



## Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Bill 2014

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#### CRIMES (SENTENCING PROCEDURE) AMENDMENT (FAMILY MEMBER VICTIM IMPACT STATEMENT) BILL 2014

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#### Second Reading

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [4.06 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

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

#### Leave granted.

The Crimes (Sentencing Procedure) Amendment (Family Victim Impact Statement) Bill 2014 (the bill) amends the Crimes (Sentencing Procedure) Act 1999 to enable a court to take a family victim impact statement into account when sentencing an offender, in appropriate circumstances.

The Crimes (Sentencing Procedure) Act 1999 already provides for the making of victim impact statements by family members. Currently, if a primary victim has died as a direct result of the offence a court must receive, and acknowledge receipt of, a victim impact statement given by an immediate family member; and the court may make any comment on it that the court considers appropriate.

However, the Act also provides that a court must not consider such a victim impact statement in connection with the determination of the punishment for an offence unless it considers that it is appropriate to do so.

In the Supreme Court decision of *R v Previtera* (1997) 94 A Crim R 76, the Court commented that it would never be appropriate to take a victim impact statement into account in sentencing where it deals only with the effect of the victim's death on the family.

As a result of the *Previtera* decision, a family member of a homicide victim can give a victim impact statement to the court about the impact of the offence on members of the family. However, this information will not be used in determining the offender's sentence.

The Government considers that it is time to change this law.

We consider that there will be circumstances in which a family victim impact statement that deals only with the impact of the offence on the immediate family members of the deceased victim should be taken into account in determining an offender's sentence. Where this is the case, the courts should be able to do so.

Therefore, this bill will enable a court, on the application of a prosecutor, to take a family victim impact statement into account for sentencing purposes where the court considers it appropriate to do so.

The bill also makes clear the basis upon which a victim impact statement given by a family victim can be considered relevant to sentencing.

The *Crimes (Sentencing Procedure) Act* 1999 currently lists a number of purposes for which a court may sentence an offender. This includes "to recognise the harm done to the victim of the crime and the community".

The bill makes clear that a victim impact statement given by a family victim may be taken into consideration in sentencing on the basis that the impact of an offence on the immediate family of a victim who has died as a result of the offence is an aspect of the "harm done to the community".

The *Previtera* decision that prevents family victim impact statements being considered in sentence proceedings has long been an issue.

We made a commitment before the last election that we would change this, so that courts could take family victim impact statements into account in determining sentence, where they consider it appropriate. But although we took

steps immediately after we were elected, to honour that commitment, there was very little support for change from stakeholders at that time.

Late last year, however, the issue came to a head when Kieran Loveridge was sentenced for the manslaughter of Thomas Kelly. The sentence imposed by the court sparked community outrage and the fact that family victim impact statements appeared not to count for anything was roundly condemned in some quarters. The Government decided that the issue needed to be looked at again. We engaged in a fresh round of consultation which, this time, showed clear support for the change by homicide victim support groups.

So I am pleased to say the Government is now finally able, via this bill, to fulfil its election commitment and to ensure that family victim impact statements can be taken into account on sentence. The Government extends thanks to the Kelly family and other victims' families and homicide victims support groups for their support and for enabling the Government to bring the bill before the House today.

I will turn now to the provisions of the bill.

Item [1] of schedule 1 replaces the existing section 28 (4) of the *Crimes (Sentencing Procedure) Act* 1999 with a new clause dealing with victim impact statements given by family victims.

The new clause 28 (4) provides that a victim impact statement given by a family victim may be considered and taken into account in determining a sentence for an offence on the basis that the harmful impact of the primary victim's death on the members of the primary victim's immediate family is an aspect of harm done to the community.

In this way, the bill addresses a concern raised by the Supreme Court in the *Previtera* decision, that a victim impact statement that deals only with the impact of the offence on the victim's family will not be relevant to sentencing. The bill makes clear that a victim impact statement dealing with these matters can be relevant to one of the existing purposes of sentencing under section 3A (g) of the Act, which is to recognise the harm done to the community.

The bill has been drafted in this way to ensure that courts will not be impeded from taking these victim impact statements into account in determining a sentence in appropriate circumstances.

The reference to the "harm done to the community" reflects the comments made by the former Chief Justice of NSW in *R v Berg* [2004] NSWCCA 300. In that case, Chief Justice Spigelman commented that:

It appears to me strongly arguable that the recognition of this purpose of sentencing [ie, to recognise the harm done to the community] would encompass the kind of matters which are incorporated in a victim impact statement. It may in some cases, be appropriate to consider the contents of such statements in the sentencing exercise.

Clause 28 (4A) makes clear that this section does not affect the application of the law of evidence in sentencing proceedings. Accordingly, if the prosecution seeks to have the contents of a victim impact statement taken into consideration on sentencing, it may be subject to the rules of evidence and the family member may be subject to cross examination on its contents.

The Government recognises that this is necessary, given that the contents of the statement could impact on the sentence given. It is also consistent with sentencing law more generally.

At the same time, the Government recognises that there may be circumstances in which it will not be appropriate for a victim impact statement given by a family victim to be taken into account in determining an offender's sentence. Alternatively, there may be families who wish to make a victim impact statement for therapeutic reasons, but do not wish that the court take its contents into account in this way.

Under the new framework, a family victim will be able to make a victim impact statement to the court and the court will be required to receive and acknowledge it. However, the victim impact statement would only be taken into account in determining sentence if the prosecutor supports this approach, and the court considers it appropriate to do so.

Family victims and other victims of crime are provided with an information package by the Director of Public Prosecutions [DPP], to help them prepare a victim impact statement for the court. This information package will be updated to inform family victims about the different ways in which their statements may now be used by the court.

Item [2] of schedule 1 moves an existing provision into a new section 28 (6) of the Act.

Item [3] of schedule 1 makes clear that the absence of a victim impact statement given by a family victim does not give rise to an inference that an offence had little or no impact on the victim's family. This provision mirrors an existing provision that applies to the absence of victim impact statements in matters other than homicides.

Item [4] of schedule 1 inserts a provision requiring these amendments to be reviewed as soon as possible after the period of three years from their commencement to determine their effect. The report on the outcome of the review is required to be tabled in each House of Parliament within 12 months after the end of the period of three years.

Item [5] of schedule 1 inserts a transitional provision that makes clear that these amendments will apply to existing offences and proceedings, except where the court has already convicted the offender, or the offender has already entered a plea of guilty, at the time these amendments commence operation.

I commend the bill to the House.

