



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

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MINISTERIAL STATEMENT
Fact Finding on Sentence

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (9.37 a.m.), by leave: I take this opportunity to outline to the House another initiative that the Queensland Labor Government is taking to bring about a culture change in the criminal justice system—to shift its focus back onto the victims of crime while respecting the traditional rights of accused persons. Already I have released discussion papers on reforms to stalking laws and to the Criminal Offence Victims Act as part of this process.

Today I have pleasure in tabling a discussion paper entitled Fact Finding on Sentence and I encourage Queenslanders to read the document and make a submission to my department by 26 October. Part of the discussion paper deals with victim impact statements and it is about this aspect of the paper that I wish to speak today.

A recent decision by the Queensland Court of Appeal has increased the likelihood of victims of crimes facing cross-examination in court about their victim impact statements before offenders are sentenced. I table a copy of an article which appeared in the Courier-Mail on 7 July 1998 which highlighted possible problems in this area. Of course, where there are disputes over material facts relevant to sentence, these have to be resolved by the calling of evidence and attendant cross-examination.

This may include the evidence of a victim, particularly where the fact in issue is grave and the consequences for sentencing of an offender are serious. The decision of the court means that the prosecution may have to prove in court the validity of a victim's impact statement beyond reasonable doubt, whereas previously factual issues such as those in victim impact statements could be decided on the balance of probabilities, subject to the proviso that the requisite degree of probability is commensurate with the importance and gravity of the issue and the consequences. This is known as the Briginshaw test.

A person who has been bashed or raped does not deserve to suffer further trauma through his or her association with the criminal justice system. The Queensland Labor Government will address this issue through community consultation. Consideration is being given to amending section 15 of the Penalties and Sentences Act and section 109(3) of the Juvenile Justice Act to change the standard of proof for disputed matters on sentence back to its state prior to the Court of Appeal decision. In Victoria, sections 95a to 95e of the Sentencing Act make it clear that a person who has made a victim impact statement may be required to give evidence and be cross-examined, while the offender may call witnesses in rebuttal.

Mr Justice Charles of the Victorian Court of Appeal said—

"The evident purpose of the 1994 legislation was to give victims of crime an opportunity to place before the courts their own statement of the impact a crime has had upon them and their families and, in doing so, both to involve victims in the workings of the criminal justice system and to ensure that judges are educated as to the consequences of the crimes with which they are concerned in sentencing.

It would be quite destructive of the purpose of these statements if their reception in evidence were surrounded and confined by the sorts of procedural rules applicable to the treatment of witness statements in commercial cases.

The reception of victim impact statements must, it seems to me, be approached by sentencing judges with a degree of flexibility; subject, of course, to the overriding concern that, in justice to the offender, the judge must be alert to avoid placing reliance on inadmissible matter."

The point of reforms in this area in Queensland legislation is to make the criminal justice system work better for victims without prejudicing the traditional rights of accused persons. The recent survey undertaken by the Australian Institute of Judicial Administration revealed a public perception of courts as hostile and intimidating. Reform in this area may help to improve that perception, particularly for victims of crime.
