



New South Wales

# Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2019

under the

Crimes (Sentencing Procedure) Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Sentencing Procedure) Act 1999*.

MARK SPEAKMAN, MP  
Attorney General

## Explanatory note

The object of this Regulation is to amend the *Crimes (Sentencing Procedure) Regulation 2017* as follows:

- (a) to specify requirements for victim impact statements prepared by or on behalf of victims of offenders who have been found not guilty by reason of mental illness or, after a special hearing, on the limited evidence available, to have committed an offence,
- (b) to require the court to whom a victim impact statement for a victim of any such offender is given to provide the statement to the Mental Health Review Tribunal (the *Tribunal*) as soon as practicable after the court makes a decision that causes the offender to become a forensic patient,
- (c) to require the Tribunal to consider and take into account the statement when determining applications by the forensic patient for leave or release,
- (d) to provide for the disclosure by the Tribunal of the contents of victim impact statements to legal representatives of forensic patients,
- (e) to specify matters about which a court may seek a submission from a designated carer or principal care provider of an offender who has been found not guilty by reason of mental illness or, after a special hearing, on the limited evidence available, to have committed an offence.

This Regulation is made under the *Crimes (Sentencing Procedure) Act 1999*, including sections 30M, 30N and 103 (the general regulation-making power).

## **Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2019**

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### **1 Name of Regulation**

This Regulation is the *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2019*.

### **2 Commencement**

This Regulation commences on 27 May 2019 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Crimes (Sentencing Procedure) Regulation 2017**

### **[1]    Clause 11A**

Insert after clause 11:

#### **11A    Victim impact statements by victims of offenders found not guilty by reason of mental illness**

- (1) This clause applies to a victim impact statement prepared for the purposes of section 30L of the Act.
- (2) The statement may include the following matters:
  - (a) the risk that the release of the offender would pose to the victim,
  - (b) conditions that should be imposed on the release of the offender,
  - (c) any other matter relating to the victim that the victim thinks should be considered in deciding the conditions of release for the offender.
- (3) The court may, if a victim impact statement is received by the court, invite the victim or the person who prepared the statement to add to the statement a matter referred to in subclause (2) or to make submissions on any of those matters.
- (4) Clause 11 (3) does not apply to a victim impact statement to which this clause applies.

### **[2]    Part 2, Division 4**

Insert after Division 3:

#### **Division 4      Offenders affected by mental illness or cognitive impairment**

##### **12C    Provision of copy to Mental Health Review Tribunal**

A court must give to the Mental Health Review Tribunal a copy of a victim impact statement relating to an offender that the court received under section 30L of the Act as soon as practicable after the court makes a decision that results in the offender becoming a forensic patient within the meaning of the *Mental Health (Forensic Provisions) Act 1990*.

##### **12D    Victim impact statements in proceedings before Mental Health Review Tribunal**

- (1) This clause applies if a victim impact statement made by or on behalf of the victim of a forensic patient is given to the Mental Health Review Tribunal by a court under section 30N of the Act.
- (2) The Tribunal is to acknowledge the victim impact statement at each review by the Tribunal of the forensic patient and is to consider and take into account the statement before determining an application by the forensic patient for release or a grant of leave.
- (3) The victim may, with the consent of the Tribunal, update the victim impact statement.
- (4) The Tribunal may disclose the contents of a victim impact statement to the forensic patient's legal representative only in the circumstances in which, and

subject to any conditions on which, the court permitted the disclosure of the victim impact statement.

- (5) Despite subclause (4), if information contained in a victim impact statement was not disclosed by the court to the forensic patient's legal representative or is inserted in an updated victim impact statement, the Tribunal may, in the interests of justice for the purposes of determining an application for release or a grant of leave, disclose the information to:
  - (a) the legal representative, or
  - (b) if the forensic patient does not have a legal representative, to an Australian lawyer appointed by the Tribunal for that purpose.
- (6) The Tribunal may direct that the information referred to in subclause (5) must not be disclosed by the legal representative to the forensic patient and may also, in that case, consent to general information about the statement being disclosed to the forensic patient.

**12E Submissions by designated carers and principal care providers**

For the purposes of section 30M of the Act, the court may seek written or oral submissions from a designated carer or principal care provider as to the following:

- (a) the risk that the release of the offender would pose to the victim,
- (b) conditions that should be imposed on the release of the offender,
- (c) any other matter that the designated carer or principal care provider thinks should be considered in deciding the conditions of release for the offender.