New South Wales

Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Crimes Legislation Amendment Bill 2018*.

Overview of Bill

The object of this Bill is to amend the *Mental Health (Forensic Provisions) Act 1990* (the *Principal Act*) and other legislation as follows:

(a)   to enable a court to obtain a report by a psychiatrist about an accused person before determining what orders to make about the accused person following a verdict about the accused person at a special hearing or a verdict of not guilty by reason of mental illness,

(b)   to provide that periods of unlawful absences by forensic patients from mental health or other facilities are not to be included when determining whether a limiting term has expired,

(c)   to enable the Mental Health Review Tribunal (the *Tribunal*) to make an order for the temporary detention of a person who has been apprehended after breaching a condition of release or leave,

(d)   to provide for submissions to be made by a victim of a forensic patient to the Tribunal when the release of or a grant of leave to the patient is being considered,

(e)   to establish a Victims Register of victims of certain forensic patients,

(f)   to provide for information to be given to registered victims,

(g)   to extend the maximum period for an interim order extending a person's status as a forensic patient,

(h)   to prevent the destruction of forensic material taken from a suspect if the person is found not guilty by reason of mental illness or a limited finding of guilt has been made at a special hearing following a finding that the person is unfit to be tried for an offence,

(i)   to provide for victim impact statements and submissions by designated carers and principal care providers in proceedings where an accused person is found not guilty by reason of mental illness or a verdict has been reached at a special hearing following a finding that an accused person is unfit to be tried for an offence,

(j)   to prevent disclosure under access to government information legislation of certain information relating to functions of the Commissioner of Victims Rights,

(k)   to set out matters comprising the Charter of rights of victims of forensic patients,

(l)   to make other minor amendments and to enact provisions of a savings nature consequent on the enactment of the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (other than provisions relating to the rights of victims) on the date of assent to the proposed Act. Provisions relating to the rights of victims will commence on a day or days to be appointed by proclamation.

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

Victims of forensic patients

Schedule 1 [1] inserts definitions of *Commissioner of Victims Rights*, *registered victim*, *victim* and *Victims Register*.

Schedule 1 [4] inserts a new object relating to the protection of the safety of victims and acknowledging the harm done to victims into the Part of the Principal Act dealing with forensic patients and correctional patients.

Schedule 1 [8] entitles a victim of a forensic patient to make a submission to the Tribunal when the Tribunal is considering the release of or a grant of leave to the patient. The Tribunal must agree to a request not to disclose the submission to the patient unless the Tribunal considers that it is not in the interests of justice to agree to the request. The amendment also requires the Tribunal to have regard to the Charter of Victims Rights when conducting a review of a forensic patient.

Schedule 1 [10] makes it clear that a victim of a forensic patient may apply for an order varying a non association condition or a place restriction condition that applies to the patient in a submission made in a hearing related to leave or release.

Schedule 1 [12] enables the Commissioner of Victims Rights and the President of the Tribunal to enter into arrangements to exchange information for the purposes of the Victims Register and notifying victims of information about forensic patients and Tribunal proceedings.

Schedule 1 [14] inserts proposed Part 5A relating to the Victims Register. The proposed Part establishes a Victims Register which is to be kept by the Commissioner of Victims Rights and is to contain the names of victims of forensic patients who have requested to be registered. Regulations may be made as to the verification of the identity of persons who wish to be registered as victims and other matters, including the use and disclosure of information in the Victims Register. The proposed Part also requires the Commissioner of Victims Rights to notify registered victims of applications by forensic patients for the grant of leave and of other matters relating to forensic patients. The Register will be limited to victims of forensic patients who have been found not guilty by reason of mental illness or who are unfit to be tried for an offence and who are subject to a limiting term following a limited finding of guilt at a special hearing.

Schedule 1 [17] provides that the existing register of victims of forensic patients that is kept by the Tribunal is to form part of the Victims Register under the Principal Act.

Other amendments

Schedule 1 [2] enables a court, after a verdict is reached at a special hearing for an accused person who has been found unfit to be tried for an offence and at the court's discretion, to obtain a report by a psychiatrist as to the condition of the accused person and whether the person's release is likely to seriously endanger the safety of the person or any member of the public. Other reports may be tendered to the court. The reports may be considered by the court in determining what orders to make about the accused person.

Schedule 1 [3] enables a court, after an accused person is found not guilty of an offence by reason of mental illness and at the court's discretion, to obtain a report by a psychiatrist as to the condition of the accused person and whether the person's release is likely to seriously endanger the safety of the person or any member of the public. Other reports may be tendered to the court. The reports may be considered by the court in determining what orders to make about the accused person.

Schedule 1 [5] provides that, if an order is issued by the Tribunal for the apprehension of a forensic patient because the patient contravenes an order for release or a grant of leave, any period after the order is made and before the patient is apprehended is not to be counted in determining whether or not the period of a limiting term has expired. A limiting term is imposed when a person who has been found unfit to be tried for an offence is found, after a special hearing, on the limited evidence available, to have committed an offence.

Schedule 1 [6] enables the apprehension of any forensic patient who has been granted conditional release or leave of absence and whose condition has deteriorated so that the patient is at risk of causing himself or herself or a member of the public serious harm.

Schedule 1 [7] enables the Tribunal, when reviewing the case of a forensic patient who has been apprehended following an issue with an order for release or a grant of leave, to order the patient's temporary detention, care or treatment in a mental health facility, correctional centre or other place, and in the manner, specified in the order.

Schedule 1 [9] enables the Tribunal to impose monitoring requirements, including electronic monitoring, on an order for release of or a grant of leave to a forensic patient.

Schedule 1 [11] enables the Secretary of the Department of Family and Community Services to enter into arrangements to exchange information about forensic patients and correctional patients with the Commissioner of Corrective Services, the Secretary of the Department of Justice and the Secretary of the Ministry of Health.

Schedule 1 [13] enables the exchange of information relating to forensic and correctional patients between various government agencies despite any provisions of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*.

Schedule 1 [15] changes the maximum period for an interim extension order by the Supreme Court that extends a person's status as a forensic patient from 28 days to 3 months.

Schedule 1 [16] enables the Minister for Health, the Minister for Mental Health or the Attorney General to require a person, or a court or tribunal, to supply information about the behaviour, or physical or mental condition, of a person who is the subject of an order extending the person's status as a forensic patient.

Schedule 2   Amendment of Crimes (Forensic Procedures) Act 2000 No 59

Schedule 2 provides for exceptions to the requirement that forensic material taken from a person who is a suspect be destroyed if no conviction is recorded or the person is acquitted of the relevant offence. The exceptions are if a person is found not guilty of an offence by reason of mental illness or the person has been found unfit to be tried for an offence and is then found, after a special hearing, on the limited evidence available, to have committed an offence.

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

Schedule 3 [1] enables a submission to be made to a court by a victim of an accused person after the accused person is found not guilty of an offence by reason of mental illness or has been found unfit to be tried for an offence and is then found, following a special hearing on the limited evidence available, to have committed an offence or an alternative offence. The court is not to take a submission into account when determining a limiting term for the person. A court may also seek a submission by a designated carer or principal care provider of the accused person if such a verdict or findings are made.

Schedule 3 [2] requires a court to refuse to disclose a submission made by a victim of any such person at the request of the victim unless the court considers that it is not in the interests of justice to agree to the request. However, a submission may be disclosed to the legal representative of the person on condition of non-disclosure to the person. A victim's submission is to be given by the court to the Tribunal if an accused person becomes a forensic patient under the *Mental Health (Forensic Provisions) Act 1990*.

Schedule 4   Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 4 prevents information about functions relating to dealing with confidential information concerning victims contained in the Victims Register from being disclosed or the subject of an access application to a government agency.

Schedule 5   Amendment of Mental Health Act 2007 No 8

Schedule 5 enables regulations to be made relating to the notification of designated carers and principal care providers of patients of proceedings before the Tribunal.

Schedule 6   Amendment of Victims Rights and Support Act 2013 No 37

Schedule 6 [2] inserts a definition of *forensic patient*.

Schedule 6 [3] confers on the victims of forensic patients the same rights as apply to other victims under the Charter of Victims Rights. It also confers the additional right to be informed in a timely manner of matters before the Tribunal or the release of or grant of leave to a forensic patient and other rights relating to compassionate treatment and to be listened to respectfully. **Schedule 6 [1]** makes a consequential amendment.

Schedule 6 [4] adds the exercise of functions relating to the administration of matters relating to forensic patients and victims of forensic patients to the matters to which a person exercising functions for the State must have regard to the Charter of Victims Rights (to the extent that it is relevant and practicable to do so).

Schedule 6 [5] confers on the Commissioner of Victims Rights the function of managing the Victims Register established by the proposed Act.