

Version  
as at 21 December 2021



## Rights for Victims of Insane Offenders Act 2021

Public Act 2021 No 55  
Date of assent 13 December 2021  
Commencement see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Justice.**

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Rights for Victims of Insane Offenders Act 2021.
- 2 Commencement**  
This Act comes into force on the date that is 1 year after the date on which this Act receives the Royal assent.

**Part 1**  
**Amendments to Criminal Procedure (Mentally Impaired Persons) Act 2003**

- 3 Principal Act**  
This Part amends the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- 4 Section 4 amended (Interpretation)**  
In section 4(1), insert in their appropriate alphabetical order:

**act proven but not criminally responsible on account of insanity**, in respect of a defendant charged with an offence, means—

- (a) the defendant is found to have caused the act or omission that forms the basis of the offence with which the defendant is charged; and
- (b) the defendant was insane at the time that the defendant caused that act or omission

**victim** has the same meaning as in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

## 5 Section 20 replaced (Finding of insanity)

Replace section 20 with:

### 20 Finding of act proven but not criminally responsible on account of insanity

- (1) If, at a trial, the defendant gives evidence as to the defendant's insanity and the jury or (if there is no jury) the Judge makes a finding of act proven but not criminally responsible on account of insanity, the Judge must—
  - (a) record a finding of act proven but not criminally responsible on account of insanity; and
  - (b) explain the meaning of that finding to the defendant; and
  - (c) acquit the defendant on account of the defendant's insanity.
- (2) Before or at a trial, the Judge must do the things specified in subsection (1) if—
  - (a) the defendant indicates an intention to raise the defence of insanity; and
  - (b) the prosecution agrees that the only reasonable verdict is a finding of act proven but not criminally responsible on account of insanity; and
  - (c) the Judge is satisfied, on the basis of expert evidence, that the defendant was insane within the meaning of section 23 of the Crimes Act 1961 at the time of the act or omission that forms the basis of the offence with which the defendant is charged.
- (3) If, at a trial before a jury, the defendant gives evidence as to the defendant's insanity and the jury finds the defendant not guilty, the Judge must ask the jury whether it has acquitted the defendant on account of the defendant's insanity.
- (4) The Judge must do the things specified in subsection (1) if—
  - (a) the Judge asks the jury under subsection (3) whether it has acquitted the defendant on account of the defendant's insanity; and
  - (b) the jury responds that it has acquitted the defendant on that basis.
- (5) If it appears from the evidence that the defendant may have been insane at the time of the act or omission that forms the basis of the offence with which the defendant is charged, the Judge may ask the jury to find whether the defendant was insane within the meaning of section 23 of the Crimes Act 1961, even

though the defendant has not given evidence as to the defendant's insanity or put the question of the defendant's sanity in issue.

**6 Section 31 amended (Change of status from special patient to patient or special care recipient to care recipient where person unfit to stand trial)**

Replace section 31(3) with:

- (3) If, at any time before the expiry of the relevant maximum period specified in section 30, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that, although the defendant is still unfit to stand trial, the continued detention of the defendant under section 24 is no longer necessary to safeguard the interests specified in subsection (3A), the Minister of Health, acting with the concurrence of the Attorney-General, must—
- (a) consider whether, in the Minister's opinion, the continued detention of the defendant under that section is no longer necessary to safeguard those interests; and
  - (b) direct that the defendant be held as a patient or, as the case requires, as a care recipient if, in the Minister's opinion, that detention is no longer necessary to safeguard those interests.
- (3A) The interests referred to in subsection (3) are—
- (a) the defendant's own interests; and
  - (b) the safety of the public or the safety of a person or class of person.
- (3B) In reaching a decision under subsection (3)(a), the Minister must have regard to any report from the Director of Mental Health made under section 33A.

**7 Section 33 amended (Duration of order for detention as special patient or special care recipient if person acquitted on account of insanity)**

After section 33(4), insert:

- (4A) In reaching a decision under subsection (3)(a), the Minister must have regard to any report from the Director of Mental Health made under section 33A.

**8 New sections 33A to 33E inserted**

After section 33, insert:

**33A Report by Director of Mental Health on defendant's continued detention**

The Director of Mental Health may report to the Minister of Health about the continued detention under section 24 of a defendant described in section 31(1) or 33(1).

**33B When victims must be notified of impending decision under section 31 or 33**

- (1) This section applies if the Director of Mental Health intends to report to the Minister of Health under section 33A.
- (2) The Director must take all reasonable steps to—
  - (a) give notice to a victim that the Director intends to report to the Minister of Health under section 33A about the continued detention of a defendant; and
  - (b) explain to the victim—
    - (i) the process under section 31(3) or 33(3); and
    - (ii) how the victim may participate in that process.

**33C Right of victims to make submissions on proposed change of status**

- (1) This section applies to a person notified under section 33B.
- (2) The person may write to the Director of Mental Health, making submissions on the decision of whether to change the defendant's status under section 31(3) or 33(3).
- (3) The person's submissions may address—
  - (a) any concerns that the person has, on reasonable grounds, about any risk that the defendant presents to—
    - (i) the person's physical safety or security; or
    - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
  - (b) any other information that the person considers relevant to the decision of whether to change the defendant's status under section 31(3) or 33(3).
- (4) The person must send the submission to the Director by the date specified by the Director.
- (5) The Director must have regard to any written submissions made by a victim under this section or section 33D.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

**33D Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 4; but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director of Mental Health about the decision of whether to change the defendant's status under section 31(3) or 33(3).



- (3) If the person seeks information from the Director for the purpose of making submissions under subsection (2), the Director may—
  - (a) advise the person of the date on which the Director intends to report to the Minister of Health about the continued detention of the defendant; and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 33C applies with any necessary modifications.
- (5) Neither the Director nor any other person has any liability for any act done in pursuance, or intended pursuance, of the Director's functions under this section or section 33E(1)(b), unless the act was done in bad faith.

**33E Victims must be notified of decisions made under sections 31 and 33**

- (1) The Director of Mental Health must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 33B;
  - (b) a person who makes a submission under section 33D(2).
- (2) The specified matters are—
  - (a) whether the Director's report to the Minister of Health concludes that the defendant's continued detention under section 24—
    - (i) continues to be necessary; or
    - (ii) is no longer necessary; and
  - (b) what decision the Minister has reached under section 31(3) or 33(3).

**33F Information about victims not to be disclosed**

- (1) This section applies to sections 33A to 33E.
- (2) No person may, directly or indirectly, disclose to the defendant the current address or contact details of any victim of the defendant.

**9 Schedule 1AA amended**

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 1 of this Act as the last Part; and
- (b) make all necessary consequential amendments.

## Part 2

### Amendments to Mental Health (Compulsory Assessment and Treatment) Act 1992

#### 10 Principal Act

This Part amends the Mental Health (Compulsory Assessment and Treatment) Act 1992.

#### 11 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

**victim** means (unless otherwise provided),—

- (a) in relation to a special patient, a person who has, under section 32B of the Victims' Rights Act 2002,—
  - (i) asked for notice, or for advice and copies; and
  - (ii) given their address:
- (b) an individual appointed under section 40 of that Act

#### 12 New section 2C inserted (Transitional, savings, and related provisions)

After section 2B, insert:

##### 2C Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

#### 13 Section 50 replaced (Leave of special patients)

Replace section 50 with:

##### 50 Special patient defined

In this section and in sections 50A to 50G, **special patient** means a person who is detained in a hospital under—

- (a) section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 as a person acquitted on account of insanity; or
- (b) section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) an order made under section 45; or
- (d) section 46.

##### 50A Minister may grant leave to special patients

- (1) The Minister may grant a special patient leave of absence from the hospital if—

- (a) 2 medical practitioners certify that the special patient is fit to be allowed to be absent from the hospital; and
  - (b) the Director supports the proposed leave of absence, taking into account any submission from a victim made in accordance with section 50C or 50D.
- (2) The Minister may grant the leave of absence subject to any conditions the Minister considers appropriate, including (at the Minister's discretion) a condition that the person must return to the hospital on the date or within the period that the Minister specifies.
- (3) The Minister may not exercise the power to grant leave under this section in respect of any person who—
- (a) was, immediately before that person's admission to the hospital, detained in a prison—
    - (i) while awaiting, or during the course of, a trial or hearing before a court; or
    - (ii) while awaiting sentence by a court; or
    - (iii) pending the determination of an appeal to a court against conviction; or
  - (b) is subject to a sentence of imprisonment for life or to a sentence of preventive detention.

**50B When victims must be notified of impending decision under section 50A**

- (1) This section applies if the Director is required to decide whether to support the proposed leave of absence of a special patient under section 50A(1).
- (2) The Director must take all reasonable steps to—
- (a) give notice to a victim that the Director is required to decide whether to support the proposed leave of absence of the special patient under section 50A(1); and
  - (b) explain to the victim—
    - (i) the process under section 50A for granting a special patient leave of absence; and
    - (ii) how the victim may participate in that process.

**50C Right of victims to make submissions on proposed leave of absence**

- (1) This section applies to a person notified under section 50B.
- (2) The person may write to the Director, making submissions on the decision of whether to grant leave of absence under section 50A(1).
- (3) The person's submissions may address—
- (a) any concerns that the person has, on reasonable grounds, about any risk that the special patient presents to—

- (i) the person's physical safety or security; or
  - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
- (b) any other information that the person considers relevant to the decision of whether to grant leave of absence under section 50A(1).
- (4) The person must send the submissions to the Director by the date specified by the Director.
- (5) The Director must have regard to any written submissions made by a victim under this section or section 50D.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

#### **50D Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 2(1); but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director about the decision of whether to grant leave of absence under section 50A(1).
- (3) If the person seeks information from the Director for the purpose of making submissions under subsection (2), the Director may—
  - (a) advise the person of the date on which the Director intends to decide whether to support the proposed leave of absence of the special patient; and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 50C applies with any necessary modifications.
- (5) Neither the Director nor any other person has any liability for an act done in pursuance, or intended pursuance, of the Director's functions under this section or section 50E(1)(b), unless the act was done in bad faith.

#### **50E Victims must be notified of decisions made under section 50A**

- (1) The Director must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 50B;
  - (b) a person who makes a submission under section 50D(2).
- (2) The specified matters are—
  - (a) whether the Director supports the proposed leave of absence of the special patient under section 50A(1):

- (b) if the Director supports the proposed leave of absence, whether the Minister has granted the special patient leave of absence under section 50A(1):
  - (c) if the Minister has granted the special patient leave of absence, any conditions applying to the special patient under section 50A(2).
- (3) The Director may withhold advice of a particular condition if, in the Director's opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

**50F Information about victims not to be disclosed**

- (1) This section applies to sections 50A to 50E.
- (2) No person may, directly or indirectly, disclose to the special patient the current address or contact details of any victim of the special patient.

**50G Minister may cancel leave of special patients**

- (1) The Minister may, during a period of leave of absence granted under section 50A(1) to a special patient, cancel that leave of absence.
- (2) If the Minister cancels a leave of absence, the Director must direct, in writing, that the special patient be admitted or re-admitted to a specified hospital.
- (3) The special patient may be taken to the specified hospital by any of the following:
  - (a) the Director:
  - (b) the Director of Area Mental Health Services:
  - (c) a duly authorised officer:
  - (d) a constable:
  - (e) a person to whom the charge of the special patient has been entrusted during the period of leave.
- (4) If the specified hospital is not the one from which the special patient was on leave of absence, the special patient must be received and detained there as if the special patient had been transferred to that hospital under section 49.

**14 Section 52 replaced (Director may grant short-term leave)**

Replace section 52 with:

**52 Director may grant short-term leave to special patients**

- (1) The Director may grant a special patient leave of absence from the hospital for a period of up to 7 days, excluding the days of the patient's departure and return.
- (2) The Director may grant the leave of absence subject to any conditions the Director considers appropriate.
- (3) The Director's power to grant leave under this section—

- (a) must not be exercised in respect of any special patient described in section 50A(3)(a); and
- (b) applies despite any other provision of this Act.

## 15 New sections 52B to 52H inserted

After section 52A, insert:

### 52B When victims must be notified of impending decision under section 52

- (1) This section applies if—
  - (a) the Director intends to decide whether to grant a special patient leave of absence under section 52(1); and
  - (b) that leave of absence would permit the patient to exercise greater autonomy outside the hospital than has any other leave of absence previously granted to the patient.
- (2) The Director must take all reasonable steps to—
  - (a) give notice to a victim that the Director intends to decide whether to grant leave of absence to the special patient under section 52(1); and
  - (b) explain to the victim—
    - (i) the process under section 52 for granting a special patient leave of absence; and
    - (ii) how the victim may participate in that process.

### 52C Right of victims to make submissions on proposed leave of absence

- (1) This section applies to a person notified under section 52B.
- (2) The person may write to the Director, making submissions on the decision of whether to grant leave of absence under section 52(1).
- (3) The person's submissions may address—
  - (a) any concerns that the person has, on reasonable grounds, about any risk that the special patient presents to—
    - (i) the person's physical safety or security; or
    - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
  - (b) any other information that the person considers relevant to the decision of whether to grant leave of absence under section 52(1).
- (4) The person must send the submissions to the Director by the date specified by the Director.
- (5) The Director must have regard to any written submissions made by a victim under this section or section 52D.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

**52D Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 2(1); but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director about the decision of whether to grant leave of absence under section 52(1).
- (3) If the person seeks information from the Director for the purpose of making submissions under subsection (2), the Director may—
  - (a) advise the person of the date on which the Director intends to decide whether to grant the leave of absence to the special patient; and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 52C applies with any necessary modifications.
- (5) Neither the Director nor any other person has any liability for an act done in pursuance, or intended pursuance, of the Director's functions under this section or section 52E(1)(b), unless the act was done in bad faith.

**52E Victims must be notified of decisions made under section 52**

- (1) The Director must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 52B;
  - (b) a person who makes a submission under section 52D(2).
- (2) The specified matters are—
  - (a) whether the Director has granted a special patient leave of absence under section 52(1);
  - (b) if the Director has granted the special patient leave of absence, any conditions applying to the special patient under section 52(2).
- (3) The Director may withhold advice of a particular condition if, in the Director's opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

**52F Information about victims not to be disclosed**

- (1) This section applies to sections 52 and 52B to 52E.
- (2) No person may, directly or indirectly, disclose to the special patient the current address or contact details of any victim of the special patient.

**52G Director may cancel short-term leave of special patients**

- (1) The Director may, during a period of leave of absence granted under section 52(1) to a special patient, cancel that leave of absence.

- (2) If the Director cancels a leave of absence, section 50G(2) to (4) applies with any necessary modifications.

**52H Director may authorise Director of Area Mental Health Services to exercise certain powers**

- (1) The Director of Area Mental Health Services may exercise the powers and duties conferred on the Director by sections 50B, 50D, 50E, 52, and 52B to 52G in respect of a special patient—
- (a) with the authority of the Director; and
  - (b) subject to any conditions imposed by the Director.
- (2) If the special patient is a special patient under section 50(c) or (d), the Director of Area Mental Health Services may exercise a power under subsection (1) only after consulting the manager of the appropriate prison.

**16 Section 80 amended (Tribunal reviews of certain special patients)**

After section 80(2), insert:

- (2A) The convener of the Review Tribunal must notify the Director of an application under subsection (1) for a review of the special patient's condition.
- (2B) On receiving notice, the Director must take all reasonable steps to—
- (a) give notice to each victim of the special patient that the Review Tribunal has received an application under subsection (1) for a review of the special patient's condition; and
  - (b) provide the victim with an explanation of—
    - (i) the process under this section for reviewing a special patient's condition; and
    - (ii) how the victim may participate in that process.

**17 Schedule 1 amended**

After clause 3 of Schedule 1, insert:

**3AAA Right of victim to make a submission**

Any person notified under section 80(2B) may write to the Review Tribunal, by the date specified by the Tribunal, making submissions on the Tribunal's review of the special patient's condition.

**18 New Schedule 1AA inserted**

Insert the Schedule 1AA set out in Schedule 2 of this Act as the first schedule to appear after the last section of the Mental Health (Compulsory Assessment and Treatment) Act 1992.



**19 Consequential amendments to Mental Health (Compulsory Assessment and Treatment) Act 1992**

Amend the Mental Health (Compulsory Assessment and Treatment) Act 1992 as set out in Part 1 of Schedule 5.

**Part 3**

**Amendments to Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003**

**20 Principal Act**

This Part amends the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

**21 Section 5 amended (Interpretation)**

In section 5(1), insert in its appropriate alphabetical order:

**victim** means (unless otherwise provided),—

- (a) in relation to a care recipient or a special care recipient, a person who has, under section 32B of the Victims' Rights Act 2002,—
  - (i) asked for notice, or for advice and copies; and
  - (ii) given their address:
- (b) an individual appointed under section 40 of that Act

**22 New section 9A inserted (Transitional, savings, and related provisions)**

After section 9, insert:

**9A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

**23 New sections 65A to 65E inserted**

After section 65, insert:

**65A When victims must be notified of impending decision under section 65**

- (1) This section applies if—
  - (a) a care manager intends to decide whether to authorise a care recipient to be on leave under section 65(1); and
  - (b) that period of leave would permit the care recipient to exercise greater autonomy outside the facility than has any other period of leave previously granted to the care recipient.
- (2) The care manager must take all reasonable steps to—

- (a) give notice to a victim that the care manager intends to decide whether to authorise a care recipient to be on leave under section 65(1); and
- (b) explain to the victim—
  - (i) the process under section 65 for granting a care recipient a period of leave; and
  - (ii) how the victim may participate in that process.

#### **65B Right of victims to make submissions on proposed leave**

- (1) This section applies to a person notified under section 65A.
- (2) The person may write to the care manager, making submissions on the decision of whether to authorise leave under section 65(1).
- (3) The person's submissions may address—
  - (a) any concerns that the person has, on reasonable grounds, about any risk that the care recipient presents to—
    - (i) the person's physical safety or security; or
    - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
  - (b) any other information that the person considers relevant to the decision of whether to authorise leave under section 65(1).
- (4) The person must send the submission to the care manager by the date specified by the care manager.
- (5) The care manager must have regard to any written submissions made by a victim under this section or section 65C.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

#### **65C Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 5(1); but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the care manager about the decision of whether to authorise leave under section 65(1).
- (3) If the person seeks information from the care manager for the purpose of making submissions under subsection (2), the care manager may—
  - (a) advise the person of the date on which the care manager intends to decide whether to authorise a care recipient to be on leave; and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 65B applies with any necessary modifications.

- (5) Neither the care manager nor any other person has any liability for an act done in pursuance, or intended pursuance, of the care manager's functions under this section or section 65D(1)(b), unless the act was done in bad faith.

**65D Victims must be notified of decisions made under section 65**

- (1) The care manager must advise the following persons of the matters specified in subsection (2):
- (a) a person notified under section 65A:
  - (b) a person who makes a submission under section 65C(2).
- (2) The specified matters are—
- (a) whether the care manager has authorised a care recipient to be on leave under section 65(1):
  - (b) if the care manager has authorised the care recipient to be on leave, any terms and conditions applying to the care recipient under section 65(1).
- (3) The care manager may withhold advice of a particular term or condition if, in the care manager's opinion, disclosing the term or condition would unduly interfere with the privacy of any other person (other than the care recipient).

**65E Information about victims not to be disclosed**

- (1) This section applies to sections 65A to 65D.
- (2) No person may, directly or indirectly, disclose to the care recipient the current address or contact details of any victim of the care recipient.

**24 Section 66 amended (Minister may authorise leave for special care recipients)**

Replace section 66(1) with:

- (1) The Minister may authorise a special care recipient to be on leave from the care recipient's secure facility on any terms and conditions that the Minister specifies, if—
- (a) a specialist assessor certifies that the care recipient is fit to be on leave; and
  - (b) the Director-General of Health supports the proposed leave, taking into account any submission from a victim made in accordance with section 67D or 67E.

**25 New sections 67B to 67H inserted**

After section 67A, insert:

**67B When victims must be notified of impending decision under section 66**

- (1) This section applies if the Director-General of Health is required to decide whether to support the proposed leave of a special care recipient under section 66(1).

- (2) The Director-General must take all reasonable steps to—
- (a) give notice to a victim that the Director-General is required to decide whether to support the proposed leave of a special care recipient under section 66(1); and
  - (b) explain to the victim—
    - (i) the process under section 66 for granting a special care recipient a period of leave; and
    - (ii) how the victim may participate in that process.

**67C When victims must be notified of impending decision under section 67**

- (1) This section applies if—
- (a) the Director-General of Health intends to decide whether to authorise a special care recipient to be on leave under section 67(1); and
  - (b) that period of leave would permit the special care recipient to exercise greater autonomy outside the secure facility than has any other period of leave previously granted to the special care recipient.
- (2) The Director-General must take all reasonable steps to—
- (a) give notice to a victim that the Director-General intends to decide whether to authorise a special care recipient to be on leave under section 67(1); and
  - (b) provide the victim with an explanation of—
    - (i) the process under section 67 for granting a special care recipient a period of leave; and
    - (ii) how the victim may participate in that process.

**67D Right of victims to make submissions on proposed leave**

- (1) This section applies to a person notified under section 67B or 67C.
- (2) The person may write to the Director-General, making submissions on, or giving information relevant to, the decision of whether to authorise leave under section 66(1) or 67(1).
- (3) The person's submissions may address—
- (a) any concerns that the person has, on reasonable grounds, about any risk that the special care recipient presents to—
    - (i) the person's physical safety or security; or
    - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
  - (b) any other information that the person considers relevant to the decision of whether to authorise leave under section 66(1) or 67(1).

- (4) The person must send the submissions to the Director-General by the date specified by the Director-General.
- (5) The Director-General must have regard to any written submissions made by a victim under this section or section 67E.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

**67E Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 5(1); but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director-General of Health about the decision of whether to authorise leave under section 66(1) or 67(1).
- (3) If the person seeks information from the Director-General for the purpose of making submissions under subsection (2), the Director-General may—
  - (a) advise the person of the date on which the Director-General intends to decide whether to—
    - (i) support the proposed leave of the special care recipient under section 66(1); or
    - (ii) authorise a special care recipient to be on leave under section 67(1); and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 67D applies with any necessary modifications.
- (5) Neither the Director-General nor any other person has any liability for an act done in pursuance, or intended pursuance, of the Director-General's functions under this section, section 67F(1)(b), or 67G(1)(b), unless the act was done in bad faith.

**67F Victims must be notified of decisions made under section 66**

- (1) The Director-General must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 67B;
  - (b) a person who makes a submission under section 67E(2) about the decision of whether to authorise leave under section 66(1).
- (2) The specified matters are—
  - (a) whether the Director-General supports the proposed leave of the special care recipient under section 66(1);
  - (b) if the Director-General supports the proposed leave, whether the Minister has authorised the special care recipient leave under section 66(1):

- (c) if the Minister has authorised the special care recipient leave, any terms and conditions applying to the special care recipient under section 66(1).
- (3) The Director-General may withhold advice of a particular term or condition if, in the Director-General's opinion, disclosing the term or condition would unduly interfere with the privacy of any other person (other than the special care recipient).

#### **67G Victims must be notified of decisions made under section 67**

- (1) The Director-General must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 67C:
  - (b) a person who makes a submission under section 67E(2) about the decision of whether to authorise leave under section 67(1).
- (2) The specified matters are—
  - (a) whether the Director-General has authorised a special care recipient to be on leave under section 67(1):
  - (b) if the Director-General has authorised the special care recipient leave, any terms and conditions applying to the special care recipient under section 67(1).
- (3) The Director-General may withhold advice of a particular term or condition if, in the Director-General's opinion, disclosing the term or condition would unduly interfere with the privacy of any other person (other than the special care recipient).

#### **67H Information about victims not to be disclosed**

- (1) This section applies to sections 67B to 67G.
- (2) No person may, directly or indirectly, disclose to the special care recipient the current address or contact details of any victim of the special care recipient.

#### **26 New Schedule 1 inserted**

Insert the Schedule 1 set out in Schedule 3 of this Act as the first schedule to appear after the last section of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

## **Part 4 Amendments to Victims' Rights Act 2002**

#### **27 Principal Act**

This Part amends the Victims' Rights Act 2002.

**28 Section 4 amended (Interpretation)**

(1) In section 4, definition of **offence**, after paragraph (b), insert:

- (c) includes an offence—
  - (i) committed against the victim; and
  - (ii) in respect of which the court recorded a finding of act proven but not criminally responsible on account of insanity under section 20 of the Criminal Procedure (Mentally Impaired Persons) Act 2003

(2) In section 4, replace the definition of **offender** with:

- offender**, in relation to a victim,—
- (a) means a person—
    - (i) convicted of the crime or offence that affected the victim; or
    - (ii) charged with the crime or offence that affected the victim, and in respect of which the court recorded a finding of act proven but not criminally responsible on account of insanity under section 20 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
  - (b) in section 9 (which relates to meetings requested by victims) and sections 17AA to 27 (which relate to victim impact statements), includes a person found guilty of, or who pleads guilty to, that crime or offence

(3) In section 4, insert in its appropriate alphabetical order:

**act proven but not criminally responsible on account of insanity** has the same meaning as in section 4(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003

**29 New section 5A inserted (Transitional, savings, and related provisions)**

*[Repealed]*

Section 29: repealed, on 21 December 2021, by section 36 of the Sexual Violence Legislation Act 2021 (2021 No 60).

**30 Cross-heading above section 17AA replaced**

Replace the cross-heading above section 17AA with:

**Part 2A**  
**Victim impact statements**

*Definitions and purpose*

**31 Section 17AA amended (Victim impact statement defined)**

In section 17AA(1)(a)(ii)(B), after “sentencing the offender”, insert “or making an order under section 24(1) or 25(1) of the Criminal Procedure (Mentally

Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity”.

**32 New cross-heading above section 17 inserted**

After section 17AB, insert:

*Information to be ascertained*

**33 Section 20 renumbered and repositioned (Statements by others disadvantaged by offence)**

Renumber section 20 as section 17AAB and reposition it after section 17AA.

**34 New cross-heading above section 21AA inserted**

Before section 21AA, insert:

*Sentence indication*

**35 New cross-heading above section 21 inserted**

Before section 21, insert:

*Use by judicial officer*

**36 Section 21 amended (Victim impact statement to be submitted to judicial officer)**

Replace section 21(1)(a) with:

- (a) to the judicial officer—
  - (i) sentencing the offender; or
  - (ii) making an order under section 24(1) or 25(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity; and

**37 Section 22 amended (Victim impact statement may be read to court)**

In section 22(1), after “sentencing the offender”, insert “or making an order under section 24(1) or 25(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity”.

**38 Section 22A amended (Victim impact statement may be presented to court in some other manner)**

In section 22A, after “sentencing the offender”, insert “or making an order under section 24(1) or 25(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity”.



**39 New section 22C inserted (Judicial officer not to take into account withheld part)**

After section 22B, insert:

**22C Judicial officer not to take into account withheld part**

- (1) In this section, **withheld part** means a part of a victim impact statement withheld under an order made under section 25.
- (2) A judicial officer must not take into account a withheld part in—
  - (a) sentencing the offender; or
  - (b) making an order under section 24(1) or 25(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity.

**40 New cross-heading above section 23 inserted**

Before section 23, insert:

*Distribution or disclosure*

**41 Section 26 repealed (Judicial officer not to take into account withheld part)**

Repeal section 26.

**42 Section 28 and cross-heading renumbered and repositioned**

Renumber section 28 as section 16B and reposition it, with the cross-heading above it, after section 16A.

**42A Section 28BA amended (Victim’s preferences on presenting victim impact statement)**

In section 28BA(a) (as, or when, inserted by section 31 of the Sexual Violence Legislation Act 2021), after “sentencing the offender”, insert “or making an order under section 24(1) or 25(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 in relation to a defendant who is acquitted on account of insanity”.

Section 42A: inserted, on 21 December 2021, by section 37 of the Sexual Violence Legislation Act 2021 (2021 No 60).

**43 New section 30A and cross-heading inserted**

After section 30, insert:

*Notice for victims of persons or offenders subject to mental health or intellectual disability care*

**30A Victims of persons or offenders subject to mental health or intellectual disability care must be notified of person's or offender's designation**

- (1) Without limiting sections 29 and 32B, this section applies to a victim if the person accused of the offence or, as the case requires, the offender—
  - (a) is liable to be detained in a hospital or facility in connection with the offence; and
  - (b) when their liability of that kind began, they were liable to be detained in a hospital or facility—
    - (i) as a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or as a special care recipient as defined in section 6(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
    - (ii) under an order made under section 25(1)(a) or (b) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) The Director-General of Health must give a victim to whom this section applies—
  - (a) notice of whether the person or offender has been designated as—
    - (i) a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
    - (ii) a special care recipient as defined in section 6(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
    - (iii) a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992, under an order made under section 25(1)(a) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
    - (iv) a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, under an order made under section 25(1)(b) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
  - (b) an explanation of the meaning and consequences of the person or offender's designation; and
  - (c) a list of the future notifications that the victim is eligible to receive.
- (3) The Director-General of Health must give notice under subsection (2) to the victim as soon as practicable after the person or offender has been designated as one of the classes of people described in subsection (2)(a).

**44 Schedule 1AA amended**

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 4 of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Section 44: replaced, on 21 December 2021, by section 38 of the Sexual Violence Legislation Act 2021 (2021 No 60).

**45 Consequential amendments to Victims' Rights Act 2002**

Amend the Victims' Rights Act 2002 as set out in Part 2 of Schedule 5.

**Part 5**

**Consequential amendments to other enactments**

**46 Consequential amendments to other enactments**

Amend the enactments specified in Part 3 of Schedule 5 as set out in that schedule.

**Schedule 1**  
**New Part inserted into Schedule 1AA of Criminal Procedure**  
**(Mentally Impaired Persons) Act 2003**

s 9

**Part 2**  
**Provisions relating to Rights for Victims of Insane Offenders Act**  
**2021**

**2 Interpretation**

In this Part, **amendment Act** means the Rights for Victims of Insane Offenders Act 2021.

**3 Proceedings started before commencement**

- (1) This clause applies if, at the commencement of the amendment Act, criminal proceedings have been commenced against a defendant but the court has not held any hearing to determine, in accordance with section 20 (as it read before the commencement of the amendment Act), the nature of the defendant's involvement with the offence.
- (2) The court may direct that criminal proceedings against the defendant be continued under the provisions of this Act (as amended by the amendment Act).
- (3) The court may give a direction under subclause (2) only if it is satisfied that it is in the interests of justice to do so.
- (4) However, proceedings against the defendant must be continued as if the amendment Act had not been enacted if, before the commencement of the amendment Act, the court has—
  - (a) begun proceedings to determine under section 20 (as it was before the commencement of the amendment Act) whether the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged; or
  - (b) made a determination under that section.

**4 Validity of proceedings under section 20**

No proceeding under section 20 is invalid only because it was conducted under the law as it was before the commencement of the amendment Act when it ought to have been conducted in accordance with the law as it was after the commencement of that Act.

**5 Matters initiated under section 31 or 33**

- (1) This clause applies to any matter initiated under section 31 or 33 before the commencement of this clause.

- (2) If this clause applies, the provisions of the relevant section, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been amended or replaced by the amendment Act.
- (3) In this clause, **matter** includes any—
  - (a) action undertaken; and
  - (b) decision taken; and
  - (c) notice given; and
  - (d) proceeding commenced; and
  - (e) application made; and
  - (f) agreement entered into; and
  - (g) requirement imposed.

**Schedule 2**  
**New Schedule 1AA inserted in Mental Health (Compulsory  
Assessment and Treatment) Act 1992**

s 18

**Schedule 1AA**  
**Transitional, savings, and related provisions**

s 2C

**Part 1**  
**Provisions relating to Rights for Victims of Insane Offenders Act  
2021**

**1 Transitional provision**

- (1) This clause applies to any matter initiated under section 50, 52, 80, or Schedule 1 before the commencement of this clause.
- (2) If this clause applies, the provisions of the relevant section or Schedule 1, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been amended or replaced by the Rights for Victims of Insane Offenders Act 2021.
- (3) In this clause, **matter** includes any—
  - (a) action undertaken:
  - (b) decision taken:
  - (c) notice given:
  - (d) proceeding commenced:
  - (e) application made:
  - (f) agreement entered into:
  - (g) requirement imposed.

**2 Transitional provision if leave decision and resulting leave of absence fall either side of commencement date**

- (1) This clause applies if—
  - (a) a leave decision has been made; and
  - (b) as a consequence of the leave decision, a special patient is due to take, or is taking, leave of absence when this clause commences.
- (2) The Director may, to the extent that the Director considers appropriate in the circumstances, advise a victim of the leave decision as specified in sections 50E(2) and 52E(2).

- (3) In this clause, **leave decision** means a decision made before the commencement of this clause by—
- (a) the Minister to—
    - (i) grant a special patient leave of absence under section 50(1); or
    - (ii) cancel a special patient’s leave of absence under section 50(3); or
  - (b) the Director to—
    - (i) grant a special patient leave of absence under section 52(1); or
    - (ii) cancel a special patient’s leave of absence under section 52(3).

**Schedule 3**  
**New Schedule 1 inserted in Intellectual Disability (Compulsory Care  
and Rehabilitation) Act 2003**

s 26

**Schedule 1**  
**Transitional, savings, and related provisions**

s 9A

**Part 1**  
**Provisions relating to Rights for Victims of Insane Offenders Act  
2021**

**1 Transitional provision**

- (1) This clause applies to any matter initiated under section 66 before the commencement of this clause.
- (2) If this clause applies, the provisions of the relevant section, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been amended or replaced by the Rights for Victims of Insane Offenders Act 2021.
- (3) In this clause, **matter** includes any—
  - (a) action undertaken:
  - (b) decision taken:
  - (c) notice given:
  - (d) proceeding commenced:
  - (e) application made:
  - (f) agreement entered into:
  - (g) requirement imposed.

**2 Transitional provision if leave decision and resulting leave fall either side of commencement date**

- (1) This clause applies if—
  - (a) a leave decision has been made; and
  - (b) as a consequence of the leave decision, a care recipient or a special care recipient is due to take, or is taking, leave when this clause commences.
- (2) The Director-General of Health may, to the extent that the Director-General considers appropriate in the circumstances, advise a victim of the leave decision as specified in sections 65D(2) and 67F(2).



- (3) In this clause, **leave decision** means a decision made before the commencement of this clause by—
- (a) a care manager to—
    - (i) authorise a care recipient to be on leave under section 65(1); or
    - (ii) extend a care recipient’s leave under section 65(2); or
    - (iii) cancel a care recipient’s leave under section 65(3); or
  - (b) the Minister to—
    - (i) authorise a special care recipient to be on leave under section 66(1); or
    - (ii) cancel a special care recipient’s leave under section 66(4); or
  - (c) the Director-General of Health to—
    - (i) authorise a special care recipient to be on leave under section 67(1); or
    - (ii) cancel a special care recipient’s leave under section 67(3).

## Schedule 4

### New Part 2 of Schedule 1AA inserted in Victims' Rights Act 2002

s 44

Schedule 4 heading: amended, on 21 December 2021, by section 39(a) of the Sexual Violence Legislation Act 2021 (2021 No 60).

#### Part 2

### Provision relating to Rights for Victims of Insane Offenders Act 2021

#### 2 Transitional provision

- (1) This clause applies to any matter initiated under section 17AA, 20, 21, 22, 22A, 26, or 28 before the commencement of this clause.
- (2) If this clause applies, the provisions of the relevant section, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been amended or replaced by the Rights for Victims of Insane Offenders Act 2021.
- (3) In this clause, **matter** includes any—
  - (a) action undertaken:
  - (b) decision taken:
  - (c) notice given:
  - (d) proceeding commenced:
  - (e) application made:
  - (f) agreement entered into:
  - (g) requirement imposed.

Schedule 4: amended, on 21 December 2021, by sections 39(b)-(e) of the Sexual Violence Legislation Act 2021 (2021 No 60).

## **Schedule 5**

### **Consequential amendments**

ss 19, 45, 46

#### **Part 1**

### **Consequential amendments to Mental Health (Compulsory Assessment and Treatment) Act 1992**

In section 46, replace “section 50” with “section 50A”.

In section 48, replace “section 50” with “section 50A”.

In section 51(1), replace “section 50” with “section 50A”.

In section 51(3), replace “section 50(1)” with “section 50A(1)”.

In section 51(5), replace “section 50(3)” with “section 50G(1)”.

In section 51(6), replace “section 50(1)” with “section 50A(2)”.

In section 51(7), replace—

(a) “section 50(3)” with “section 50G(1)”; and

(b) “section 50(1)” with “section 50A(2)”.

In section 52A(1)(a) and (2)(a), replace “section 50” with “section 50A”.

#### **Part 2**

### **Consequential amendments to Victims’ Rights Act 2002**

In section 17AA(1)(a)(i)(B), replace “section 20” with “section 17AAB”.

In section 21(2), replace “section 20” with “section 17AAB”.

Schedule 5 Part 2: amended, on 21 December 2021, by section 40(a) of the Sexual Violence Legislation Act 2021 (2021 No 60).

Schedule 5 Part 2: amended, on 21 December 2021, by section 40(b) of the Sexual Violence Legislation Act 2021 (2021 No 60).

#### **Part 3**

### **Consequential amendments to other enactments**

#### **Criminal Procedure Act 2011**

In section 200(6), replace “section 28” with “section 16B”.

#### **Residential Care and Disability Support Services Regulations 2018**

In regulation 6(f)(i), replace “section 50” with “section 50A”.

## Notes

### **1** *General*

This is a consolidation of the Rights for Victims of Insane Offenders Act 2021 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Sexual Violence Legislation Act 2021 (2021 No 60): sections 36–40