

# Mental Health (Forensic Provisions) Amendment (Victims) Act 2018 No 85

[2018-85]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Mental Health (Forensic Provisions) Amendment (Victims) Act 2018 No 85



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# Mental Health (Forensic Provisions) Amendment (Victims) Act 2018 No 85



New South Wales

An Act to amend the *Mental Health (Forensic Provisions) Act 1990* and other legislation with respect to the rights of victims of forensic patients and proceedings relating to forensic patients; to amend the *Crimes (Forensic Procedures) Act 2000* with respect to the retention of forensic material relating to forensic patients; and for other purposes.

## 1 Name of Act

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

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
  - (a) Schedule 1 [1], to the extent that it inserts the definitions of **Commissioner of Victims Rights, registered victim** and **Victims Register**,
  - (b) Schedule 1 [8]-[10] and [14] (except to the extent it inserts the heading to Part 5A and section 76L),
  - (c) Schedules 3 and 4.

## Schedule 1 Amendment of *Mental Health (Forensic Provisions) Act 1990* No 10

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**Commissioner of Victims Rights** has the same meaning as in the *Victims Rights and Support Act 2013*.

**registered victim** means a victim registered on the Victims Register.

**victim** of a forensic patient means:

- (a) a primary victim of an act of violence (within the meaning of the [Victims Rights and Support Act 2013](#)) committed by a forensic patient, and
- (b) a family victim (within the meaning of section 22 of that Act) of an act of violence committed by a forensic patient.

**Victims Register** means the Victims Register established under Part 5A.

**[2]-[7] (Repealed)**

**[8] Sections 74A and 74B**

Insert after section 74:

**74A Victims may make submissions to Tribunal on review of and release of, or grant of leave to, forensic patients**

- (1) A victim of a forensic patient may make a submission to the Tribunal if the Tribunal is considering the release of or the grant of leave of absence to the forensic patient.
- (2) A submission may include an application under section 76 (2).
- (3) The victim may request the Tribunal not to disclose the whole or part of a submission made by the victim to the forensic patient.
- (4) The Tribunal is to agree to a request of a victim not to disclose the whole or part of a submission unless it 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 Tribunal is the question of procedural fairness to the forensic patient.

- (5) The regulations may make provision for or with respect to submissions by victims relating to the release of or grant of leave of absence to forensic patients.
- (6) Without limiting subsection (5), the regulations may make provision for or with respect to the following:
  - (a) the matters about which a victim may make submissions,
  - (b) the representation of victims by nominated support persons at hearings conducted for the purpose of a review,

- (c) the form of submissions by victims,
- (d) the disclosure of victims' submissions to the forensic patient or other persons, including the circumstances in which the Tribunal may determine that, having regard to the interests of justice, non-disclosure is reasonable in the circumstances of the case.

## **74B Rights of victims**

In conducting a review under this Act, the Tribunal is to have regard to the rights of victims in accordance with the Charter of Victims Rights set out in the [Victims Rights and Support Act 2013](#).

### **[9] Section 75 Conditions that may be imposed by Tribunal on release or leave of absence**

Insert after section 75 (1) (k):

- (l) requirements for the purposes of monitoring (including by electronic means) compliance with the conditions of release or leave.

### **[10] Section 76 Tribunal may amend or impose conditions on release or leave orders on application of victims**

Insert "(in a submission made under section 74A or otherwise)" after "may apply" in section 76 (2).

### **[11]-[13] (Repealed)**

### **[14] Part 5A**

Insert after Part 5:

## **Part 5A Victims Register**

### **76L Victims Register**

- (1) There is to be a Victims Register.
- (2) The following matters are to be included in the Victims Register:
  - (a) the names of victims of forensic patients who have requested that they be given notice of the review by the Tribunal of those patients,
  - (b) any other matter prescribed by the regulations.
- (3) The Victims Register may only include the name of a victim of a forensic patient if:

- (a) the forensic patient has been found not guilty by reason of mental illness of an offence (whether or not following a special hearing), or
  - (b) a limiting term has been imposed on the forensic patient following a verdict in a special hearing.
- (4) The Victims Register is to be kept by the Commissioner of Victims Rights and is to be in the form determined by the Commissioner.
- (5) The regulations may make provision for or with respect to the following matters:
  - (a) applications to register as a victim,
  - (b) the verification by the Commissioner of the identity of persons applying to register as victims, and the circumstances under which they became victims,
  - (c) the use and disclosure of information contained in the Victims Register,
  - (d) notifications to victims by the Tribunal or the Commissioner,
  - (e) the operation and administration of the Victims Register.

#### **76M Notification to victims of reviews and other matters**

- (1) The Commissioner of Victims Rights must give notice to any registered victim of a forensic patient if:
  - (a) the forensic patient is due for a mandatory review by the Tribunal, or
  - (b) an application is made by or for the forensic patient for a review by the Tribunal, or an application is made by or for the forensic patient to the Tribunal, in relation to release or leave of absence, or
  - (c) the Tribunal makes or varies an order for the release (including the conditional release) of, or granting leave of absence to, the forensic patient or refuses to make any such order, or
  - (d) the forensic patient ceases to be a forensic patient, or
  - (e) the forensic patient is the subject of an order for apprehension made under section 68 or a request for apprehension under section 70, or
  - (f) the forensic patient appeals against a decision of the Tribunal, or
  - (g) notice is required to be given of a specified matter by regulations made for the purposes of this paragraph.
- (2) The notice is to be given subject to and in accordance with the regulations.
- (3) Without limiting subsection (2), the notice must contain the following

information:

- (a) the matter being notified,
  - (b) that the victim may make a submission to the Tribunal in any review proceedings involving the release of or a grant of leave to the forensic patient,
  - (c) the form that a submission may take,
  - (d) the period within which a submission must be made.
- (4) The Commissioner is not required to give notice of a matter under this section if:
- (a) the matter required to be notified to the victim is included in any other requirement to give notice to the victim under this Act, or
  - (b) the victim has notified the Commissioner that the victim does not require notice of the matter.
- (5) A failure by the Commissioner to comply with this section does not affect the validity of any decision or order made by the Tribunal.

**[15]-[17] (Repealed)**

## **Schedule 2 (Repealed)**

## **Schedule 3 Amendment of [Crimes \(Sentencing Procedure\) Act 1999](#) No 92**

### **[1] Sections 28A and 28B**

Insert after section 28:

#### **28A Victim impact statements where verdict of not guilty by reason of mental illness or limited finding of guilt**

- (1) A court may receive 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 given by or on behalf of the victim to whom it relates or by or on behalf of the prosecutor.
- (6) Section 28 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).

## **28B 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 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 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 meaning as they have in the [Mental Health Act 2007](#).

## **[2] Section 30B**

Insert after section 30A:

### **30B 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 28A 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 forensic patient.

- (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 under 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](#).

## **Schedule 4 Amendment of [Government Information \(Public Access\) Act 2009 No 52](#)**

### **Schedule 2 Excluded information of particular agencies**

Insert “and functions relating to dealing with confidential information concerning victims contained in the Victims Register established under the [Mental Health \(Forensic Provisions\) Act 1990](#)” after “[Victims Rights and Support Act 2013](#)” in clause 4.

## **Schedules 5, 6 (Repealed)**