



New South Wales

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

## Explanatory note

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

## Overview of Bill

The object of this Bill is to enable a court on the application of the prosecutor to take a family victim impact statement into account for sentencing purposes on the basis that the impact of an offence on the immediate family of a deceased victim is an aspect of harm done to the community.

The Bill overrules the decision in *R v Previtara* (1997) 94 A Crim R 76 that the impact of the death of a victim on the victim's family is not relevant to the determination of the offender's sentence.

The Bill does not affect the application of the law of evidence in connection with the use of family victim impact statements in sentencing.

The Bill also makes it clear that the absence of a family victim impact statement does not give rise to an inference that an offence had little or no impact on the victim's family.

## 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.

## Schedule 1      **Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

**Schedule 1 [1]–[3]** make the amendments described in the Overview to the *Crimes (Sentencing Procedure) Act 1999*.

**Schedule 1 [4]** requires the Minister to review the amendments described in the Overview 3 years after their commencement and report to Parliament on the results of the review.

**Schedule 1 [5]** enacts a transitional provision to extend the amendments described in the Overview to existing offences and proceedings (unless the court has already convicted the offender or the offender has already entered a plea of guilty).



New South Wales

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

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New South Wales

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

No. , 2014

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## **A Bill for**

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to make further provision for the consideration of family member victim impact statements in sentencing.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

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This Act is the *Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014*.

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**2 Commencement**

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This Act commences on a day or days to be appointed by proclamation.

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<b>Schedule 1</b>	<b>Amendment of Crimes (Sentencing Procedure) Act 1999 No 92</b>	1 2
<b>[1] Section 28</b>	<b>When victim impact statements may be received and considered</b>	3
	Omit section 28 (4). Insert instead:	4
	(4) A victim impact statement given by a family victim may, on the application of the prosecutor and if the court considers it appropriate to do so, be considered and taken into account by a court in connection with the determination of the punishment for the 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.	5 6 7 8 9 10
	(4A) Subsection (4) does not affect the application of the law of evidence in proceedings relating to sentencing.	11 12
<b>[2] Section 28 (6)</b>		13
	Insert after section 28 (5):	14
	(6) Despite any other provision of this section, a court must not consider or take into account a victim impact statement under this section unless it has been given by or on behalf of the victim to whom it relates or by or on behalf of the prosecutor.	15 16 17 18
<b>[3] Section 29</b>	<b>Victim impact statements discretionary</b>	19
	Insert after section 29 (3):	20
	(4) 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 members of the primary victim's immediate family.	21 22 23
<b>[4] Section 107</b>		24
	Insert after section 106:	25
<b>107</b>	<b>Review of Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014</b>	26 27
	(1) In this section: <i>family member victim impact statement amendments</i> means the amendments made by the <i>Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014</i> .	28 29 30 31
	(2) The Minister is to review the operation of the family member victim impact statement amendments to determine the effect of those amendments.	32 33
	(3) The review required by this section is to be undertaken as soon as possible after the period of 3 years from the commencement of the family member victim impact statement amendments.	34 35 36
	(4) A report on the outcome of the review required by this section is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.	37 38 39

<b>[5] Schedule 2 Savings, transitional and other provisions</b>	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
<b>Part Provision consequent on Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014</b>	3
	4
	5
<b>Application of amendments</b>	6
The amendments made to section 28 of this Act by the <i>Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014</i>	7
apply to the determination of a sentence for an offence whenever committed,	8
unless:	9
(a) the court has convicted the person being sentenced of the offence, or	10
(b) a court has accepted a plea of guilty and the plea has not been	11
withdrawn,	12
before the commencement of the amendments.	13
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