



Australian Government
Attorney-General's Department

Criminal Justice Division

National Victims of Crime Conference
Hawke Building, City West Campus, University of
South Australia
Tuesday 23 September 2008, 10.50am

CHECK AGAINST DELIVERY

[Introduction]

1. It is a pleasure to join you here today.
2. Conferences such as this one provide a tremendous opportunity for experts in the field to exchange ideas and stimulate debate on important issues of victim policy and practice.
3. The Minister for Home Affairs, the Hon Bob Debus MP, regrets that he is unable to join you today but he is keen for the Commonwealth Government to capitalise on the exchange of ideas that will occur during this conference.

[Expansion of Commonwealth offences]

4. There is commonly held perception that the only victim of a Commonwealth crime is the Commonwealth itself.
5. This perception may be due to a lack of understanding of the diversity of Commonwealth offences.
6. The expansion of the Commonwealth criminal law in recent years has meant that the victim of a Commonwealth offence may now be an identifiable person.
7. The Criminal Code and Crimes Act contains a number of offences for which individual persons may be directly affected, for example:
 - people trafficking
 - child sex tourism
 - slavery and sexual servitude, and
 - terrorism.
8. Although the number of prosecutions for these offences is currently quite low, it is likely that it will increase in the coming years.
9. An increase could be the result of several different factors, including:

- greater community awareness of the existence of these provisions
- law enforcement officers and prosecutors increasing their experience in conducting investigations and prosecutions
- greater information sharing between countries to detect perpetrators of transnational crimes such as people trafficking, and
- law enforcement authorities increasing their capacity to detect and investigate online offences.

10. As Commonwealth offences increase in diversity, so too should measures to support victims of these offences.

11. This is particularly the case as some of these offences include acts capable of causing widespread suffering.

12. The threat of terrorism remains real for many countries, including Australia. While we all hope that we will never witness events like those seen in New York, Madrid and London, we must ensure that adequate measures are in place to support those affected by such despicable acts.

13. The victims' reforms that the Commonwealth is developing are a first step towards ensuring that a framework is in place to assist the victims of such atrocities should they ever occur.

[Victim reforms]

14. The Minister for Home Affairs has announced plans to introduce new measures to support and empower victims of federal offences. These are:

- a charter of victims' rights
- protections for vulnerable and disadvantaged witnesses, and
- provision for the use of victim impact statements in sentencing federal offenders.

15. I will outline the issues being considered in formulating each of these reforms in turn.

[Charter of victims' rights]

16. In June 1993, the Standing Committee of Attorneys-General endorsed the National Charter for Victims' Rights in Australia.

17. The National Charter is based on the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
18. As you may be aware, the charters or declarations in place in most States and Territories are based on this National Charter.
19. The National Charter contains ten principles which set minimum standards for the treatment of victims in the criminal justice system.
20. The first and overarching principle of the National Charter is the victims should be treated with courtesy, compassion and respect for their dignity.
21. Any Commonwealth charter would be based on the National Charter.
22. Government agencies and officials would be required to meet these minimum conditions in their treatment of victims.
23. A Commonwealth charter would ensure that victims, their circumstances and their rights are acknowledged, respected and protected.
24. Proposals for the Charter are still to be settled for consultation.

25. However, it would potentially outline:

- the range of victims to which the charter would apply
- approved ways of dealing with victims in the criminal justice context
- victims' needs and the services they may require
- the information that should be provided to victims
- privacy and secrecy considerations, and
- the victim's role in the process of the investigation and prosecution.

[Victim impact statements]

26. The second of the Government's proposals is to introduce the use of victim impact statements, as currently, federal legislation does not make specific provision for them to be used in sentencing federal offenders.

27. Victim impact statements are an important mechanism in allowing a victim to speak directly about the effect that an offence has had to them.

28. Not only do they assist the court to determine an appropriate sentence for an offender, they can aid in the

victim's healing process by giving him or her a voice in the court proceedings.

29. They may also serve to promote an offender's rehabilitation by confronting them with details of how a victim may have suffered as a result of their offence.
30. The introduction of victim impact statements in federal sentencing legislation would be beneficial for several reasons.
 31. First, it would bring the Commonwealth into line with most States and Territories, which currently provide for the use of victim impact statements.
 32. Second, it will address one of the recommendations made by the Australian Law Reform Commission in its *Same Crime, Same Time* report on the sentencing of federal offenders.
 33. Third, it will dispel the confusion around whether victim impact statements can be used in criminal trials for federal offences which are held in State and Territory courts.
 34. By clarifying this point, consistency in sentencing federal offenders would be promoted.

35. Currently, although federal legislation does not expressly provide for the use of victim impact statements, they are sometimes used in State and Territory courts in which the Commonwealth matter is being tried.
36. This is by virtue of certain provision of the Judiciary Act, which apply the same procedural laws used in State and Territory prosecutions to federal prosecutions.
37. However, there is a question as to whether victim impact statements can be categorised as ‘procedural’.
38. There are also differences between the States and Territories as to the content, form and use of victim impact statements.

[Vulnerable witnesses]

39. The third of the Government’s proposals is to amend the Crimes Act to provide enhanced protections for vulnerable witnesses.
40. The Crimes Act currently only provides protection for child victims and child witnesses in proceedings for Commonwealth sex and sex-related offences.

41. These protections include:

- alternative methods of giving evidence (for example, closed circuit television, excluding persons from a court room or having a support person available for the witness)
- protection from inappropriate or aggressive cross-examination, and
- prohibitions on publishing names of child witnesses or complainants without the leave of the court.

42. However, the Crimes Act currently contains no provisions for adult witnesses or child witnesses to other Commonwealth offences who may possess certain vulnerabilities.

43. There are legitimate reasons why witnesses may be reluctant to testify, or suffer considerable difficulty in testifying, in Commonwealth criminal proceedings.

44. For example, they may fear for their safety, feel humiliated due to the nature of the evidence, or may feel stressed or intimidated.

45. The Australian Institute of Criminology has documented some of the barriers encountered by

vulnerable witnesses in their recent report, *Trafficking of women for sexual purposes*.

46. They often speak limited or no English, have no friends, family or support persons and have no knowledge of the Australian legal process and what they might expect in a court room.
47. They also face an uncertain future, remaining in a foreign land, without any assurance of their migration status, for sometimes several years before a case concludes.
48. Under the Government's proposal, such victims, with their very particular needs and vulnerabilities, would receive additional assistance to support them through the court process.
49. As with victim impact statements, the Judiciary Act provides that State and Territory provisions and rules for vulnerable witnesses can apply to Commonwealth proceedings.
50. However, the distinctions between jurisdictions can result in different protections being available to witnesses depending on the jurisdiction in which the matter is being heard.

51. This has the potential to lead to inequitable treatment of witnesses giving evidence about similar Commonwealth offences.

52. New provisions in this area could ensure that courts exercising Commonwealth criminal jurisdiction are in a position to hear the best possible evidence from all witnesses, by reducing unnecessary fear and stress suffered by witnesses with particular vulnerabilities.

[Government's commitment to reform]

53. I'd like to take this opportunity to put this current work on victims in the context of the general approach of the Minister for Home Affairs to the development of legislative proposals.

54. It is vital that Governments are able to make informed decisions about what is and what is not working with the federal criminal justice system, and how best to improve it.

55. To do this, the Minister for Home Affairs has indicated that he will be engaging with, and listening to:

- those who are affected by the system, such as victims, witnesses and prisoners

- those who work within the system, such as police, lawyers, prosecutors, judges, community groups, and
- those who conduct research into the system, such as academia.

56. The Government is committed to ensuring its policy and legislative reforms have a sound and rigorous empirical basis.

57. In his inaugural speech to Parliament on 13 February 2008, the Minister for Home Affairs announced that he would introduce several new measures to support and empower victims of Commonwealth offences.

58. As some of you may know from his time as a Minister in the New South Wales Government, the Minister for Home Affairs is a strong advocate of a consultative approach to reform.

59. Therefore we anticipate that the Commonwealth efforts in this field will be developed in full consultation with the community.

[Criminal Justice Forum]

60. The Minister is also keen to engage in more broad ranging debate about the future of the federal criminal justice system.
61. As you may be aware, he is convening the federal Criminal Justice Forum on 29 September - this Sunday.
62. The Forum will bring together a diverse group of experts and interested persons to discuss future directions for federal criminal justice reform.
63. Participants will include academia, the judiciary, the legal profession and non-government organisations.
64. The Forum represents a unique opportunity for the wider community to help set the course for the reform.
65. We anticipate that it will canvass a broad range of topics, including victims' rights.
66. A report on the outcomes of the Forum will be presented to Government to assist in developing reform priorities.

[Consistency of laws]

67. Another major initiative of the Minister for Home Affairs is the achievement of national consistency of criminal laws across Australia, as far as is practicable.
68. As in many other areas of government, federalism presents a challenge to establishing a consistent approach to criminal law issues.
69. While on the one hand, the States and Territories are responsible for managing their own criminal justice systems, on the other, there is a fundamental principle of justice that like cases should be treated in a like manner.
70. Differences in legislation between jurisdictions have the potential to result in profoundly inequitable outcomes.
71. Model legislation is a most commonly used approach to harmonisation.
72. Under this traditional approach, once a Bill was drafted, each jurisdiction would agree to enact legislation identical (or substantially identical) to the model.

73. However, where harmonisation of laws is desirable, it is inevitable that each jurisdiction will come to the table representing the interests of its particular stakeholders and with its own ideas about how to achieve reform.
74. Even with each party approaching the task with the best of intentions, it is often difficult and time-consuming for consensus to be reached.
75. Even if consensus is reached and model legislation is created, a variety of factors can create barriers to the enactment of the model, for example, the internal parliamentary system of each jurisdiction.
76. More often than not, model legislation which is agreed to by all jurisdictions is either not enacted, or enacted in a piecemeal fashion, undermining the reason for its creation, and perpetuating inequitable outcomes across jurisdictions.

[Best practice benchmarks]

77. To overcome this, the Government is committed to pursuing an ambitious program of legal harmonisation through creative means.

78. Recognising the difficulties and potential unsuitability of a ‘one size fits all’ approach, the Government has chosen to pursue a different avenue to achieve harmonisation – best practice benchmarks.
79. Best practice benchmarks are essentially ‘non-negotiables’ agreed by all jurisdictions.
80. The Commonwealth believes that if jurisdictions agree to these benchmarks, substantive harmonisation of legislation can be achieved without the need to enact identical laws.
81. A good example of the Government’s approach is the work that is currently being progressed on victims’ issues.
82. In March this year, Ministers attending the Standing Committee of Attorneys-General agreed that an officers’ working group should report to Ministers on a comparison of victims’ rights schemes in jurisdictions.
83. As chair of the working group, the Commonwealth recognised that the States and Territories have extensive expertise and a wealth of practical experience in developing and administering victims’ rights schemes.

84. Commonwealth officers have received extensive assistance, already, from State and Territory officials and practitioners who have been enthusiastic in offering the benefit of their knowledge and ‘on the ground’ perspective.
85. Through information sharing at this conference and in other fora, the Commonwealth is working with the States and Territories to achieve two outcomes.
86. The first, as was requested by the Standing Committee of Attorneys-General, is a comparison of victims’ rights schemes.
87. The second is a determination of best practice benchmarks which may assist both the Commonwealth and other jurisdictions wishing to review their legislation in the future.

[Conclusion]

88. The Government’s proposed reforms that I have outlined today will, if enacted, ultimately be felt at the community level.
89. Therefore, it is critical that people such as yourselves who are involved in service delivery have a say in their development.

90. Several officers from my Division are attending this conference.
91. I encourage anyone who would like further information about any of the Government's proposals to talk to them.
92. My officers are keen to listen and learn from the knowledge and experiences that all participants at this conference can share.
93. I thank you all for the opportunity to speak to you today and I trust you will enjoy the remainder of this conference.

ENDS (approx 2,480 words)