

Crimes Legislation Amendment (Victims) Act 2018 No 88

[2018-88]



New South Wales

Status Information

Currency of version

Repealed version for 2 December 2018 to 27 May 2019 (accessed 25 November 2024 at 10:29)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 28.5.2019.

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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Crimes Legislation Amendment (Victims) Act 2018 No 88



New South Wales

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.

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.

Schedules 1, 2 (Repealed)

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 (Repealed)