

Support for Victims

The *Mental Health Act 2016* supports victims of unlawful acts by enabling victims to present victim impact statements to the Mental Health Court and the Mental Health Review Tribunal, and by enabling victims to receive specific information about persons on forensic orders and treatment support orders.

Who is a victim?

The Mental Health Act 2016 defines a victim, of an unlawful act, as a person against whom the unlawful act was committed or allegedly committed.

How does the Act recognise victims?

The Act establishes a set of principles which persons performing functions under the Act must have regard to.

The principles include:

- the physical, psychological and emotional harm caused to the victim by the unlawful act must be recognised with compassion
- the benefits of counselling, advice on the nature of proceedings under the Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised, and
- the benefits to the victim of being advised in a timely way of proceedings under the Act against a person in relation to the unlawful act must be recognised.

The principles apply to:

- a victim of an unlawful act
- a close relative of the victim, and
- another person who has suffered harm because of an unlawful act.

What is a Victim Impact Statement?

The Act support victims of unlawful acts committed by persons who have a mental condition by allowing victims to present victim impact statements to the Mental Health Court and the Mental Health Review Tribunal.

A victim impact statement may be prepared and presented to the Court by a victim or a close relative of the victim if the Mental Health Court decides a person

was of unsound mind when the offence was allegedly committed or is unfit for trial.

The victim impact statement may include a request that the Court impose a condition on an order that the person not contact the victim, close relative or other person.

The Mental Health Court is required to have regard to the victim impact statement in deciding matters such as the order to make and the conditions on the order.

The Mental Health Court must not disclose the victim impact statement to the relevant person unless the victim or close relative asks that the statement be disclosed. However, the Court may prohibit the disclosure to the person if the Court is satisfied that it may adversely affect the health and wellbeing of the person. In these cases, the statement may be disclosed to the patient's lawyer.

When the Court registrar gives notice of the Court's decision to the Tribunal, it must also provide any victim impact statement to the Tribunal.

If a victim impact statement is given to the Tribunal by the Court, another victim impact statement is not required. However, a new one may be prepared by the victim if they choose to do so.

The Tribunal must have regard to a victim impact statement in the review of a forensic order or treatment support order.

The same confidentiality provisions apply to the Tribunal as apply to the Court.

What is an Information Notice?

A victim may apply to the chief psychiatrist for the right to receive particular information about a person who is subject to a forensic order or treatment support order. This is known as an 'information notice'.

Another person who has suffered harm because of the unlawful act and has sufficient personal interest in receiving the information may also apply for an information notice.

The applicant may nominate another person to receive information under the notice on behalf of the person.

An application by a victim must be decided within 14 days, and within 28 days if the application is made by another individual.

What information is received under an Information Notice?

The chief psychiatrist must ensure that a person entitled to receive information about a patient under an information notice receives the information as outlined in Schedule 1 of the Act.

This includes information about the timing and outcome of Tribunal reviews, information about appeals, and information about patient absences if it is relevant to the safety and welfare of the person.

Information about a patient being absent is to be given to the person as soon as practicable after the chief psychiatrist becomes aware of it. Other information is to be provided within 14 days. The chief psychiatrist may make arrangements with a victim support service (the Queensland Health Victim Support Service) to provide the information on behalf of the chief psychiatrist.

What confidentiality provisions apply?

The chief psychiatrist (or other person performing a function under the Act) must not tell the relevant patient of the making of an information notice.

However, the applicant may request that the relevant patient be advised that an information notice has been made, or that an information notice has been made and the name of the person receiving the information. This patient may be advised of this if the chief psychiatrist or an authorised doctor considers it is in the best interests of the patient.

The person receiving information under an information notice must not publish the information unless it is permitted by law.

How do the provisions apply to Forensic Disability Clients?

The information notice provisions apply to persons on a forensic order (disability) for which the forensic

disability service is responsible. The Director of Forensic Disability (under the Forensic Disability Act 2011) is responsible for these information notices.

Can an information notice be revoked?

The Act provides that an information notice is automatically revoked under particular circumstances, including where the chief psychiatrist is satisfied the disclosure of information is likely to result in serious harm to the patient's health or welfare, or put the safety of the patient or someone else at risk.

The chief psychiatrist may revoke the information notice under particular circumstances, including where the person has contravened the confidentiality obligations under the Act. A 'show cause' process applies to these revocations.