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The Mental Health Coordinating Council (MHCC) thanks the NSW Department of Justice for inviting us to provide comment on the draft Regulations that will accompany the *Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018*, which will underpin the operation and management of the Specialist Victims Register and victim impact statements. These regulations are:

1. Mental Health Amendment (Forensic Patients) Regulation
2. Crimes (Sentencing Procedure) Amendment (Victims Impact Statement) Regulation
3. Mental Health (Forensic Provisions) Amendment (Victims) Regulation

#### **1. Mental Health (Forensic Provisions) Amendment (Victims) Regulation 2018, under the Mental Health (Forensic Provisions) Act 1990**

In relation to:

##### **13C Administration of Victims Register**

The Commissioner of Victims' Rights may remove the name of a victim from the Victims Register if:

- (a) the forensic patient ceases to be a forensic patient or is no longer a forensic patient for reasons related to acts committed by the forensic patient that are relevant to the victim, or
- (b) all limiting terms imposed on the forensic patient for acts committed by the forensic patient that are relevant to the victim have expired, or
- (c) an extension order or interim extension order is in force in respect of the forensic patient.

**Comment:** *We recommend that a victim be informed that their name has been removed from the register.*

##### **13D (3)**

The Commissioner must give notice in writing to a victim of a matter within 1 working day after notice is given of the matter to the victim by telephone.

**Comment:** *We suggest that included here is a reference to s13G for further details.*

**(13G Notice in writing** - A notice in writing under this Part may be given to a victim by any of the following methods: etc)

##### **13F**

##### **Publication of information in Victims Register**

- (1) A registered victim or any other person must not publish any information contained in the Victims Register.

Maximum penalty: 10 penalty units.

**Comment:** *Regarding maximum penalty, we recommend that this section refers the reader to where information about what this means is described.*

## **2. Mental Health Amendment (Forensic Patients) Regulation 2018 under the Mental Health Act 2007**

### **20A Designated carers of forensic patients and Tribunal proceedings**

(1) The Tribunal must give notice in writing to a designated carer of a forensic patient known to the Tribunal of review proceedings before the Tribunal relating to the patient.

**Comment:** *In our view it is not the role of the tribunal to inform the designated carer of review proceeding. This is appropriately the treating team's role.*

(3) The Tribunal is not required to give notice to a designated carer who is to be or has been notified of the proceedings because the person is a registered victim of the forensic patient.

**Comment:** *In our view s (3) should just be removed.*

## **3. Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Regulation 2018 under the Crimes (Sentencing Procedure) Act 1999**

### **12D Victim impact statements in proceedings before Mental Health Review Tribunal**

(2) The Tribunal is to acknowledge the victim impact statement at each review by the Tribunal of the forensic patient and is to consider and take into account the statement before determining an application by the forensic patient for release or a grant of leave.

**Comment:** *The requirement in 12D (2) that victim impact statements must be mentioned "at each review" should be limited to the reviews where the victim is present. The obligation to consider the victim impact statement should only be necessary on a leave or release applications.*

**Comment:** *Re Drafting note 2.1 – We agree that it would be useful to include in s30B an additional regulation-making power, if it is intended to make it an offence for a legal representative to fail to comply with a direction by the Tribunal not to disclose the contents of a victim impact statement.*

MHCC thanks the DoJ for seeking our input, and would appreciate advice as to when the Bill will be enacted and the regulations come into force; so that we can alert our members of the changes.

For any further information regarding our comments please contact Corinne Henderson, Principal Advisor/ Policy and Legislative Reform. T: 02 9555 8388 #101 E: [corinne@mhcc.org.au](mailto:corinne@mhcc.org.au)



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