

**Legislative Council—No 94**

As received from the House of Assembly and read a first time, 22 November 2007

South Australia

**Criminal Law (Sentencing) (Victims of Crime)  
Amendment Bill 2007**

A BILL FOR

An Act to amend the *Criminal Law (Sentencing) Act 1988*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Criminal Law (Sentencing) (Victims of Crime) Amendment Act 2007*.

#### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### 10 Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

#### 4—Amendment of section 6—Determination of sentence

Section 6—after paragraph (b) insert:

; and

- 15 (c) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

**5—Amendment of section 7—Prosecutor to furnish particulars of victim's injury etc**

Section 7—after subsection (2) insert:

- 5                   (2a) If the offence is not an offence in relation to which a victim impact statement may be furnished in accordance with section 7A, the court may nevertheless allow particulars furnished under this section to include a victim impact statement if the court determines that it would be appropriate in the circumstances of the case (and the other provisions of this Division relating to victim impact statements apply to such a statement as if it were furnished under section 7A).
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**6—Amendment of section 7A—Victim impact statements**

- (1) Section 7A(1)—after "indictable offence" insert:

or a prescribed summary offence

- (2) Section 7A(1)—delete "trial" and substitute:

sentencing

- (3) Section 7A(2)—delete subsection (2)

- (4) Section 7A(3)—delete "The court, on convicting the defendant of the offence" and substitute:

Before determining sentence for the offence, the court

- (5) Section 7A(3)(a)—delete "so requested when furnishing the statement, allow the person" and substitute:

, or an appropriate representative of the person, so requested when furnishing the statement, allow the person, or an appropriate representative of the person,

- (6) Section 7A(3a)—delete subsection (3a) and substitute:

- (3a) If the court considers there is good reason to do so, it may, in order to assist a person who wishes to read out a victim impact statement to the court—

(a) allow an audio or audio visual record of the person reading the statement to be played to the court; or

(b) exercise any other powers that it has with regard to a vulnerable witness.

- (3b) Subject to subsection (3c), the court must, if the person so requested when furnishing the statement, ensure that—

(a) the defendant; or

(b) if the defendant is a body corporate, a director or other officer or an employee or agent of the body corporate who, in the opinion of the court, is a suitable person to represent the defendant,

is present when the statement is read out to the court.

(3c) Subsection (3b) does not apply if the court is satisfied that special reasons exist which make it inappropriate for the defendant or other person to be present, or that the presence of the defendant or other person may cause a disturbance or a threat to public order and safety (however, in such a case, the court must ensure that the defendant or other person is present by means of an audio visual link or audio link, if such facilities are reasonably available to the court, or that arrangements are otherwise made for the statement to be audiovisually recorded and played to the defendant).

(7) Section 7A—after subsection (4) insert:

(5) In this section—

***appropriate representative***, in relation to a person, means any of the following:

- (a) an officer of the court;
- (b) the Commissioner for Victims' Rights or a person acting on behalf of the Commissioner for Victims' Rights;
- (c) an officer or employee of an organisation whose functions consist of, or include, the provision of support or services to victims of crime;
- (d) a relative of the person;
- (e) another person who, in the opinion of the Commissioner for Victims' Rights, would be suitable to act as an appropriate representative;

***prescribed summary offence*** means a summary offence that results in the death of a victim or a victim suffering total incapacity;

***total incapacity***—a victim suffers total incapacity if the victim is permanently physically or mentally incapable of independent function.

## **7—Insertion of sections 7B and 7C**

After section 7A insert:

### **7B—Community impact statements**

- (1) Any person may make a submission to the Commissioner for Victims' Rights for the purpose of assisting the Commissioner to compile information which may be included in a statement under this section.
- (2) In any proceedings to determine sentence for an offence, the prosecutor or the Commissioner for Victims' Rights may, if he or she thinks fit, furnish the sentencing court with—
  - (a) a written statement about the effect of the offence, or of offences of the same kind, on people living or working in the location in which the offence was committed (a ***neighbourhood impact statement***); or

(b) a written statement about the effect of the offence, or of offences of the same kind, on the community generally or on any particular sections of the community (a *social impact statement*).

5 (3) Before determining sentence for the offence, the court will cause the statement to be read out to the court by the prosecutor, or such other person as the court thinks fit, unless the court determines that it is inappropriate or would be unduly time consuming for the statement to be so read out.

10 (4) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

### **7C—Statements to be provided in accordance with rules**

15 (1) A statement to be furnished to a court under section 7A or 7B must comply with and be furnished in accordance with rules of court.

(2) A copy of the statement must be made available for inspection by the defendant or his or her counsel in accordance with rules of court and the defendant is entitled to make submissions to the court in relation to the statement.

## **8—Insertion of Part 9 Division 2A**

20 After section 58 insert:

### **Division 2A—Enforcement of restitution orders**

#### **59—Non-compliance with order for restitution of property**

(1) If—

25 (a) an order is made under section 52 requiring property to be restored to a person; and

(b) the order is not complied with,

the person may request an authorised officer to take action under this section for enforcement of the order.

30 (2) On receiving a request under this section in relation to an order requiring the restitution of property, an authorised officer may—

(a) enter any land (using such force as may be necessary) on which the officer reasonably suspects the property is situated and seize and remove the property; or

35 (b) cause the property to be valued (in such manner as the officer thinks fit) and make an order requiring the defendant to pay to the person an amount equal to the value of the property.

40 (3) In exercising powers under subsection (2)(a), an authorised officer may be assisted by such other persons (including a member of the police force) as the officer considers necessary in the circumstances.

(4) An authorised officer who makes an order under subsection (2)(b) must cause a copy of the order to be served on the defendant personally or by post.

(5) An order under subsection (2)(b)—

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(a) may be made in the absence of, and without prior notice to, the defendant; and

(b) may be varied or cancelled by an authorised officer in such circumstances as the officer considers just; and

(c) is enforceable as a pecuniary sum.

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(6) The prescribed fees for issuing, serving and executing an order under subsection (2)(b) are payable in addition to the amount specified in the order as the value of the relevant property and form part of the amount payable under the order.

(7) In this section—

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***defendant***, in relation to property, means the defendant in the proceedings in which the order requiring restitution of the property was made.