose to end that. Together we can overturn the travesty suffered by the Kelly family and countless other families before them. We can address this epic imbalance; where the court is free to look at every reason to trim the sentence of a guilty defendant while ignoring the victim's story—the victim's voice. If we are truly to have a compassionate and honourable justice system in New South Wales and if we are to look back with pride in 10, 20 or 30 years on our days of work in this Chamber, the rights of victims must come first.

The purpose of this bill is to establish a clear and consistent structure for the consideration of victim impact statements. Let us look at the current law. Currently victims have the capacity to make a victim impact statement before the Local Court, District Court, Supreme Court and Industrial Relations Court in relation to indictable offences, including offences that cause injury, involve the threat or use of violence or are prescribed sexual offences. The statement

is read out after a person is convicted but before a sentence is handed down. Courts are not required to consider it when determining a sentence, instead there is wide discretion. Judicial practice in this area has not always been consistent. In homicide cases the Act appears to grant a sentencing court the discretion to consider a statement from the family of a deceased homicide victim provided that it is appropriate to do so. In practice, the judiciary has interpreted this restrictively.

The Court of Criminal Appeal has consistently held in binding decisions that it is never appropriate for a court to consider a victim impact statement from a family member in a homicide case. The reason for this is that sentences for homicide offences must already take into account the value of a human life, which in effect recognises the harm caused to the victim. The fear has also been expressed that when homicide victims die without any family members who are available or willing to make a statement, there is the potential for inconsistent sentences to be imposed. This is a very real problem and, as I shall outline later, this bill introduces new measures to deal with that. It is true that under current law, even where a victim impact statement is forbidden from consideration, family members are still entitled to make one. There is no doubt that making a victim impact statement and having the opportunity to express feelings of hurt, anger and loss to an offender's face provides many victims with a measure of catharsis. At the same time many victims feel powerless. Their testimony is deadened by the knowledge that it will have no effect on how the offender will be punished, and for many this is a denial of justice.

Under the O'Farrell Government victims in this State have been given the run-around. Queensland, the Australian Capital Territory and the Northern Territory make it mandatory for courts to consider victim impact statements as part of the sentencing process, and Victoria, South Australia, Western Australia and the Northern Territory allow sentencing courts to consider statements in homicide cases. Many overseas jurisdictions, including Canada and the United Kingdom, also permit their use. It should never be forgotten that remedying this situation was one of the Coalition's flagship promises that it took to the 2011 election. I quote from a press release from the then shadow Attorney General:

The NSW Liberals and Nationals will legislate to specifically provide that courts in New South Wales may consider victim impact statements by family victims in homicide cases when determining an offender's sentence.

Unfortunately, like so many other press releases, this one got locked away in some long-forgotten cupboard. The O'Farrell Government has been in power for three years. It is a disgrace that after the hopes that were raised there has not been a scrap of action. The Premier likes to play cheap law and order politics in this Chamber for the television cameras; the reality is very different. It is the Premier's failure to deliver his election promise to legislate for victim impact statements that has denied so many families a voice. It is the Premier's inaction that has granted lighter sentences for criminals and a safe harbour for the thugs. In its three years in power this Government has shown no regard for victims. The first example was the Government's destruction of the New South Wales victims compensation scheme—slashing the entitlements of victims of horrific crimes such as homicide, child sexual abuse and domestic violence. Victims across this State have been stripped of tens of thousands of dollars and potentially left with nothing. This Liberal-Nationals Government has no credibility whatsoever in protecting victims. It never helps victims: it creates victims. That is why the Labor Opposition has introduced this important bill.

The bill proposes four powerful changes to the sentencing laws of this State. First, it will require a judge to consider a victim impact statement when determining a sentence. Secondly, it explicitly clarifies that the purpose of a victim impact statement is to assist the court in determining a sentence. Thirdly, it will overturn existing laws that prohibit courts from considering victim impact statements from family members in homicide cases. In fact, it makes it mandatory for such statements to be considered as part of the sentencing process. However, the bill will not change the current position whereby a victim can choose not to make a statement. In such instances courts will be required to respect a victim's choice not to partake in the sentencing process and will be prohibited from drawing any adverse inference if no victim impact statement has been made. These clarifications to the law are necessary.

Currently section 28 of the Act is unhelpful as to how and for what purpose a court is to consider a victim impact statement. There is a vacuum, which has been commented upon by learned figures such as former Chief Justice Spigelman and former Acting Justice Basten. This bill ends that uncertainty. In one fell swoop it will provide the judiciary with the guidance it seeks. The fourth vitally important feature of the bill is that it will empower the New South Wales Victims Commissioner to make a community impact statement on behalf of a deceased victim if no family member is available or willing to make one. Above all, this is a safety valve against inconsistent sentencing.

The Opposition believes that there is no such thing in our society as a friendless victim. We believe that every human being, especially every victim, is entitled to dignity and the fundamental principle of equality before the law. That is why this bill adopts provisions in place in South Australia that allow the Victims Commissioner in that State to make community impact statements on behalf of victims. New South Wales already has a Victims Commissioner, and it is anticipated that this additional responsibility could be met from within existing resources. Importantly, under these changes judges will still have discretion. Judges will still be able to decide how much weight to place on a victim impact statement and they will still need to consider other factors such as an offender's record or a report from Probation and Parole. However, the Opposition believes that those who have suffered from the most heinous of crimes must be given an elevated place in the sentencing process. Families are at the very cornerstone of our community and homicide offences have a huge impact on families. Allowing them a say will, if nothing else, assist a judge to fulfil his or her duty to consider the impact of a crime upon the community when determining a sentence.

This is a considered change to the law; it is a compassionate change and it is long overdue. Too often in New South Wales our legal system has appeared to place criminals first and victims second. Today I am proud to put my name to a bill which, if passed, will guarantee all victims real and meaningful input into the sentencing process and it will not allow their testimony to be discarded ever again.

Debate adjourned on motion by Mr Troy Grant and set down as an order of the day for a future day.