CRIMINAL LAW (SENTENCING) (VICTIMS OF CRIME) AMENDMENT BILL
12 February 2008

The Hon. D.G.E. HOOD (17:54): It will come as little surprise to members that Family First supports this bill. I have said on many occasions that Family First and I will support any legislation that empowers victims of crime. In fact, I have personally attended court with victims on numerous occasions and helped them in parliament or in publicising their case as necessary and, of course, I am happy to do so.

The plain truth is that victims still often feel powerless and totally left out of the court process. In earlier years that was not necessarily the case. In fact, I read recently that there were no public prosecutions for most crimes in England before the 19th century. Instead, the victim, or a relative of the victim, would ordinarily initiate proceedings. Police forces began to form in England from about 1829 onwards, as policing law and order was increasingly seen as the role of the state. In 1823, a British statute first gave the attorney-general in the New South Wales colony power to prosecute crimes and misdemeanours on behalf of the state, and we inherited that some time later.

So, the initial system, with its many faults, gave the victim a powerful say in determining justice and in resolving their case. That simple system changed, of course—and perhaps necessarily. However, in the process, few could argue that victims would not have been silenced as their rights were subsumed by police prosecutors and the DPP.

Some victims complain that the legal system has ignored their submissions, or even held them in contempt, as their pain and suffering is put through an untouchable and unsympathetic machine called the South Australian court system. There is considerable force in saying that victims should be able to have a direct voice in the criminal court.

Family First strongly supports the use of victim impact statements and any expansion of a victim's voice to put it nearer to parity with the strong voice a defendant has in our courts today. Members should recall that defendants can choose to represent themselves in court, choose their legal representation and, in fact, direct their legal representative to make certain submissions or take their defence down a certain course. Victims do not have that luxury and, in many ways, are subject to the discretion of the police and the DPP.

This bill expands the scope of a victim's ability to place their submissions before the court, making it clear in clause 6 that such evidence can be given by CCTV or, indeed, by recording. Some members have referred to the wording in the bill that makes it clear that, where possible, the defendant must be present when a victim impact statement is read. I note that some judges, including Judge Barrett, make a habit of seeking a response from the defendant to the victim's impact statement. Anything that provides an offender something of an insight into the damage that he or she has caused is certainly a good thing, and I commend the judge on that.

In fact, this bill does not change the law significantly in that regard. Since 2001, section 9B of the Criminal Law (Sentencing) Act has required the defendant to be present 'throughout all proceedings relevant to the determination of sentence'. This provision was rushed through after Peter Liddy infamously refused to listen to any of his victims' impact statements. One of his victims had travelled from interstate and one had travelled from the country, and they were unable to read their statements. They described Liddy's move as 'woeful and disgusting'. They were completely correct in their observation.

I also regard community impact statements in clause 7B as important. There are many crimes in our community where there is no apparent or direct victim. For example, someone caught cultivating a large cannabis crop may not have

directly injured one particular person, and this may be the reason why cultivation of up to 10 cannabis plants for personal use results in only a $500 fine. I have introduced a private member's bill to rectify this.

In sentencing in drug offences, there is rarely a victim who will jump up and down against the penalty imposed, but offences such as drug cultivation cause crime and damage to the whole community, and it is completely appropriate that community organisations (perhaps local Neighbourhood Watch groups) should be able to make appropriate submissions, whether or not anyone was directly or personally impacted.

One thing we would not want to see is pro forma victim of community impact statements. DPP prosecutors should not feel compelled to tender something from a stack of pro forma community impact statements on various topics. For example, we would not want to see the same photocopied pro forma anti-speeding community impact statement read out in court following every dangerous driving trial. It would be a waste of court time and simply slow down an already very slow court process and system. The DPP may have to make some procedural decisions in that regard.

About a week ago I had a terrific meeting with the Commissioner for Victims' Rights, Michael O'Connell (previously the victim of crime coordinator). It is terrific that we have someone with his skills and dedication in the role. As members will be aware, he played a major part in the drafting of this bill and was keen that Family First supported the measures. I am indeed happy to do so and advise that Family First supports the second reading of the bill.