

## Individuals with an intellectual disability

The *Mental Health Act 2016* applies to individuals with an intellectual disability in a limited number of ways. It applies in relation to Magistrates' powers, reports on unsoundness of mind and fitness for trial, and in the forensic provisions of the Act.

### What is an intellectual disability?

The *Mental Health Act 2016* relies on the definition of 'intellectual disability' in the *Forensic Disability Act 2011*, namely:

- a disability characterised by significant limitations in intellectual functioning and adaptive behaviour that originates in a person before the age of 18.

An intellectual disability includes a cognitive disability as defined in that Act.

### What decisions can Magistrates make regarding individuals with an intellectual disability?

The *Mental Health Act 2016* provides that a Magistrate may discharge a person if the Magistrate is satisfied, on the balance of probabilities, that the person:

- was, or appears to have been, of unsound mind at the time of an alleged offence, or
- is unfit for trial.

This applies to individuals with any mental condition, including an intellectual disability.

See Factsheet: *Magistrates Court*

Where the person does not have a mental illness, a Magistrate may refer the person to an agency who may be able to provide treatment or care for the person.

For individuals with an intellectual disability, the Magistrate may refer the person to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships or the National Disability Insurance Agency, to see if suitable care is available for the person. A referral does not mandate the provision of any care for the person.

### Is a person with an intellectual disability entitled to a report about unsoundness of mind and fitness for trial?

A person subject to a Treatment Authority, Forensic Order or Treatment Support Order who is charged with a 'serious offence' is entitled to a free psychiatrist report that expresses an opinion about whether a person was of unsound mind at the time of an alleged offence or fit for trial. This may include a person with an intellectual disability.

See Factsheet: *Psychiatrist Reports*

Where a person is subject to a Forensic Order (disability) for which the Forensic



Disability Service is responsible, a person may request the Director of Forensic Disability (under the *Forensic Disability Act 2011*) for a senior practitioner (under that Act) to prepare a report.

Also, the Director of Forensic Disability may direct a report be prepared for a person with an intellectual disability if it is in the public interest.

### **How do the forensic provisions apply to individuals with an intellectual disability?**

A reference may be made to the Mental Health Court where a person with an intellectual disability is alleged to have committed a 'serious offence'. A reference may be made by the person, the person's lawyer, the Chief Psychiatrist or the Director of Forensic Disability.

Where the person has an intellectual disability:

- the Director of Forensic Disability may elect to be a party to the proceeding, and
- the Court may be assisted by a person with expertise in the care of individuals with an intellectual disability.

There are two types of Forensic Orders that the Court may make if a person is found of unsound mind or unfit for trial, namely:

- a Forensic Order (mental health)
- a Forensic Order (disability)

Forensic Order (mental health) is made if:

- the person's unsoundness of mind or unfitness for trial is due to a mental condition other than an intellectual disability, or
- the person has a dual disability (a mental illness and an intellectual

disability) and needs involuntary treatment and care for their mental illness, as well as care for their intellectual disability.

Forensic Order (disability) is made if:

- the person's unsoundness of mind or unfitness for trial is due to an intellectual disability, and
- the person needs care for their intellectual disability but does not need treatment and care for any mental illness.

A person on a Forensic Order (disability) may receive care from an authorised mental health service or the Forensic Disability Service (if the service has capacity to take on this responsibility).

See Factsheet: *Forensic Orders*

### **How is a Forensic Order (disability) reviewed?**

The Mental Health Review Tribunal reviews a Forensic Order (disability) every six months. If a person has been approved by the Tribunal to transfer out of Queensland, the requirement to conduct periodic reviews is suspended while the person subject to the Order is out of Queensland.

- The Director of Forensic Disability is a party to the Tribunal's proceedings if the person is subject to a Forensic Order (disability) for which the Forensic Disability Service is responsible.

For a person with a dual disability on a Forensic Order (mental health), the Tribunal must amend the order to a Forensic Order (disability) if the person no longer requires involuntary treatment for the mental illness.

## What role does the Director of Forensic Disability play in managing Information Notices for Victims?

A registered victim of an unlawful act has a right to receive particular information about the person subject to a Forensic Order (or Treatment Support Order). This is known as an 'Information Notice'.

The Director of Forensic Disability manages Information Notices made in relation to a person subject to a Forensic Order (disability) for which the Forensic Disability Service is responsible.

See Factsheet: *Support for Victims*

## More information

Mental Health Act 2016

[www.health.qld.gov.au/mental-health-act](http://www.health.qld.gov.au/mental-health-act)

Forensic Disability Act

[Forensic Disability Act 2011](http://legislation.qld.gov.au/Forensic%20Disability%20Act%202011)

[\(legislation.qld.gov.au\)](http://legislation.qld.gov.au/)

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

<https://www.dsdsatsip.qld.gov.au/our-work/disability-services>

National Disability Insurance Agency

<https://www.ndis.gov.au/>

Contact your local mental health service

1300 MH CALL (1300 642255)

[www.qld.gov.au/health/mental-health/help-lines/services](http://www.qld.gov.au/health/mental-health/help-lines/services)

## Resources

Factsheet: [Magistrates Court](#)

Factsheet: [Psychiatrist Reports](#)

Factsheet: [Forensic Orders](#)

Factsheet: [Support for Victims](#)