



New South Wales

Mental Health (Forensic Provisions) Amendment (Victims) Regulation 2018

under the

Mental Health (Forensic Provisions) Act 1990

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mental Health (Forensic Provisions) Act 1990*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to amend the *Mental Health (Forensic Provisions) Regulation 2017* as follows:

- (a) to provide that the Mental Health Review Tribunal (the **Tribunal**) may be constituted by the President or a Deputy President for the purpose of adjourning a review of a forensic patient,
- (b) to set out matters that may be the subject of submissions by victims of forensic patients for the purposes of proceedings before the Tribunal relating to the consideration of a grant of leave or release,
- (c) to enable the Tribunal to disclose an edited version of a victim's submission to the legal representative of a forensic patient, or a legal representative appointed by the Tribunal, in circumstances where the Tribunal has agreed to a request by the victim not to disclose the submission but is of the opinion that some disclosure is required for reasons of procedural fairness,
- (d) to enable a victim to be represented before the Tribunal by a nominated representative,
- (e) to enable the Tribunal to disclose all or part of or a summary of a submission by a victim of a forensic patient to a person treating the patient or a delegate of the person,
- (f) to prescribe additional information to be included in the Victims Register of victims of forensic patients and to set out formal requirements for applicants for registration,
- (g) to require the Commissioner of Victims Rights to notify a registered victim of a forensic patient of specified matters, including particulars of proposed orders being sought before the Tribunal by the patient, the reasons for decisions about applications by the patient for leave or release and other matters and to set out the manner in which the notice is to be given,
- (h) to set out the circumstances when the name of a victim may be removed from the Victims Register,
- (i) to permit the Commissioner of Victims Rights, with the consent of the victim, to disclose to the Tribunal information in the Victims Register and other information relating to the registered victim,
- (j) to make it an offence for a registered victim or other person to publish information contained in the Victims Register, unless the Tribunal or a court consents to or orders the publication or the information is publicly available.

This Regulation is made under the *Mental Health (Forensic Provisions) Act 1990*, including sections 73 (4), 74A (5) and (6), 76L and 77 (the general regulation-making power).

Mental Health (Forensic Provisions) Amendment (Victims) Regulation 2018

under the

Mental Health (Forensic Provisions) Act 1990

1 Name of Regulation

This Regulation is the *Mental Health (Forensic Provisions) Amendment (Victims) Regulation 2018*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 7 January 2019 and is required to be published on the NSW legislation website.
- (2) Schedule 1 [1] and [2] commence on 4 February 2019.

Schedule 1 Amendment of Mental Health (Forensic Provisions) Regulation 2017

[1] Clause 5A

Insert after clause 5:

5A Adjournments

The Tribunal may be constituted by the President or a Deputy President for the purpose of adjourning a review under the Act.

[2] Clauses 7A–7D

Insert after clause 7:

7A Submissions to Tribunal by victims

- (1) This clause applies to submissions by victims of forensic patients under section 74A of the Act.
- (2) A victim may make a submission about any of the following:
 - (a) the forensic patient's behaviour, both past and present, and the impact of the behaviour on the victim and the victim's family,
 - (b) the risk posed by the forensic patient to the victim, the victim's family or any other person,
 - (c) the impact on the victim and the victim's family if leave is granted to the forensic patient or the patient is released, whether unconditionally or subject to proposed conditions,
 - (d) the conditions that should be imposed on a grant of leave to or release of a forensic patient, including non-association and place restriction conditions.
- (3) A submission may be made in writing or orally to the Tribunal.
- (4) The Tribunal must acknowledge the receipt of a submission.
- (5) A victim who makes a submission to the Tribunal may, with the leave of the Tribunal, raise questions that the Tribunal considers to be appropriate for discussion during the proceedings.

7B Disclosure of victims' submissions by Tribunal

- (1) The Tribunal may disclose an edited version of a submission by a victim of a forensic patient to the legal representative of a forensic patient if:
 - (a) the Tribunal determines under section 74A of the Act that a submission is not to be disclosed to a forensic patient, and
 - (b) the Tribunal is of the opinion that information contained in the submission should be provided to the legal representative of the patient for reasons of procedural fairness, and
 - (c) the legal representative has agreed to the non-disclosure conditions in subclause (2).
- (2) The non-disclosure conditions are as follows:
 - (a) the legal representative must only disclose to the forensic patient general information about the submission of a kind specified by the Tribunal,

- (b) in the case of information about proposed place restrictions, general information about the areas the proposed restrictions apply to and the reasons for the victim's proposal may be disclosed, but not information identifying the location of the residence or place of work of the victim or the victim's family or friends or of other places frequented by the victim,
 - (c) the edited submission must not be disclosed to the forensic patient without the consent of the Tribunal.
- (3) If the forensic patient is not represented by a legal representative, the Tribunal may appoint an Australian legal practitioner to act on behalf of the forensic patient for the purposes of this clause.
- (4) Before disclosing an edited version of a submission, the Tribunal must:
 - (a) inform the victim of the proposed disclosure, and
 - (b) give the victim an opportunity to withdraw or amend the submission, and
 - (c) if the edited version is not created by the victim, provide the victim with a copy of the edited version and give the victim an opportunity to request amendments to the edited version, and
 - (d) if the edited version is created by the victim, give the victim an opportunity to amend the edited version.
- (5) The edited version may be created by the victim or the Tribunal.

7C Representation of victims

- (1) A nominated representative of a victim may represent the victim at a hearing of the Tribunal at which the victim is entitled to make a submission.
- (2) A nominated representative is not eligible to represent a victim at a hearing unless:
 - (a) the representative has completed and lodged with the Tribunal a statutory declaration, in the form approved by the Secretary, as to confidentiality, and
 - (b) the victim has authorised the representative in writing to attend the hearing and represent the victim.
- (3) A nominated representative is not to be the legal representative of a victim unless leave is granted by the Tribunal.
- (4) A nominated representative of a victim who represents a victim at a hearing may do anything at the hearing that the victim may do.

7D Disclosure by Tribunal to treatment team

- (1) The Tribunal may disclose all or part of, or a summary of, a submission received from a victim of a forensic patient to a person who is treating the forensic patient or a delegate of the person.
- (2) The submission must be disclosed on the condition that the person to whom the information is disclosed does not disclose the information to the forensic patient.

[3] Part 3A

Insert after Part 3:

Part 3A Victims Register

13A Information to be in Victims Register

For the purposes of section 76L (2) (b) of the Act, the following matters are to be included in the Victims Register in relation to each registered victim of a forensic patient:

- (a) particulars of the information used to verify the identity of a victim,
- (b) the name of the forensic patient,
- (c) whether the victim has obtained, or is the subject of, or is seeking to obtain, a non association condition or place restriction condition under section 76 of the Act,
- (d) whether or not the victim made a victim impact statement to a court in proceedings against the forensic patient,
- (e) any dates relating to the events the subject of court proceedings against the forensic patient or a victim of the forensic patient that may cause distress to a victim if Tribunal hearings were held on those dates,
- (f) the name and contact details of an emergency contact for the victim if the victim is unavailable when notice is given under clause 13D (1) (d) or (2).

13B Verification of victim's identity and status before registration

- (1) A person must not be registered on the Victims Register unless the Commissioner of Victims Rights is satisfied as to the person's identity and that the person is a primary victim or a family victim of an act of violence committed by a forensic patient.
- (2) A person requesting registration on the Victims Register as a victim of a forensic patient must provide the following to the Commissioner:
 - (a) at least 1 of the person's current Australian driver licence, current passport or birth certificate,
 - (b) the name of the forensic patient,
 - (c) if available, at least 1 of the following documents, to enable verification that the person is a victim:
 - (i) the case number of the Director of Public Prosecutions for each offence committed by the forensic patient that is relevant to the victim,
 - (ii) the hearing number for the Tribunal,
 - (iii) the police event number for each offence committed by the forensic patient that is relevant to the victim,
 - (iv) the claim number for any assistance claimed by the person under the *Victims Rights and Support Act 2013*.
- (3) The Commissioner may require a person who applies to be registered on the Victims Register, or any other person, to execute undertakings or other documents relating to disclosure or publication of information contained in the Register.

- (4) The Commissioner may request a victim to provide further information for the purposes of the Victims Register.
- (5) A failure by the victim to provide information under subclause (2) or further information under subclause (4) does not prevent the registration of a victim on the Victims Register.
- (6) The Commissioner must notify a registered victim in writing when the victim is registered on the Victims Register.

13C Administration of Victims Register

- (1) The Commissioner of Victims Rights may remove the name of a victim from the Victims Register if:
 - (a) the forensic patient ceases to be a forensic patient or is no longer a forensic patient for reasons related to acts committed by the forensic patient that are relevant to the victim, or
 - (b) all limiting terms imposed on the forensic patient for acts committed by the forensic patient that are relevant to the victim have expired, or
 - (c) an extension order or interim extension order is in force in respect of the forensic patient.
- (2) The Commissioner of Victims Rights must give notice in writing of removal from the Victims Register to a person whose name is removed from the register.

13D Notifications by Commissioner of Victims Rights

- (1) The Commissioner of Victims Rights must give notice in writing of the following to a registered victim of a forensic patient:
 - (a) particulars of proposed orders to be sought in relation to the forensic patient at a hearing of the Tribunal, and the location of that hearing,
 - (b) particulars of the reasons for decisions by the Tribunal about an application for a grant of leave to, or the release of, the forensic patient,
 - (c) if there is an application for an extension order or interim extension order or an extension order or interim extension order is made in relation to the forensic patient,
 - (d) any safety concerns relating to the victim known to the Commissioner in relation to a hearing before the Tribunal or arising out of a breach of an order relating to the forensic patient,
 - (e) if the forensic patient is reclassified as an involuntary patient.
- (2) Despite subclause (1), notice may be given by telephone if the Commissioner is of the opinion that there is a risk of immediate harm to the victim or another person.
- (3) The Commissioner must give notice in writing to the victim of a matter within 1 working day after notice is given of the matter to the victim by telephone.
- (4) Notice under this clause must be given in a timely manner.

Note. Section 6A of the *Victims Rights and Support Act 2013* applies the Charter of rights of victims of crime to victims of forensic patients making submissions to the Tribunal. In particular, that section requires victims to be notified in a timely way of the release of or granting of leave to a forensic patient.

13E Disclosure of information to Tribunal

The Commissioner of Victims Rights may, with the consent of the victim, disclose to the Tribunal information contained in the Victims Register and other information relating to the victim.

13F Publication of information in Victims Register

- (1) A registered victim or any other person must not publish any information contained in the Victims Register.
Maximum penalty: 10 penalty units.
- (2) This clause does not apply if the Tribunal or a court consents to or orders the publication or the information is publicly available.
- (3) In this clause, *publish* means disseminate or provide access to 1 or more persons by means of the internet, radio, television or other media.

13G Notice in writing

A notice in writing under this Part may be given to a victim by any of the following methods:

- (a) by personal delivery to the victim,
- (b) by post to the address specified by the victim for the service of documents of that kind,
- (c) in the case of a victim who has not specified an address for service—by post to the residential or business address of the person last known to the person serving the document,
- (d) by email to an email address specified by the victim for the service of documents of that kind.