



New South Wales

Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* as follows:

- (a) to extend the circumstances in which a court may receive a victim impact statement,
- (b) to allow a victim to read out his or her victim impact statement to the court by means of closed-circuit television arrangements or other special arrangements in appropriate cases,
- (c) to provide that photographs, drawings and other images may be included in a victim impact statement,
- (d) to make it clear that a victim impact statement may be prepared on behalf of a child by a parent or other person having parental responsibility for the child,
- (e) to make other minor and consequential changes to that Act.

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* (the **principal Act**) set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Extension of circumstances in which victim impact statement may be given

At present, the principal Act provides that a court may receive and consider a victim impact statement in proceedings for certain serious offences involving death, the infliction of actual physical bodily harm, sexual assault or an act of actual or threatened violence.

The amendments extend the availability of victim impact statements to any case involving a prescribed sexual offence (within the meaning of the *Criminal Procedure Act 1986*). This includes not only the offence ordinarily referred to as sexual assault, but other sexual offences such as indecent assault, persistent sexual abuse of a child, sexual servitude, child prostitution and pornography and also kidnapping and child abduction offences. See **Schedule 1 [2], [5] and [7]**. **Schedule 1 [4] and [6]** make consequential amendments.

The amendments will also ensure that a witness to such an offence who suffers personal harm as a direct result of the offence will be treated as a victim of the offence for the purposes of the provisions. See **Schedule 1 [3]**.

Reading of victim impact statements to court

At present, certain persons can give evidence in criminal proceedings by means of closed-circuit television or other special arrangements. These arrangements are available to a complainant in a sexual assault case and to children and intellectually impaired persons.

The amendments will enable a victim to whom those arrangements for giving evidence are available to read a victim impact statement to the court in accordance with those same arrangements. See **Schedule 1 [11]**.

Content of victim impact statements

The amendments make it clear that a victim impact statement may include photographs, drawings and other images (for example, photographs of the victim before the offence occurred), subject to any requirements imposed by the regulations. See **Schedule 1 [8]**.

Victim impact statements for children

At present, the principal Act provides that if a primary victim of an offence is incapable of providing information for a victim impact statement, the victim impact statement can be prepared by a member of the victim's immediate family or other representative of the victim. The amendments make it clear that this applies to children, by providing that any victim who is incapable of preparing a statement (by reason of age, impairment or otherwise) may have a statement prepared on his or her behalf. In addition, the amendments make it clear that a person having parental responsibility for a victim (who may not necessarily be a member of the victim's immediate family) may also prepare a statement on behalf of a victim. See **Schedule 1 [9]**. **Schedule 1 [10]** makes a consequential amendment.

It continues to be the case that a court cannot receive a victim impact statement unless satisfied that the victim to whom the statement relates does not object to the statement being given to the court.

Other amendments

At present, the principal Act allows a victim of an offence who has suffered personal harm to provide a victim impact statement. The amendment updates the definition of *personal harm*, in a manner consistent with the *Victims Rights Act 1996*, so that it includes psychological or psychiatric harm (instead of mental illness or nervous shock). See **Schedule 1 [1]**.

Schedule 1 [12] enables the making of savings and transitional regulations as a consequence of the proposed Act.

Schedule 1 [13] provides that the amendments apply to victim impact statements lodged after the commencement of the amendments.

First print



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Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to make further provision with respect to victim impact statements.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	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 Repeal of Act	10
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

Schedule 1 Amendments

	(Section 3)	1
		2
[1] Section 26 Definitions		3
Omit “, mental illness or nervous shock” from the definition of <i>personal harm</i> .		4
Insert instead “or psychological or psychiatric harm”.		5
[2] Section 26		6
Insert in alphabetical order:		7
<i>prescribed sexual offence</i> has the same meaning as it has in the <i>Criminal Procedure Act 1986</i> .		8
[3] Section 26, definition of “primary victim”		9
Insert “the sexual offence,” after “threatened violence,” in paragraph (b).		10
[4] Section 27 Application of Division		11
Omit “or an act of sexual assault” from section 27 (2) (b).		12
[5] Section 27 (2) (d)		13
Insert at the end of section 27 (2) (c):		14
, or		15
(d) a prescribed sexual offence.		16
[6] Section 27 (3) (c) (ii)		17
Omit “or an act of sexual assault”.		18
[7] Section 27 (3) (d)		19
Insert at the end of section 27 (3) (c):		20
, or		21
(d) a prescribed sexual offence that is referred to in Table 1 of Schedule 1 to the <i>Criminal Procedure Act 1986</i> .		22
[8] Section 30 Formal requirements for victim impact statements		23
Insert after section 30 (1):		24
(1A) Photographs, drawings or other images may be included in the victim impact statement, subject to compliance with any requirements relating to the inclusion of such matters that are prescribed by the regulations.		25
		26
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		31

[9] Section 30 (2)	1
Omit the subsection. Insert instead:	2
(2) If a primary victim is incapable of providing information for or objecting to a victim impact statement about the personal harm suffered by the victim (by reason of age, impairment or otherwise), a person having parental responsibility for the victim, a member of the primary victim’s immediate family or any other representative of the victim may, subject to the regulations, act on behalf of the victim for that purpose.	3 4 5 6 7 8 9
[10] Section 30A Reading out victim impact statements in court	10
Insert “or a person having parental responsibility for the victim,” after “relates,” in section 30A (1).	11 12
[11] Section 30A (3) and (4)	13
Insert after section 30A (2):	14
(3) If the proceedings for the offence concerned are proceedings in which the victim to whom the victim impact statement relates is entitled to give evidence by means of closed-circuit television arrangements, the victim is also entitled to read out the statement in accordance with those closed-circuit television arrangements.	15 16 17 18 19
(4) For the purposes of this section, <i>closed-circuit television arrangements</i> means the arrangements for giving evidence provided for by section 294B or Division 4 of Part 6 of Chapter 6 of the <i>Criminal Procedure Act 1986</i> .	20 21 22 23
[12] Schedule 2 Savings, transitional and other provisions	24
Insert at the end of clause 1 (1):	25
<i>Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008</i>	26 27

[13] Schedule 2, Part 18	1
Insert after Part 17:	2
Part 18 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008	3 4 5 6
58 Application of amendments	7
(1) An amendment made to this Act by the <i>Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008</i> applies in respect of any victim impact statement that is first received by a court after the commencement of the amendment.	8 9 10 11
(2) This Act, as in force immediately before any such amendment, continues to apply in respect of any victim impact statement received by a court before the commencement of the amendment.	12 13 14