

Passed by both Houses



New South Wales

Crimes Legislation Amendment (Victims) Bill 2018

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Crimes Legislation Amendment (Victims) Bill 2018

Act No , 2018

An Act to make miscellaneous amendments to various Acts with respect to criminal proceedings involving children, victim involvement in sentencing and the rights of victims of crime and witnesses in court procedure; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Victims) Act 2018*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedules 1, 2 and 5 commence on 1 December 2018 or on the date of assent to this Act, whichever is the later.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55

[1] Section 27 Application of Criminal Procedure Act 1986 and other Acts

Insert “, 3AA” after “Divisions 3” in section 27 (2B).

[2] Section 31 Hearing of charges in the Children’s Court

Insert after section 31 (3):

- (3A) Notwithstanding subsection (1), if a person is charged before the Children’s Court with a child sexual assault offence, and the prosecution requests that the proceedings be dealt with according to law (and not summarily) in accordance with Division 3AA, the proceedings are to be dealt with as provided for by that Division.
- (3B) If the Children’s Court states that it is of the opinion, after taking evidence in accordance with Division 3AA:
 - (a) that, having regard to all the evidence before the Children’s Court, the evidence is capable of satisfying a jury beyond reasonable doubt that the accused person has committed a child sexual assault offence, and
 - (b) that the charge may not properly be disposed of in a summary manner, the proceedings for the child sexual assault offence must not be dealt with summarily but are to be dealt with as committal proceedings in accordance with Division 3A.
- (3C) If the Children’s Court, after taking evidence in accordance with Division 3AA, does not form the opinion referred to in subsection (3B):
 - (a) the proceedings for the child sexual assault offence must be dealt with summarily (subject to any other exceptions provided for by this section), and
 - (b) subsection (3) ceases to apply to the child sexual assault offence.

[3] Section 31 (4)

Insert “or (3B)” after “subsection (3)”.

[4] Section 31 (8)

Insert in alphabetical order:

child sexual assault offence has the same meaning as it has in Division 3AA.

[5] Part 3, Division 3AA

Insert after Division 3:

Division 3AA Special provisions—child sexual assault offences

31AA Application of Division

- (1) This Division applies to proceedings in which a person (an *accused person*) is charged before the Children’s Court with a child sexual assault offence.
- (2) To avoid doubt, this Division extends to proceedings in which a person is charged before the Children’s Court with a child sexual assault offence and one or more other offences (other than a serious children’s indictable offence) against the same complainant.

(3) In this Division:

child sexual assault offence means a child sexual assault offence within the meaning of section 83 of the *Criminal Procedure Act 1986* (other than a serious children's indictable offence) in respect of which the complainant:

- (a) was under the age of 16 years on the date of the alleged offence or at the beginning of the period during which the offence is alleged to have been committed, or
- (b) in the case of an offence against section 73 or 73A of the *Crimes Act 1900*, was under the age of 18 years on the date of the alleged offence.

complainant means a person, or any of the persons, against whom an offence is alleged to have been committed and includes:

- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, a person who is alleged to have been the subject of sexual servitude, and
- (b) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, a person who is alleged to have been the subject of child prostitution, and
- (c) in relation to an offence under section 91G of the *Crimes Act 1900*, a person who is alleged to have been used for the production of child abuse material.

31AB Prosecution may request that proceedings be dealt with on indictment

- (1) The prosecution may request that proceedings for a child sexual assault offence be dealt with according to law (and not summarily):
 - (a) on or before the first return date for service of a brief of evidence in the proceedings, or
 - (b) on or before a later date nominated by the Children's Court, if the Children's Court is satisfied that it is in the interests of justice to allow the request to be made later than would otherwise be required under paragraph (a).
- (2) If the request is duly made, the Children's Court is to take evidence for the prosecution and the accused person in accordance with this Division.

31AC Taking of prosecution evidence

- (1) Evidence for the prosecution must be given by written statements that are admissible as evidence.
- (2) A statement is not admissible as evidence unless any requirements specified for the statement by or under this Division are complied with in relation to the statement and any associated exhibits or documents.
- (3) A statement that is not admissible as evidence under this section may be admitted as evidence if otherwise admissible in accordance with any rule or law of evidence.
- (4) A statement sought to be admitted for the purposes of this Division must be served on the accused person on or before the day set by the Children's Court for that purpose.
- (5) The Children's Court must refuse to admit a statement sought to be tendered under this Division if any requirement specified for the statement by or under this Division, or under subsection (2), has not been complied with by the prosecutor.

- (6) Despite subsection (5), the Children's Court may admit the statement sought to be tendered if the Court is satisfied that:
 - (a) the non-compliance is trivial in nature, or
 - (b) there are other good reasons to excuse the non-compliance, and admit the statement, in the circumstances of the case.
- (7) Without limiting any other power to adjourn proceedings, the Children's Court may grant one or more adjournments, if it appears to the Court to be just and reasonable to do so, if any requirement specified for the statement by or under this Division, or under subsection (2), has not been complied with by the prosecutor. For that purpose, the Children's Court may extend the time for service of a statement.

31AD Prosecution witness may be directed to attend in limited circumstances

- (1) The Children's Court may, on the application of the accused person or the prosecutor, direct the attendance of a person who made a written statement that the prosecution intends to tender as evidence.
- (2) The Children's Court must direct the attendance of a person, other than a complainant, if an application is made by the accused person or the prosecutor and the other party consents to the direction.
- (3) In the case of any other application, the Children's Court may direct the attendance of a person other than a complainant only if satisfied that there are substantial reasons why the witness should, in the interests of justice, attend to give oral evidence.
- (4) The Children's Court may direct the attendance of a complainant only if satisfied that there are special reasons why the complainant should, in the interests of justice, attend to give oral evidence.
- (5) Subsection (4) applies whether or not the parties to the proceedings consent to the attendance of the complainant.
- (6) The Children's Court may hold a hearing to determine an application for a direction under this section and may require the accused person or the prosecutor to make submissions in relation to the application.
- (7) For the purposes of determining whether to give a direction, the Children's Court may consider any material (whether or not the material is in a form required for it to be admissible as evidence).
- (8) A direction given on the application of the accused person or the prosecutor may be withdrawn only:
 - (a) on the application, or with the consent, of the accused person, or
 - (b) on the application of the prosecutor, if the accused person fails to appear on a day on which a person has been directed to give evidence and the Children's Court is satisfied that it is in the interests of justice in the circumstances of the case.

31AE Evidence of witness directed to attend

- (1) The evidence of a person who is directed to attend a hearing under this Division is to be given orally.
- (2) The person may be examined by the prosecutor.
- (3) The person may be cross-examined by the accused person and by the prosecutor.

- (4) The Children's Court must not allow a person to be cross-examined in respect of matters that were not the basis of the reasons for giving the direction, unless the Children's Court is satisfied that:
- (a) if the person is a complainant—there are special reasons why the person should, in the interests of justice, be cross-examined in respect of those matters, or
 - (b) in any other case—there are substantial reasons why the person should, in the interests of justice, be cross-examined in respect of those matters.

31AF Taking of evidence of accused person

- (1) The Children's Court must give the accused person an opportunity to give evidence under this Division and to call any witness on the accused person's behalf.
- (2) An accused person may make full answer and defence. An accused person may give evidence and may examine and cross-examine the witnesses giving evidence for the accused person or for the prosecution.
- (3) This section does not confer on an accused person any entitlement to require the attendance of, or to examine or cross-examine, a prosecution witness or a complainant except in the circumstances (if any) permitted by section 31AD or 31AE.

31AG Application of Criminal Procedure Act 1986

- (1) The following provisions of the *Criminal Procedure Act 1986*, and any regulations under those provisions, apply in relation to the taking of evidence under this Division in the same way as they apply to committal proceedings, subject to any modifications made by this Division and the regulations under this Act:
 - (a) Division 6 of Part 2 of Chapter 3 (except sections 82–84),
 - (b) Part 3A of Chapter 6,
 - (c) any other provisions prescribed by the regulations under this Act.
- (2) Except as provided by subsection (1), this Division does not affect the application of any provisions of the *Criminal Procedure Act 1986* that apply to criminal proceedings before the Children's Court under section 27.
- (3) In particular, Division 1 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986* applies to the taking of evidence under this Division.

31AH Regulations

- (1) The regulations may make further provision for or with respect to this Division, including:
 - (a) the application of this Division to, and procedure to be followed by the Children's Court in, proceedings in which a person is charged with a child sexual assault offence and one or more other offences, and
 - (b) the taking of evidence under this Division.
- (2) The regulations may make provision for or with respect to a determination of substantial reasons or special reasons under a provision of this Division.

[6] Section 31A Committal proceedings for offences

Insert "or (3B)" after "31 (3) (b)" in section 31A (1) (b).

[7] Section 31B Evidence in committal proceedings

Omit “section 31 or 31C” from section 31B (6).

Insert instead “section 31, Division 3AA or section 31C”.

[8] Section 31B (6), note

Insert “Section 31AB also requires prosecution evidence to be taken before a child sexual assault offence is referred to be dealt with under this Division.” after “and (3)).”.

[9] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Crimes
Legislation Amendment (Victims) Act 2018**

Application of amendments to proceedings

An amendment made to this Act by the *Crimes Legislation Amendment (Victims) Act 2018* applies only to proceedings commenced after the commencement of the amendment.

Schedule 2 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 38 Apprehended violence orders made by court or authorised officer can also protect persons with whom person seeking protection has a domestic relationship

Insert “, 41AA” after “41” in section 38 (4).

[2] Section 41AA

Insert after section 41:

41AA Measures to protect young persons in proceedings

- (1) The following proceedings or parts of proceedings are to be heard in the absence of the public, unless the court hearing the proceedings otherwise directs:
 - (a) proceedings in which an apprehended violence order is sought or proposed to be made for the protection of a young person,
 - (b) proceedings in relation to an application for the variation or revocation of an apprehended violence order, if the protected person or one of the protected persons is a young person,
 - (c) any part of proceedings in which an apprehended violence order is sought or proposed to be made in which a young person appears as a witness,
 - (d) any part of proceedings in relation to an application for the variation or revocation of an apprehended violence order in which a young person appears as a witness,
 - (e) any part of proceedings under Part 13B for the variation or revocation of a recognised non-local DVO or for a declaration that a DVO is a recognised DVO in which a young person appears as a witness,
 - (f) proceedings in which an apprehended violence order is sought or proposed to be made against a young person,
 - (g) proceedings in relation to an application for the variation or revocation of an apprehended violence order made against a young person.
- (2) In this section:
young person means a person who is 16 years of age or over but who is under the age of 18 years.

[3] Section 58

Omit the section. Insert instead:

58 Proceedings to be open to public unless defendant is under the age of 18 years

- (1) Application proceedings before the court are to be heard:
 - (a) in the absence of the public, if the defendant is under the age of 18 years, or
 - (b) in open court, in any other circumstances.
- (2) If application proceedings are heard in the absence of the public, the court may, if the court considers it to be appropriate, permit persons who are not parties to the proceedings, or who are not Australian legal practitioners or

other persons who represent the parties to the proceedings, to be present during the hearing of the proceedings.

- (3) This section is subject to Part 9 and the provisions of any other Act or law.

[4] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Crimes
Legislation Amendment (Victims) Act 2018**

Application of amendments to proceedings

An amendment made to this Act by the *Crimes Legislation Amendment (Victims) Act 2018* applies only to proceedings commenced after the commencement of the amendment.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

[1] Part 3, Division 2

Omit the Division. Insert instead:

Division 2 Victim impact statements

Subdivision 1 Preliminary

26 Definitions

In this Division:

closed-circuit television arrangements means the arrangements for giving evidence provided for by section 294B or Division 4 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*.

family victim, in relation to an offence as a direct result of which a primary victim has died, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence.

member of the primary victim's immediate family means any of the following:

- (a) the victim's spouse,
- (b) the victim's de facto partner,
Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.
- (c) a person to whom the victim is engaged to be married,
- (d) a parent, step-parent or guardian of the victim,
- (e) a grandparent or step-grandparent of the victim,
- (f) a child or step-child of the victim or some other child for whom the victim is the guardian,
- (g) a grandchild or step-grandchild of the victim,
- (h) a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim,
- (i) an aunt, uncle, niece or nephew of the victim,
- (j) in the case of a victim who is an Aboriginal person or a Torres Strait Islander—a person who is or has been part of the close family or kin of the victim according to the Indigenous kinship system of the victim's culture,
- (k) any person who the prosecutor is satisfied is a member of the victim's extended family or culturally recognised family to whom the victim is or was close,
- (l) any person who the prosecutor is satisfied is a person with whom the victim had a close relationship analogous to a family relationship, or whom the victim considered to be family.

personal harm means actual physical bodily harm or psychological or psychiatric harm.

prescribed sexual offence has the same meaning as it has in the *Criminal Procedure Act 1986*.

primary victim, in relation to an offence, means:

- (a) a person against whom the offence was committed, or
- (b) a person who was a witness to the act of actual or threatened violence, the sexual offence, the death or the infliction of the physical bodily harm concerned,

being a person who has suffered personal harm as a direct result of the offence.

victim means a primary victim or a family victim.

victim impact statement has the meaning given by section 28 (1) and (2).

27 Application of Division

- (1) This Division applies only in relation to an offence that is being dealt with by the Supreme Court, the Industrial Relations Commission, the District Court or the Local Court, and only as provided by this section.
- (2) In relation to an offence that is being dealt with by the Supreme Court or the District Court, this Division applies only if the offence is being dealt with on indictment in the Supreme Court or on indictment or summarily in the District Court and is:
 - (a) an offence that results in the death of, or actual physical bodily harm to, any person, or
 - (b) an offence that involves an act of actual or threatened violence, or
 - (c) an offence for which a higher maximum penalty may be imposed if the offence results in the death of, or actual physical bodily harm to, any person than may be imposed if the offence does not have that result, or
 - (d) a prescribed sexual offence, or
 - (e) an offence against section 91H, 91J, 91K, 91L, 91P, 91Q or 91R of the *Crimes Act 1900*.
- (3) In relation to an offence being dealt with by the Industrial Relations Commission, this Division applies only if:
 - (a) the offence is an offence against Division 5 of Part 2 of the *Work Health and Safety Act 2011* or Subdivision 3 of Division 3 of Part 3 of the *Rail Safety National Law (NSW)*, and
 - (b) the offence results in the death of, or actual physical bodily harm to, any person.
- (4) In relation to an offence that is being dealt with by the Local Court, this Division applies only if the offence is:
 - (a) an offence that results in the death of any person, or
 - (b) an offence for which a higher maximum penalty may be imposed if the offence results in the death of any person than may be imposed if the offence does not have that result, or
 - (c) an offence that is referred to in Table 1 of Schedule 1 to the *Criminal Procedure Act 1986* and that:
 - (i) results in actual physical bodily harm to any person, or
 - (ii) involves an act of actual or threatened violence, or
 - (d) a prescribed sexual offence that is referred to in Table 1 of Schedule 1 to the *Criminal Procedure Act 1986*, or
 - (e) an offence against section 91H, 91J, 91K, 91L, 91P, 91Q or 91R of the *Crimes Act 1900*.

- (5) Nothing in this Division limits any other law by or under which a court may receive and consider a victim impact statement in relation to any offence to which this Division does not apply.
- (6) This Division extends to any offence referred to in subsection (1)–(4) that is dealt with under section 33.

Subdivision 2 Preparation of statements

28 Contents of victim impact statements

- (1) A primary victim in relation to an offence may prepare a statement (a *victim impact statement*) that contains particulars of the following suffered by the primary victim, or by the members of the primary victim's immediate family, as a direct result of the offence:
 - (a) any personal harm,
 - (b) any emotional suffering or distress,
 - (c) any harm to relationships with other persons,
 - (d) any economic loss or harm that arises from any matter referred to in paragraphs (a)–(c).
- (2) A family victim in relation to an offence may prepare a statement (a *victim impact statement*) that contains particulars of the impact of the primary victim's death on the family victim and other members of the primary victim's immediate family.

29 Formal requirements for victim impact statements

- (1) A victim impact statement must:
 - (a) be in writing, and
 - (b) comply with any other requirements prescribed by the regulations.
- (2) Photographs, drawings or other images may, subject to the regulations, be included in a victim impact statement.
- (3) A victim impact statement may relate to more than one victim.
- (4) The preparation of a victim impact statement is not mandatory.

30 Victim may be assisted

- (1) A representative of a primary victim may (subject to the regulations) do any of the following on behalf of the victim, but only if the primary victim is incapable of doing so because of age, impairment or otherwise:
 - (a) provide information for the preparation of a victim impact statement,
 - (b) object to the tendering of a victim impact statement.
- (2) A representative of a victim may (subject to the regulations) do any of the following on behalf of the victim:
 - (a) prepare a victim impact statement,
 - (b) read a victim impact statement.
- (3) Anything done by a representative in accordance with this section is taken to have been done by the victim.
- (4) The regulations may specify the persons or classes of person who may be a representative of a victim for the purposes of this section.

- (5) A representative of a victim who provides information for the preparation of a victim impact statement or prepares a victim impact statement for the victim is not precluded from providing information or preparing a victim impact statement on the representative's own behalf in relation to the same offence if otherwise eligible.

Subdivision 3 Consideration of statements by court

30A Tendering of victim impact statements

- (1) After it is prepared, a victim impact statement is to be provided to the prosecutor in the relevant proceedings.
- (2) A victim impact statement may be tendered to the court only by the prosecutor.

30B Receipt of victim impact statement by court

- (1) A court must accept a victim impact statement tendered by a prosecutor if the statement complies with the requirements of this Division and the regulations.
- (2) A court to which a victim impact statement is tendered must acknowledge receipt of the statement.

30C Victim may object to tendering of victim impact statement

- (1) A victim to whom a victim impact statement relates may object to the statement being tendered to a court.
- (2) A victim impact statement may not be received or considered by a court if any victim to whom the statement relates objects to the statement being tendered to the court.

30D Reading out of statement

- (1) A victim to whom a victim impact statement relates may read out the whole or part of a victim impact statement if the statement has been tendered to the court in accordance with this Division.
- (2) The statement may be read out at any time that the court determines after the court has convicted, but before it sentences, the offender.

30E How court uses victim impact statements

- (1) A court to which a victim impact statement has been tendered in relation to an offence:
 - (a) must consider the statement at any time after it convicts, but before it sentences, an offender for the offence, and
 - (b) may make any comment on the statement that the court considers appropriate.
- (2) A victim impact statement may also be considered by the Supreme Court when it determines an application under Schedule 1 for the determination of a term and a non-parole period for an existing life sentence referred to in that Schedule.
- (3) A victim impact statement of a family victim may also be taken into account by a court in connection with the determination of the punishment for the offence on the basis that the harmful impact of a primary victim's death on family victims is an aspect of harm done to the community, but only if:
 - (a) the prosecutor applies for this to occur, and

- (b) the court considers it to be appropriate.
- (4) Subsection (3) does not affect the application of the law of evidence in proceedings relating to sentencing.
- (5) The absence of a victim impact statement does not give rise to any inference that an offence had little or no impact on a victim.
- (6) The absence of a victim impact statement given by a family victim does not give rise to any inference that an offence had little or no impact on the members of the primary victim's immediate family.

30F Restrictions on consideration of victim impact statements not made in accordance with Division

- (1) A court must not consider or take into account a victim impact statement unless it has been prepared by the victim to whom it relates and tendered by the prosecutor.
- (2) A court must not consider or take into account any material that is not specifically authorised by this Division to be included in a victim impact statement.

30G Access to victim impact statements prior to sentencing hearing

- (1) The prosecution may provide a copy of a victim impact statement to the offender's Australian legal practitioner (in the case of a represented offender).
- (2) An Australian legal practitioner may copy, disseminate or transmit images of a victim impact statement only to the extent that it is reasonably necessary to do so for the purposes of providing the victim impact statement to another Australian legal practitioner for legitimate purposes related to the proceedings.
- (3) The Australian legal practitioner must destroy any copies or images at the conclusion of the sentencing proceedings.
- (4) The court may provide supervised access to a victim impact statement to an offender who is not represented by an Australian legal practitioner, if resources to facilitate the access are reasonably available.
- (5) An offender must not retain, copy, disseminate or transmit images of the victim impact statement.

Subdivision 4 Special provisions relating to the reading of statements

30H Victims are entitled to have a support person present

- (1) The victim to whom a victim impact statement relates is entitled to have a person chosen by the victim to be present near the victim, and within the victim's sight, when the statement is read out.
- (2) The person chosen by the victim may include a parent, guardian, relative, friend or support person of the victim or a person assisting the victim in a professional capacity.
- (3) The right to have a person present applies whether the victim impact statement is read in proceedings that are being heard in open court, in closed court or in accordance with any closed-circuit television arrangements.
- (4) A victim may have more than one person present.

30I Victims who are entitled to give evidence in closed court may also read their victim impact statements in closed court

- (1) If the proceedings are for a prescribed sexual offence, the part of the proceedings in which the victim impact statement is read out is to be held in closed court unless:
 - (a) the court directs (subject to section 30K), at the request of a party to the proceedings, that the proceedings are to be held in open court, and
 - (b) the court is satisfied that:
 - (i) special reasons in the interests of justice require the part of the proceedings to be held in open court, or
 - (ii) the victim to whom the statement relates consents to the statement being read out in open court.
- (2) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.

30J Victims who are entitled to give evidence by CCTV may also read their victim impact statements by CCTV

If the proceedings for the offence concerned are proceedings in which the victim to whom the victim impact statement relates is entitled to give evidence by means of closed-circuit television arrangements, the victim is also entitled to read out the victim's victim impact statement in accordance with those closed-circuit television arrangements.

30K Other victims may read their victim impact statements in closed court or by CCTV with leave of court

- (1) Any victim may request that the court give leave to the victim to read out the victim's victim impact statement in closed court or by means of closed-circuit television arrangements.
- (2) In determining whether to grant leave to the victim to read out the victim's victim impact statement in closed court, the court is to consider:
 - (a) whether it is reasonably practicable to exclude the public, and
 - (b) whether special reasons in the interests of justice require the statement to be read in open court, and
 - (c) any other matter that the court considers relevant.
- (3) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the statement to be read in open court.
- (4) In determining whether to grant leave to the victim to read out the victim's victim impact statement by means of closed-circuit television arrangements, the court is to consider:
 - (a) whether the facilities necessary to do so are available or could reasonably be made available, and
 - (b) any other matter that the court considers relevant.
- (5) This section does not apply to a victim to whom section 30I or 30J relates.

Subdivision 5 Special provisions regarding forensic patients

30L Victim impact statements where verdict of not guilty by reason of mental illness or limited finding of guilt

- (1) A court may accept a victim impact statement after:
 - (a) a verdict that an accused person is not guilty by reason of mental illness (whether or not following a special hearing) under the *Mental Health (Forensic Provisions) Act 1990*, or
 - (b) a verdict following a special hearing under that Act, that, on the limited evidence available, an accused person committed an offence.
- (2) A court must acknowledge receipt of the victim impact statement.
- (3) A court may consider a victim impact statement when it considers what conditions are to be imposed on the release of the accused person.
- (4) A court is not to consider a victim impact statement when determining the limiting term to be imposed on an accused person.
- (5) A court must not consider a victim impact statement under this section unless it has been prepared by the victim to whom it relates and tendered by the prosecutor.
- (6) Section 30E does not apply to a victim impact statement received by a court under this section.
- (7) For the purposes of the definitions of *family victim* and *primary victim* in this Division, an offence is taken to have been committed by an accused person referred to in subsection (1).

30M Submissions by designated carers and principal care providers

- (1) A court may seek a submission by the designated carer or principal care provider of an accused person after:
 - (a) a verdict of not guilty by reason of mental illness (whether or not following a special hearing) under the *Mental Health (Forensic Provisions) Act 1990*, or
 - (b) a verdict following a special hearing under that Act, that, on the limited evidence available, the accused person committed an offence.
- (2) The regulations may make provision for or with respect to submissions under this section.
- (3) In this section, *designated carer* and *principal care provider* have the same meanings as in the *Mental Health Act 2007*.

30N Victim impact statements in mental health and cognitive impairment forensic proceedings

- (1) A victim may request that a court not disclose the whole or part of a victim impact statement received by the court under section 30L to the accused person or that the statement not be read out to the court.
- (2) The court is to agree to a request of a victim not to disclose the whole or part of a victim impact statement to the accused person or that a statement not be read out to the court unless the court considers that it is not in the interests of justice to agree to the request.

Note. Among other things that may be considered by the court is the question of procedural fairness to the accused person.

- (3) This section does not prevent the court from disclosing the whole or part of a victim impact statement to an Australian legal practitioner representing the accused person, on the condition that the statement is not to be disclosed to any other person, if the court is satisfied that it is in the interests of justice to do so.
- (4) The court is required to give a copy of the victim impact statement to the Mental Health Review Tribunal constituted by the *Mental Health Act 2007*, in accordance with the regulations, as soon as practicable after the court makes a decision that results in the accused person becoming a forensic patient within the meaning of that Act.
- (5) The regulations may make provision for or with respect to the requirements and procedures for victim impact statements in proceedings under the *Mental Health (Forensic Provisions) Act 1990*.

[2] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Crimes
Legislation Amendment (Victims) Act 2018**

Application of amendments

Each of the following provisions as substituted by the *Crimes Legislation Amendment (Victims) Act 2018* applies only to proceedings that are commenced after the relevant substitution:

- (a) Division 2 of Part 3 of this Act,
- (b) Division 2 of Part 2 of the *Crimes (Sentencing Procedure) Regulation 2017*.

Schedule 4 Amendment of Crimes (Sentencing Procedure) Regulation 2017

Part 2, Division 2

Omit the Division. Insert instead:

Division 2 Victim impact statements

9 Persons who may assist victim

- (1) For the purposes of section 30 (4) of the Act, a person who may be a representative of a victim for the purposes of providing information for inclusion in a victim impact statement or objecting to the tendering of a victim impact statement are as follows:
 - (a) a person having parental responsibility for the victim,
 - (b) a member of the victim's immediate family,
 - (c) the victim's carer,
 - (d) a person who is important in the victim's life or any other person chosen by the victim.
- (2) For the purposes of section 30 (4) of the Act, and without limiting the ability of a victim to designate any person as a representative to prepare a victim impact statement, a person who may be a representative of a victim for preparing a victim impact statement is a qualified person designated by:
 - (a) the victim or victims to whom the statement relates, or
 - (b) a representative referred to in subclause (1) who is providing information for inclusion in a victim impact statement, or
 - (c) the prosecutor in the proceedings to which the statement relates.
- (3) For the purposes of section 30 (4) of the Act, a person who may be a representative of a victim for the purposes of reading a victim impact statement is:
 - (a) a person designated by the victim or victims to whom the statement relates, or
 - (b) if a representative referred to in subclause (1) is providing information for inclusion in a victim impact statement, a person (including the representative) designated by the representative.
- (4) In this clause, *qualified person* means:
 - (a) a counsellor who is approved under section 31 of the *Victims Rights and Support Act 2013*, or
 - (b) any other person who is qualified by training, study or experience to provide the particulars required for inclusion in a victim impact statement.

10 Form of victim impact statements

A victim impact statement:

- (a) must be legible and may be either typed or hand-written, and
- (b) must be on A4 size paper, and

- (c) must be no longer than 20 pages in length including medical reports or other annexures (except with the leave of the court).

Note. Victims Services provides information about victim impact statements, including the suggested form of a victim impact statement, on its website at www.victimsservices.justice.nsw.gov.au.

11 Content of victim impact statements

- (1) A victim impact statement must identify the victim or victims to whom it relates.
- (2) The statement must include the full name of the person who prepared the statement.
- (3) If the person who prepared the statement is not a victim to whom it relates (or a representative referred to in clause 9 (1) who is providing information for inclusion in a victim impact statement):
 - (a) the statement must indicate that the victim or victims do not object to the statement being tendered to the court, and
 - (b) the victim or victims (or the victim's representative) must sign the statement to verify that they do not object.
- (4) If a victim to whom the statement relates is a family victim, the statement must identify the primary victim and state the nature and (unless a relative by blood or marriage) the duration of that victim's relationship with the primary victim.
- (5) If a victim's representative acts on behalf of a primary victim for the purpose of providing information for inclusion in the victim impact statement, the statement must indicate the name of that person and the nature and (unless a relative by blood or marriage) the duration of that person's relationship with the primary victim.
- (6) A victim impact statement must not contain:
 - (a) anything that is offensive, threatening, intimidating or harassing, or
 - (b) any suggestion or views about the sentence to be imposed, or the matters that the sentencing court should take into account, or
 - (c) anything else that is not referred to in section 28 of the Act or that is otherwise not contemplated by the Act to be included in the statement.

12 Tendering of victim impact statements

Only one victim impact statement may be tendered in respect of:

- (a) the primary victim, or
- (b) if the primary victim has died as a result of the offence—each family victim.

Schedule 5 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

female genital mutilation offence means any of the following:

- (a) an offence under section 45 or 45A of the *Crimes Act 1900*,
- (b) an offence (including an offence under section 86 of the *Crimes Act 1900*) that includes the commission of, or an intention to commit, an offence under section 45 or 45A of the *Crimes Act 1900*,
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

sexual offence witness has the same meaning as in section 294D.

[2] Section 83 Witnesses who cannot be directed to attend

Insert at the end of paragraph (c) of the definition of *child sexual assault offence* in section 83 (3):

, or

- (d) an offence under any law of the Commonwealth that corresponds to an offence referred to in paragraph (a), (b) or (c) and that is prescribed by the regulations.

[3] Section 83 (3), definition of “complainant”

Insert at the end of paragraph (c):

, and

- (d) in relation to an offence under any law of the Commonwealth that corresponds to an offence referred to in paragraph (a), (b) or (c) and that is prescribed by the regulations—the person referred to in the relevant paragraph.

[4] Section 84 Victim witnesses, sexual offence witnesses and vulnerable witnesses generally not to be directed to attend

Insert after section 84 (1):

- (1A) In committal proceedings for an offence involving violence, a direction may not be given so as to direct a vulnerable person whose evidence is referred to in the brief of evidence to give evidence orally unless:
 - (a) the Magistrate is satisfied that there are special reasons why the vulnerable person should, in the interests of justice, attend to give evidence, or
 - (b) the prosecutor consents.
- (1B) In committal proceedings for a prescribed sexual offence, a direction may not be given so as to direct the attendance of a sexual offence witness (even if the parties to the proceedings consent to the attendance) unless the Magistrate is satisfied that there are special reasons why the sexual offence witness should, in the interests of justice, attend to give evidence.

[5] Section 84 (3) (h1)

Insert after section 84 (3) (h):

- (h1) an offence under any law of the Commonwealth that corresponds to an offence referred to in paragraph (a)–(h) and that is prescribed by the regulations,

[6] Section 84 (5)

Insert after section 84 (4):

- (5) Despite section 85 (4), the Magistrate must not allow a person who is an alleged victim of an offence involving violence to be cross-examined in respect of matters that were not the basis of the reasons for giving the direction, unless the Magistrate is satisfied that there are special reasons why, in the interests of justice, the person should be cross-examined in respect of those matters.

[7] Section 279A

Insert after section 279:

279A Admission of evidence of complainant from related proceedings

- (1) This section applies if a complainant in proceedings for a prescribed sexual offence (the *earlier proceedings*) is the complainant in later criminal proceedings (the *current proceedings*) and the offence in both proceedings is alleged to have been committed by the same accused person against the complainant in related circumstances.
- (2) A prosecutor may tender as evidence in current proceedings a record of the evidence of a complainant given in the earlier proceedings (the *original evidence*).
- (3) The original evidence of the complainant means all evidence given by the complainant in the earlier proceedings, including the evidence given by the complainant on examination in chief in the earlier proceedings and any further evidence given on cross-examination or re-examination in those proceedings.
- (4) Despite anything to the contrary in the *Evidence Act 1995*, or any other Act or law, a record of the original evidence of the complainant is admissible in the current proceedings if:
 - (a) the prosecutor gives written notice to the accused person, in accordance with the regulations, of the prosecutor's intention to tender the record under this section, and
 - (b) the prosecutor gives written notice to the court of the prosecutor's intention to tender the record under this section, and
 - (c) the notices referred to in paragraphs (a) and (b) are given no less than 21 days before the court commences hearing the current proceedings or within such other period as the court may allow.
- (5) If a record of original evidence is admitted in current proceedings under this section, the complainant is not compellable to give further evidence about the same matters in the current proceedings unless the court is satisfied that it is necessary for the complainant to give further evidence:
 - (a) to clarify any matters relating to the original evidence of the complainant, or
 - (b) to canvass information or material that has become available since the original evidence was given, or

- (c) in the interests of justice.
- (6) The court is to ensure that the complainant is questioned by any party to the current proceedings only in relation to matters that are relevant to the matters mentioned in subsection (5).
- (7) Subject to subsection (6), if a complainant gives any further evidence under this section, the complainant is compellable (for the prosecution or the accused person) to give evidence.
- (8) The court hearing the current proceedings may decline to admit a record of original evidence of the complainant if, in the court's opinion, the accused person would be unfairly disadvantaged by the admission of the evidence, having regard to the following:
 - (a) the completeness of the original evidence, including whether the complainant has been cross-examined on the evidence,
 - (b) the effect of editing any inadmissible evidence from the original evidence,
 - (c) the availability or willingness of the complainant to attend to give further evidence and to clarify any matters relating to the original evidence,
 - (d) the interests of justice,
 - (e) any other matter the court thinks relevant.
- (9) If the court allows a record of the original evidence of the complainant to be admitted, the court may give directions requiring the record to be altered or edited for the purpose of removing any statements that would not be admissible if the original evidence of the complainant had been given orally before the court hearing the current proceedings in accordance with the usual rules and practice of the court.
- (10) The hearsay rule (within the meaning of the *Evidence Act 1995*) does not prevent the admission of a record of the original evidence of the complainant under this section or the use of that record to prove the existence of a fact that the complainant intended to assert by a representation made in the original evidence.
- (11) Sections 306E–306G (including any regulations made for the purposes of those sections) apply for the purposes of this section with such modifications as are necessary.
- (12) In this section:
prescribed sexual offence includes a female genital mutilation offence.

[8] Section 283A Application of Part

Insert “and to statements provided under Division 3AA of Part 3 of that Act” after “that Act” in the note to section 283A (1).

[9] Section 290A Definitions

Insert in alphabetical order in section 290A (1):

prescribed sexual offence includes a female genital mutilation offence.

[10] Section 294C Complainant entitled to have support person or persons present when giving evidence

Omit “does not apply” from section 294C (7).

Insert instead “operates in addition to this section”.

[11] Section 294CA

Insert after section 294C:

294CA Admission of evidence of sexual offence witness given as complainant in earlier proceedings

- (1) This section applies if a person who was a complainant in proceedings for a prescribed sexual offence (the *earlier proceedings*) is called as a sexual offence witness in later proceedings for a prescribed sexual offence (the *current proceedings*).
- (2) A prosecutor may tender as evidence in current proceedings a record of the evidence of the person given in the earlier proceedings (the *original evidence*).
- (3) The original evidence of the person means all evidence given by the person in the earlier proceedings, including the evidence given by the person on examination in chief in the earlier proceedings and any further evidence given on cross-examination or re-examination in those proceedings.
- (4) Despite anything to the contrary in the *Evidence Act 1995*, or any other Act or law, a record of the original evidence of the person is admissible in the current proceedings if:
 - (a) the prosecutor gives written notice to the accused person, in accordance with the regulations, of the prosecutor’s intention to tender the record under this section, and
 - (b) the prosecutor gives written notice to the court of the prosecutor’s intention to tender the record under this section, and
 - (c) the notices referred to in paragraphs (a) and (b) are given no less than 21 days before the court commences hearing the current proceedings or within such other period as the court may allow.
- (5) If a record of original evidence is admitted in current proceedings under this section, the person is not compellable to give further evidence about the same matters in the current proceedings unless the court is satisfied that it is necessary for the person to give further evidence:
 - (a) to clarify any matters relating to the original evidence of the person, or
 - (b) to canvass information or material that has become available since the original evidence was given, or
 - (c) in the interests of justice.
- (6) The court is to ensure that the person is questioned by any party to the current proceedings only in relation to matters that are relevant to the matters mentioned in subsection (5).
- (7) Subject to subsection (6), if a person gives any further evidence under this section, the person is compellable (for the prosecution or the accused person) to give evidence.
- (8) The court hearing the current proceedings may decline to admit a record of original evidence of a person if, in the court’s opinion, the accused person would be unfairly disadvantaged by the admission of the evidence, having regard to the following:

- (a) the completeness of the original evidence, including whether the person has been cross-examined on the evidence,
 - (b) the effect of editing any inadmissible evidence from the original evidence,
 - (c) the availability or willingness of the person to attend to give further evidence and to clarify any matters relating to the original evidence,
 - (d) the interests of justice,
 - (e) any other matter the court thinks relevant.
- (9) If the court allows a record of the original evidence of the person to be admitted, the court may give directions requiring the record to be altered or edited for the purpose of removing any statements that would not be admissible if the original evidence of the person had been given orally before the court hearing the current proceedings in accordance with the usual rules and practice of the court.
- (10) The hearsay rule (within the meaning of the *Evidence Act 1995*) does not prevent the admission of a record of the original evidence of the person under this section or the use of that record to prove the existence of a fact that the person intended to assert by a representation made in the original evidence.
- (11) Sections 306E–306G (including any regulations made for the purposes of those sections) apply for the purposes of this section with such modifications as are necessary.

[12] Section 306A Definitions

Omit the definition of *original evidence*.

Insert in alphabetical order:

original evidence of the complainant or of any special witness has the meaning given by section 306B.

prescribed sexual offence includes a female genital mutilation offence.

special witness means any of the following witnesses in relation to the offence concerned:

- (a) a sexual offence witness,
- (b) a witness who is a cognitively impaired person,
- (c) a witness who is under the age of 18 years.

[13] Sections 306B (1)–(7), 306C, 306D (1), 306F (1), 306I (1)–(4) and (7) and 306K (1)

Insert “or a special witness” after “of the complainant” wherever occurring.

[14] Sections 306B (2) and 306I (2)

Insert “or special witness” after “by the complainant” wherever occurring.

[15] Sections 306B (4) and 306I (4)

Insert “or special witness” after “that the complainant” wherever occurring.

[16] Section 306B (5A)–(5D)

Insert after section 306B (5):

- (5A) If a record of original evidence of a special witness is admitted in new trial proceedings under this section, the special witness is not compellable to give further evidence about the same matters in the new trial proceeding unless the

court is satisfied that it is necessary for the special witness to give further evidence:

- (a) to clarify any matters relating to the original evidence of the special witness, or
 - (b) to canvass information or material that has become available since the original evidence was given, or
 - (c) in the interests of justice.
- (5B) The court is to ensure that the special witness is questioned by any party to the new trial proceedings only in relation to matters that are relevant to the matters mentioned in subsection (5A).
- (5C) Subject to subsection (5B), if a special witness gives any further evidence under this section, the special witness is compellable (for the prosecution or the accused person) to give evidence.
- (5D) The court hearing the new trial proceedings may decline to admit a record of the original evidence of a special witness if, in the court's opinion, the accused person would be unfairly disadvantaged by the admission of the record, having regard to the following:
- (a) the completeness of the original evidence, including whether the special witness has been cross-examined on the evidence,
 - (b) the effect of editing any inadmissible evidence from the original evidence,
 - (c) the availability or willingness of the special witness to attend to give further evidence and to clarify any matters relating to the original evidence,
 - (d) the interests of justice,
 - (e) any other matter the court thinks relevant.

[17] Sections 306C, 306D (1), 306J (1) and 306K (1)

Insert "or special witness" after " , the complainant" wherever occurring.

[18] Sections 306D (1) and 306K (1)

Insert "or special witness" after "if the complainant" wherever occurring.

[19] Sections 306D (2)–(4), 306E (2)–(4), 306I (5) (a) and (c), 306J (1) (a), (3) and (4) and 306K (2) (a), (3) and (4)

Insert "or special witness" after "complainant" wherever occurring.

[20] Sections 306E (1), 306I (5) and (6) and 306J (1)

Insert "or a special witness" after "of the complainant" wherever firstly occurring.

[21] Sections 306E (1) and 306I (6)

Insert "or special witness" after "of the complainant" wherever secondly occurring.

[22] Section 306G (1)

Insert "or a special witness" after "of a complainant".

[23] Section 306G (1)

Insert "or special witness" after "of the complainant" wherever occurring.

[24] Section 306H Definitions

Omit the definition of *original evidence*. Insert in alphabetical order:

original evidence of the complainant or a special witness has the meaning given by section 306I.

prescribed sexual offence includes a female genital mutilation offence.

special witness has the same meaning as in section 306A.

[25] Sections 306J (1) and 306K (2)

Insert “or special witness” after “for the complainant” wherever occurring.

[26] Section 306K (2)

Insert “or special witness” after “to the complainant”.

[27] Section 306ZK Vulnerable persons have a right to presence of a support person while giving evidence

Insert after section 306ZK (3):

- (3A) An accused person is not entitled to object to the suitability of the person or persons chosen by a vulnerable person to be with the vulnerable person when giving evidence, and the court is not to disallow the vulnerable person’s choice of person or persons on its own motion, unless the vulnerable person’s choice is likely to prejudice the accused person’s right to a fair hearing (for example, because the person chosen by the vulnerable person is a witness or potential witness in the proceedings).

[28] Section 306ZK (7)

Insert after section 306ZK (6):

- (7) In this section (and despite section 306P):
vulnerable person includes, in respect of proceedings referred to in subsection (1) (a) or (c), a person who is 16 years of age or over but under the age of 18 years.

[29] Section 306ZK, note

Omit the note.

[30] Chapter 6, Part 7

Insert after Part 6:

Part 7 Miscellaneous

306ZQ Complainants in domestic violence offence proceedings have a right to presence of a support person while giving evidence

- (1) A complainant who gives evidence in proceedings in respect of a domestic violence offence is entitled to choose a person whom the complainant would like to have present near him or her when giving evidence.
- (2) Without limiting a complainant’s right to choose such a person, that person:
- (a) may be a parent, guardian, relative, friend or support person of the complainant, and
 - (b) may be with the complainant as an interpreter, for the purpose of assisting the complainant with any difficulty in giving evidence

associated with an impairment or a disability, or for the purpose of providing the complainant with other support.

- (3) An accused person is not entitled to object to the suitability of the person or persons chosen by a complainant to be with the complainant when giving evidence, and the court is not to disallow the choice of person or persons on its own motion, unless the person chosen by the complainant is likely to prejudice the accused person's right to a fair hearing (for example, because the person chosen by the complainant is a witness or potential witness in the proceedings).

Note. This section does not apply to a complainant in proceedings for a prescribed sexual offence. In that case, section 294C sets out the entitlements of the complainant to have one or more support persons present when giving evidence.

[31] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Crimes
Legislation Amendment (Victims) Act 2018**

Application of amendments

An amendment made to this Act by the *Crimes Legislation Amendment (Victims) Act 2018* applies only to proceedings commenced after the commencement of the amendment.