

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

23 October 2007

The Hon. D.G.E. HOOD: I rise to support the second reading of this bill on behalf of Family First. The bill introduces a range of reforms to improve victims' rights in the criminal justice system, and I think it is quite fair to say that not all the reforms embodied in this bill necessarily have their genesis on the government side. On that note I think the contents of this bill are an acknowledgment of the fine thinking and value-adding that the Legislative Council provides to the work of parliament. Of course, having said that, I believe that the government is to be commended for introducing such a bill, and Family First certainly supports it.

Generally speaking, the reforms contained in this bill give victims not only a great deal of information about the workings of the case of the person accused of hurting them: it also gives them more information about and say in how the criminal justice system handles that person once they are found guilty. The bill was introduced on 25 September 2007 and, given that the median age of bills since my election is 57 days (by my count), we are in something of a rush on this bill. I mention this as I have received no submissions from the bodies representing victims of crime, the Director of Public Prosecutions, or any representatives of SA Police concerning these reforms.

It may be the government's position that these stakeholders have been consulted by the government, but at this stage we have not had the opportunity to consult them, and I would put that on the record. Perhaps the government will note that in future that would be appreciated, where possible. Certainly, the Acting Commissioner for Victims' Rights, Mr O'Connell, will have his work cut out for him. I say this because some victims will need to be given counselling to maintain a reasonable position in criminal law matters, such as those outlined in this bill.

Do not misunderstand me; I am not expressing a concern about the rights that we are handing victims: in fact, I fully support the rights that victims

will be able to access as a result of this bill. However, it does seem to me a sad day for South Australia when the court system is so bankrupt of justice, if I can use that expression, that we must hand rights to victims to satisfy the community that justice is being done. In short, it should be self-evident that justice is being done, and it is a poor reflection on our courts in general that such a bill is even required.

Currently, it is quite open to judges to make orders, to conduct court hearings and proceedings and enforce the law in such a way that victims are appeased. I think it is factual to say that victims, at present, are most unhappy with the kind of justice they are receiving in the courts. Indeed, in my view, I think it is fair to say that the community as a whole thinks that, by and large, sentencing is inadequate in our court system and that in many cases justice is not seen to be done or that the sentences issued on particular cases are not adequate, in the eyes of large samples of the community. I would like to list a few examples of that.

Again, this is not necessarily a criticism of this parliament or the laws of this parliament. By and large, the laws passed are adequate and, in some cases, more than adequate. It is more a criticism of our courts and the sentences they choose to issue.

The Hon. R. Wortley interjecting:

The Hon. D.G.E. HOOD: Indeed. Since August I have been monitoring the sentencing of hard core drug offenders. I have discovered that somewhere in the region of 30 to 35 per cent of all offenders who are either selling or manufacturing ecstasy, heroin, methamphetamines and the like are actually going to gaol; that means the rest are not. So, in other words, 65 to 70 per cent of these drug dealers are actually getting suspended sentences and walking free, effectively. Meanwhile, South Australian families are victims of the associated crime, such as theft, home invasions and the like, that comes with drug dealing, and they are victims in the sense that they lose their belongings and, in some cases, in one sense of the word, they lose their children, if their children are addicted to drugs.

Another example is that last week we saw an appalling sentence handed down to the bank robbers known colloquially as 'the overall bandits'. The case involved two co-accused young men who pointed a shotgun at tellers during seven armed hold-ups over a nine-month period from December 2005 to August 2006. They escaped with more than \$100,000, yet the sentence for each of them was 16 years gaol as the head sentence, which actually sounds adequate, but that was reduced to an eight-year non-parole period. The valid question must be: why can a sentence be reduced by half in the case of such violent and dangerous crime?

This represents just slightly more than one year of gaol time likely to be served for each robbery. Meanwhile, those bank tellers and customers who were in the bank at the time of the robbery have to live with the nightmares and the general scarring that such an event would cause. In this case, I think it is fair to argue that the victims came last; their rights were not represented adequately, and that is certainly why this bill is positive, because it will address that situation once and for all.

Another example is that my preliminary research into last year's sentences for sexual offences left me somewhat angry, and no doubt victims are far more so. In the District Court in 2006, cases of rape and unlawful sexual intercourse saw an incredible number of acquittals and failures to proceed. There were some 72 rape cases, of which only 20 offenders were sentenced to a term of imprisonment. There were 23 acquittals and 28 cases of the prosecution essentially giving up, and in the final case the accused actually died before the case was finished. In unlawful sexual intercourse cases there were 86 cases, with 20 acquittals, 22 cases where the prosecution simply gave up, two findings of guilt, but no convictions recorded, and 10 receiving suspended sentences. The remaining 26 went to gaol.

That is 26 out of 86 cases that actually went to gaol. In amongst the data, one particular judge—and this is fascinating when one takes the time to look at the data—had 12 cases with six acquittals and six prosecution withdrawals in the one calendar year of 2006. Put simply, that judge did not send a single person to gaol for that entire year for such a serious offence.

The Hon. R. Wortley interjecting:

The Hon. D.G.E. HOOD: I cannot. I do not know the colloquial term for the opposite of a hanging judge, but this certainly fits the bill. Like the victims, Family First is very concerned about this trend. Indeed, where are the rape law reforms that the state government has promised? We encourage the government to introduce those laws as soon as possible.

Victims are right to be offended by these court outcomes, if I can even call them outcomes. However, it is a sad day when we need to legislate to provide better justice for victims. Why on earth do we need victims effectively monitoring the parole or community service performance of offenders? I can tell you why, Mr President. It is because the criminal justice system simply is not performing to expectations. Victims actually care whether or not offenders are contrite or do their time, whereas it seems that the criminal justice system in many ways does not.

Bail breaches, failure to complete community service, failure to attend court and failure to answer warrants for arrest are all dealt with by no more than slaps on the wrist by the criminal justice system at the current time. Let me make it clear: Family First blames the courts, wholly and absolutely, for failing victims and, therefore, making the reforms in this bill absolutely necessary.

I cannot help but think that elements of this bill are an admission that, for reasons that may be their own fault or may be beyond their control, the courts and the corrections systems are failing victims. Family First thinks that many of these reforms would be common sense and should be happening anyway in the system. The fact that we need legislated rights, if I can use that term, to ensure these things happen is an admission that the system is operating below acceptable levels.

I want to turn now to the compensation payment for victims contained in this bill. Victims of crime compensation levels are currently very low, in the view of Family First. Indeed, the maximum level of compensation is \$50,000 and that is simply too low. Injuries sustained as the result of a crime can be life changing and, indeed, almost always life changing for the worse.

Generally speaking, the offender has no financial means by which they can meet a more appropriate civil claim for compensation or injury. In other words, despite the sometimes diligent efforts of the crown in pursuing assets of offenders, in a great majority of cases, there are no assets to pursue and offenders simply get away with their actions. Victims are sometimes left with horrific injuries and no means of compensation for their injuries. The message the government sends to families by maintaining this compensation is that, on some level, they need to grin and bear it. We urge the government to consider raising these amounts.

There is a competing and strange balance between the punitive aspect of the criminal law and the compensatory aspect of victims of crime legislation. It is similar to the tension between workers compensation and punishment for failing to protect workers that the Hon. Ms Bressington has highlighted in her amendments to the Occupational Health, Safety and Welfare (Penalties) Amendment Bill, as also has the Hon. Caroline Schaefer with her amendment. In other words, having a compensation scheme overlapping with criminal penalties creates a situation where an offender could in theory be punished twice for their actions.

It may be time for courts to take a more active role in merging these two functions in the one proceeding. In other words, why doesn't a court that finds an offender guilty then take an active and keen interest in working out whether compensation can be paid to a victim, pursuing that to a financial outcome for the victim, and measuring the criminal penalty having regard to the compensation that has been done wrong to the victim?

Surely, this is better justice than what is occurring currently. Now one court finds a victim guilty, gives them a fine or, on embarrassingly rare occasions, sends them to gaol and then sends them away. Then it is up to the victim to pursue compensation in a separate proceeding after the conviction is recorded and the offender has been dealt with. The rogue offender will make sure they disappear before compensation can be pursued, as happens in many cases. Why does the court sign off its sentencing and leave the victim to chase the compensation? Surely the court should take an interest in seeing justice done to the victim.

Why doesn't an offender on bail continue to bail, ensure that they front the court when there is a hearing as to how they will pay the victim for their actions?

Let me clarify that. I am quite aware that at present the victim of crime proceedings is an action against the crown, which then recovers that compensation from the victim. Surely, however, when you have an offender in front of a court on bail, it is a perfect time to quiz them about the question of compensation, rather than setting them loose and then trying to find them years after the event to try to make them pay compensation; that is a much more difficult task.

Victims of crime express surprise to their lawyers as to why they need to chase compensation when the criminal case is concluded. The average man or woman on the street expects compensation to be a normal part of the criminal proceedings, and Family First has the same view. It is time we wrested control from lawyers and their semantic lines of inquiries and various disputes they may have, and got the balance right for victims. In short, the priority must be the victims themselves and not satisfying the legal system. The legal system comes second; the victims come first.

It is, therefore, regrettable that the only reforms in this bill to victims of crime compensation are some increases in circumstances where there is death of a victim and improving the amounts payable for the family's funeral expenses and their grief at the loss of a father, mother, son or daughter. This increase is welcome but, as I have set out already, I think it represents a limited way of thinking about how we can fix the justice system to improve outcomes and to work along the lines of reasonable expectations of victims: victims expect more and, indeed, they deserve more.

I might add that a situation where, as we have seen in this bill, we have the first increase in compensation payable for offences in some 19 years represents, in my view, a failing in the way that we legislate in this place. Surely it is high time that we had an indexation on compensation sums and criminal penalties. I can only think that the merit in not doing so is to give a government of any colour (whatever persuasion it may be) an opportunity for another media release saying it is increasing penalties or increasing payouts.

The cost of living, represented by the consumer price index, would surely be an appropriate index to allow the periodic increases of penalties and compensation payments to match community standards. I think it is fair to say that other states and territories in Australia have done this, so it is not radical thinking. I return to my original point on this: it is farcical to have to improve a particular compensation payment since 1988. The present maximum of \$4,200 compensated for a lot more in 1988 than it does in 2007. The government is to be commended for lifting this to \$10,000, but we feel that it could go further and link it to the CPI, as I said.

Finally, I turn now from the pro-victim reforms to the creation of sentencing guidelines. It is entirely appropriate but, again, an indictment of the failings of the system that we now need victims to be represented in the changing of sentencing guidelines. It is a very welcome reform but one about which I am not very optimistic, to be honest. I am of the view that, rather than sentencing guidelines, we need to start thinking about mandatory minimum sentencing, particularly for violent crimes. I know that might raise some people's eyebrows, but I think such people (and judges) might find themselves in good company, as being soft on criminals and pathetic in upholding victims' rights. The government has talked of mandatory minimum sentencing for drug offences but, as yet, we have not seen that legislation. However, I can say to the government that, when we do see that legislation, Family First will look upon it favourably indeed.

For some reason drink-driving and the way that it can hurt people is considered serious enough for mandatory minimum sentencing, but other crimes that can actually kill or hurt people significantly are not considered appropriate for such legislation. Indeed, for an even stranger reason, there are minimum penalties for using a motor vehicle without permission, whereas, in most cases, the loss of property (which is often insured) is the only harm to a victim. Family First simply does not understand this arbitrary ad hoc approach within the same justice system. The pro-victim reforms contained in this bill, to enable victims to participate in the creation of sentencing guidelines, had better work and have better sentencing outcomes because Family First is quite ready and willing to have a debate on mandatory

minimum sentencing. Indeed, we are likely to support such a measure should it be presented in this place.

Before I leave sentencing guidelines, it is here that I think it is appropriate to mention supposedly victimless crimes. I mentioned earlier my concern about soft penalties for drug offenders. No right presently exists for the families of victims of drug overdose or crime arising from drug dealing (such as home invasions and theft) to appear in the sentencing of drug dealers. I can understand why, but I muse as to whether instead the government ought to be allowing the Commissioner for Victims' Rights, or his representative, to appear and be heard in such proceedings, to give the judiciary notice as to the impact the drug dealing and its manufacturing has upon such victims

I mention this in the context of sentencing guidelines, as one would think that, in consulting with victims' representatives in establishing guidelines, one would not need such a presence as I propose in the sentencing event. However, if slack and inadequate sentencing of drug dealers continues, perhaps it is because there is no human face for the court to look into when it considers what is, in reality, a human tragedy of illicit drug use and the profit that people make from it. I again flag Family First's interest in this kind of reform in the future, and I indicate to the government that it is highly likely to have Family First's support, subject to seeing the bill itself.

I conclude Family First's contribution on this bill by expressing support for the second reading, and the bill itself, with a tinge of sadness and anger that we have to legislate for victims rather than accommodate them better via hospitality, participation and sentencing that matches community standards, as a matter of courtesy and common sense, not law, in the criminal justice system. This is a good bill and we support it; however, we wish it was unnecessary.