



CABINET - SUBJECTS FOR CONSIDERATION, 12 JUNE 2007 10:00 AM

Out of scope




2 Bills and Regulations in Principle

Out of scope



202 AGO0044/07CS Enactment of a Victims' Package (Michael Atkinson)
APPROVED

Out of scope



to

THE HON. THE PREMIER FOR CABINET

about

ENACTMENT OF A VICTIMS' PACKAGE

1. PROPOSAL

- 1.1 I propose that Cabinet approve the drafting of a Bill to enact the proposals to improve victims' rights pledged at the last election and some additional matters recommended by the Interim Commissioner for Victims' Rights.

2. BACKGROUND

- 2.1 At the last election, the Government made pledges to improve victims' rights. Some of them have already been the subject of Cabinet approval and exist in the form of a draft *Statutes Amendment (Victims of Crime) Bill 2007* (yet to be introduced into Parliament). Others are in Parliament in the *Criminal Law (Sentencing) (Dangerous Offenders) Amendment Bill 2007*.

- 2.2 The remaining promises are:

2.2.1 *For the first time in our legal history, the Rann Government will give victims of crime advocates the legal right to make victim impact submissions at the sentencing hearing in cases that result in the death or total permanent incapacity of the victim.*

2.2.2 *The Sentencing Act also will be amended to enable the prosecution to obtain, and present, community impact statements to court during sentencing submissions. The community impact statements will be used to inform the sentencing court about the effects on the community of the crimes before the court. For example, with regard to drug production or sale offences, evidence of medical professionals could be called to establish the harmful effects of drugs on individuals and the long-term health consequences of drug abuse. In cases of death by dangerous driving, expert evidence could be called to establish the human and financial cost of road deaths.*

- 2.3 The Interim Commissioner for Victims' Rights has also asked for some legislative change. His recommendations are:

2.3.1 *Amend the Criminal Law (Sentencing) Act to make it clear that victim impact statements can be given in person, via C.C.T.V., audio or audio-visual recording etc. I have had several requests to cover the costs of victims coming to court to read or listen to their impact statements. This will provide another option, especially for vulnerable victims.*

2.3.2 *Section 52 of the Criminal Law (Sentencing) Act provides for restitution orders (i.e. court order that the convicted offender return misappropriated property to the victim-owner). Unlike section 53, which provides for compensation orders*

that can be enforced like any other pecuniary order, an order made under section 52 appears to be unenforceable. The Premier and the Attorney-General pledged to strengthen victims' rights including their right to compensation. Making it clear how section 52 will be enforced might alleviate some of the pressure to amend the compensation laws.

- 2.4 Before the 2006 election, the Government promised to amend the law on victim impact statements so that the Commissioner for Victims' Rights has the authority to make submissions at the sentencing stage (either personally or through counsel) on the impact of the crime on victims and on victims' families in cases resulting in the death or permanent total incapacity of the victims. Funding was allocated for the Commissioner to engage counsel as part of the 2006-07 budget. Before the amending law could be introduced into Parliament, the Honourable Nick Xenophon M.L.C. proposed that victims be given an absolute right to read their victim impact statements in cases resulting in death or permanent total incapacity as a result of non-indictable summary offences. The Honourable Member then introduced a private Member's bill that has been passed the second reading by the Legislative Council. On my behalf, the Honourable Paul Holloway M.L.C. opposed the Bill but allowed it to proceed to the Committee stage and stated that the Government would have a similar provision in its victim-orientated reform package. I propose that a similar provision be incorporated in the legislation to give effect to our promise. This will be a new law that was not costed when the original pledge in the justice for victims statement was formulated.

3. DISCUSSION

Election Promises

First Promise

- 3.1 The first pledge contains two policies:
- 3.1.1 Section 7 of the *Criminal Law (Sentencing) Act* now obliges prosecutors to furnish particulars of any injury, loss or damage suffered by a person as a result of the offence for which the defendant was convicted or, in short, any associated offence. Section 7A allows the victim of an indictable offence to read his or her statement to a court before it passes sentence, or the victim can ask the court to permit another person to read the victim's statement. It follows that this policy is to enact legislation to extend the right that is currently confined to indictable offences to summary offences where death or total permanent incapacity to the victim has resulted. The reason for this is some prominent cases where the relevant offence has been reckless or negligent driving and death has resulted. It should be noted that it would also apply to, for example, industrial accidents constituting summary offences under workplace-safety law. There will also be a need to compel the defendant to be present, but where the court is satisfied that a threat to the defendant or the victim has been made, the court should make special arrangements for this process. The necessary amendments are detailed below in paragraph 3.3. For these purposes, 'total and permanent incapacity' should be defined to mean: 'the victim is permanently physically or mentally incapable of independent function'.
- 3.1.2 The second pledge is to allow a victim's advocate to read out the victim impact statement to the court on behalf of the victim. The right should be confined to an officer of the court, an immediate family member or close

relative, or, in the absence of these, a friend nominated by the victim, or, in any event, an employee of a group or organisation devoted to victim support, or the Commissioner for Victims' Rights (or a person nominated by the Commissioner).

Second Promise

- 3.2 Two kinds of community impact statements are proposed. The first type is a type of collective negative impact statement to be called a 'neighbourhood impact statement'. A common example is a drug dealer in a street. The neighbours suffer the effects - discarded syringes, lots of traffic at all hours, increased levels of street and petty property crime and so on. Under the proposal, they would be allowed to give a collective impact statement on how this drug dealing offence has affected them. The second type is more a policy-justification statement - to be called a 'social impact statement'. In the drug dealing instance, evidence could be given of the harmful effects of drugs generally (for example). It was intended that the election policy promise would deal with the enactment of provisions for both types. I propose that both kinds of statements can potentially be given in a sentencing hearing for any offence. It should be possible to collate the statements of many individuals into a group statement. I propose that the provision of these statements be up to the Commissioner for Victims' Rights and that the Commissioner or the prosecution be authorised to place the material before the court.

Commissioner for Victims' Rights Suggestions

First Suggestion

- 3.3 Section 7A(3a) of the *Criminal Law (Sentencing) Act* says: "If the court considers there is good reason to do so, it may exercise any of the powers that it has with regard to a vulnerable witness in order to assist a victim who wishes to read out a victim impact statement to the court." This suffices to bring C.C.T.V. into play. But the Act should be amended so that it is possible for victim impact statements to be given via audio or audio-visual recording where there is equipment available for the purpose, subject to the right to call for cross-examination by the defence if that is required. Provision should also be made for the defendant to be present via C.C.T.V. at the discretion of the court but, in any event, that should be done where the court is satisfied that a real threat has or is being made to the safety of the defendant or the defendant's representatives or family.
- 3.4 The policy should be consistent with that currently before Parliament in the *Evidence (Miscellaneous) Amendment Bill 2007*. In particular, if a request for special arrangements is made, the court must consider the request and any arguments put in opposition to the request. It must consider whether any supporting material should be required and, if necessary, require it, and must consider whether any enquiry should be made of the victim in question by the court, and, if necessary, make such enquiries. Victims should have an entitlement to have their statement heard using a special arrangement or a combination of special arrangements unless they do not want to, or unless the court decides to dispense with special arrangements because the necessary equipment is not readily available and it is not in the interests of the administration of justice to make the special arrangements.

Second Suggestion

- 3.5 Section 53 of the *Criminal Law (Sentencing) Act* is the order for compensation upon sentence. That sum is defined to be a pecuniary sum and therefore can be enforced in

the same way as any order for a pecuniary sum - that is, effectively, as a fine. Section 52 of the Act is different. It is about giving back particular property, not a sum of money. This is about returning the particular item stolen (for example). It follows that this cannot be defined as an order for a payment of a pecuniary sum and cannot be enforced in that way. The *Criminal Law (Sentencing) Act* deals with the matter by providing for default imprisonment. The Commissioner for Victims' Rights says that this does not work. In some ways that is not surprising, since the analogous old method of collecting pecuniary sums by default imprisonment did not work well either - which is why it was replaced. It is proposed to add remedies for restitution orders short of imprisonment. It is proposed to give the Registrar of Motor Vehicles power to suspend driver's licences, put a charge on land, or suspend business dealings with the Registrar until the restitution order is satisfied.

3.6 Other implications and effects

3.6.1 Economic, Financial and Budget Implications

The Commissioner for Victims' Rights met with the Chief Magistrate, Elizabeth Bolton, to ascertain the likely resource implications for the Magistrates Court where most of the cases affected by the proposal will be determined.

Ms Bolton estimates that each victim impact statement read will take 15-30 minutes as the cases are tragic and often stir highly emotional feelings that victims want their offenders to hear. Ms Bolton was unable to estimate the number of cases or statements that the court might hear.

On average, about 13 cases involving offenders failing to stop after a road crash where a person was killed or injured are disposed of in the Magistrate's Court per year - this represents about one full business day per year. However, the proposed law may have a greater financial impact with regards to the estimated 1,500 major assaults per year in which someone might have been seriously injured. I have instructed the Commissioner for Victims' Rights to monitor the operation of the law once it is operational and, for this purpose, he has agreed to liaise with the Chief Magistrate.

Another cost implication will be requests from victims for financial assistance to cover travel and other expenses they incur when exercising their right to present a statement. To date I have given such assistance by way of discretionary payments under section 31(2) of the *Victims of Crime Act 2001*. I propose to continue doing so but this will result in an adverse budget impact on the Victims of Crime Fund.

I intend to reconsider these issues as part of the 2007-08 mid-year budget review once the law becomes operational. The fund has a cash reserve of about \$17 million at present.

3.6.2 Required Resources

There will be costs from the enlarged types of victim impact statements allowed. Both kinds of statement (neighbourhood impact and social impact) may require significant additional effort by the Commissioner for Victims' Rights or the prosecution, to, in the first instance, collate the statements of more than one person into a group statement or, in the second case, to find, proof and present the appropriate expert evidence. There will be impacts on the flow of business in the Magistrates Court. Once a draft is obtained,

consultation will be needed with the Commissioner for Victims' Rights and the D.P.P. as to practicalities and to attempt to quantify costs.

3.6.3 South Australia's Strategic Plan

Objective 2: Improving Wellbeing - Priority Actions (March 2004 release)
'There will be a stronger emphasis on victims' rights'; in addition, this Bill will fulfil specific election promises.

3.6.4 Information and Communication Technology Requirements

None

3.6.5 Staffing Implications

Refer to paragraph 3.6.2 above – Required Resources. The precise staffing implications are not able to be assessed until the demand for presenting community impact statements is quantified.

3.6.6 Public and Environmental Effect

Families will benefit through the enhancement of victims' rights.

3.6.7 Risk Management Strategy

None required

3.6.8 Consultation

Affected agencies will be consulted when a draft has been prepared.

3.6.9 Implementation Plan

This will be considered after drafting the Bill.

3.6.10 Communication Strategy

The Attorney-General's Department Communications Unit will work closely with the Commissioner for Victims' Rights to develop a communications strategy and public-education campaign promoting the new legislation and its impact. This will be supported by expert advice provided by the Attorney-General's Victims of Crime Ministerial Advisory Committee.

The communication strategy will detail clear objectives and suitable media selection (as required for advertising or publicity or both) to reach the

identified target audience. A budget will be attached appropriate to achievement of the desired outcomes and as agreed by the relevant parties.

The Attorney-General's Department Communications Unit will ensure that all communications about the legislative changes will comply with Government policy in the areas of branding, sponsorship and advertising.


It will also assist campaign approvals from the Department of Premier and Cabinet's Strategic Communications Unit and the Premier's Communications Advisory Group if needed.

The Commission for Victims' Rights will also play an important role in carrying out these proposals. The Commissioner will consult with victims, victim-advocates, police, prosecutors, judges and magistrates, among others, about the proposals.

4. RECOMMENDATION

- 4.1 I recommend that Cabinet approve the drafting of a Bill to enact the proposals for the enhancement of victims' rights promised at the last election and some additional matters recommended by the Interim Commissioner for Victims' Rights.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

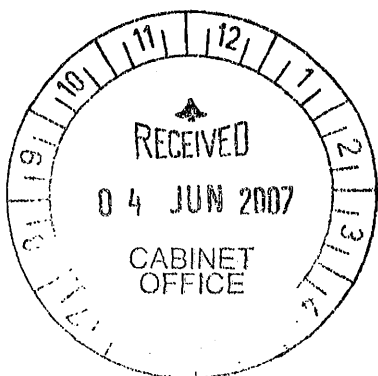

Michael Atkinson
 Attorney-General
 24 May, 2007

In Cabinet

12 JUN 2007

APPROVED

 PREMIER



Attachment to Cabinet submission

Drafting Instructions

(2 pages)

Refused in full – Exemption clause 10(1) – Legal professional privilege