

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

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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[1]-[7] (Repealed)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]-[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*.

Schedules 4-6 (Repealed)