

Support for victims

The *Mental Health Act 2016* supports victims of unlawful acts by enabling them to present victim impact statements to the Mental Health Court and Mental Health Review Tribunal. Support is also provided through the provision of specific information about a person subject to a Forensic Order or Treatment Support Order that is relevant to a victim's safety and welfare.

Who is a victim?

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

How does the Act recognise victims?

The Act establishes a set of principles which a person performing a function 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 allows victims to present victim impact statements to the Mental Health Court and the Mental Health Review Tribunal.

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 type of 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?

If a Forensic Order or Treatment Support Order is made by the Mental Health Court, a victim or person affected by the relevant unlawful act, may apply to the Chief Psychiatrist or Director of Forensic Disability for an Information Notice.

An application may be made by:

- a victim of the relevant unlawful act
- a close relative of a victim, and
- another person who:
 - has suffered harm because of the relevant unlawful act, and
 - has a sufficient person interest in receiving information about the relevant patient.

An Information Notice provides the approved applicant with particular information about the relevant patient (of an authorised mental health service) or client (of the Forensic Disability Service).

Information is provided while the person remains under the order and if an order is revoked, while any appeal of the revocation is ongoing.

An Application for Information Notice must be submitted via the Queensland Health Victim Support Service.

How do the provisions apply to Forensic Disability Clients?

The Information Notice provisions apply to persons on a Forensic Order (disability) for whom the Forensic Disability Service is responsible. The Director of Forensic Disability (under the *Forensic Disability Act 2011*) is responsible for these Information Notices.

What is the Queensland Health Victim Support Service (QHVSS)?

The QHVSS is a free statewide service that provides specialised counselling, support and information to victims of crime when the offender has been assessed as having a mental illness and/or intellectual disability.

The QHVSS operates independently of the Office of the Chief Psychiatrist.

Information provided under an Information Notice is given via the QHVSS.

More information is available on the QHVSS website at:
www.health.qld.gov.au/qhvss

What happens after an application is submitted?

The Chief Psychiatrist or Director of Forensic Disability must make a decision on an *Application for Information Notice* within 14 days of receiving the application (direct victim or close relative of a direct victim) or within 28 days for a person with sufficient personal interest.

In deciding the application, the following is considered:

- that the applicant meets the eligibility criteria set out in the Act, and
- whether disclosing information under the Information Notice would cause serious harm to the patient's health or put the safety of any person at risk.

Once a decision is made, notification of the decision will be provided to the applicant via the QHVSS.

If the applicant does not agree with the decision, they may appeal to the Mental Health Review Tribunal (Tribunal) within 28 days of receiving the decision (refer to information about appeals below).

What information is received under an Information Notice?

Information provided under an Information Notice includes:

- when a review of the person's treatment order and/or fitness for trial is going to be carried out by the Tribunal
- the Tribunal's decision on review to confirm (continue) or revoke (cancel) the order

- the Tribunal's decision on review of the person's fitness for trial (this occurs when the Mental Health Court has decided the person is temporarily unfit for trial and the Tribunal will regularly review if the person is able to stand trial, or may eventually be found Permanently Unfit for Trial)
- whether approval has been given for the person to have some or all of their mental health treatment outside the hospital (i.e. in the community)
- if the Tribunal decides to increase the level of mental health treatment in the community, the Tribunal will provide reasons for this decision
- any conditions made by the Tribunal in relation to the order (if relevant to the approved applicant's safety and welfare)
- if an appeal has been made to the Mental Health Court for a decision made by the Tribunal, including the nature of the appeal
- when an appeal hearing is due to take place and notification of the Mental Health Court's decision on the appeal
- if the person has been transferred from one mental health service to another or to the Forensic Disability Service
- when a hearing is scheduled for a person's application to transfer to a mental health service out of Queensland (including overseas)
- that the person's order has ended because they have transferred out of Queensland

- that the Tribunal has revoked the person's treatment order and the reason for the revocation
- that the person is required to return to an authorised mental health service (if relevant to the approved applicant's safety and welfare)
- that the person has returned to the authorised mental health service (if the notice of the absence was given)

Information about a person being required to return is to be given to the approved applicant as soon as practicable after the Chief Psychiatrist or Director of Forensic Disability becomes aware of it.

Other information is to be provided within 14 days.

Can someone else receive the information on behalf of an eligible person?

An eligible person may nominate another person to receive information on their behalf. The nominee is entitled to receive the information only for the purpose of providing the information to the eligible person as the approved person under the Information Notice.

An eligible person may nominate a person to receive the information at the time they make the application or at any time after the Information Notice is made.

They may also cancel the nominee at any time via written request to the QHVSS if they no longer want the nominee to receive the information.

The QHVSS will provide all information under the Information Notice to the nominee.

However, in certain circumstances, information must be provided directly to the approved applicant. For example, if the Information Notice is revoked (cancelled), a written notice must be provided to the approved applicant and their nominee.

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, with or without identifying the name of the person receiving the information. The patient may be advised of this only if 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.

If information is shared with the public (e.g. published on social media) the Information Notice may be cancelled and a fine may be issued.

Can an Information Notice be ended or revoked?

The Act provides that an Information Notice is ended or revoked under particular circumstances.

An Information Notice ceases to have effect if:

- the patient is no longer subject to a Forensic Order or Treatment Support Order
- the patient has been transferred out of Queensland

- the person entitled to receive information under the notice notifies the Chief Psychiatrist that the person no longer wishes to receive the information
- the Chief Psychiatrist revokes the information notice, including where 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 or Director of Forensic Disability may revoke an Information Notice under particular circumstances, including where the person has contravened the confidentiality obligations under the Act i.e. information under the notice has been disclosed to the public.

A 'show cause' process applies to these revocations which means the Information Notice holder will be provided a reasonable opportunity for a submission to be made about why the Notice should not be revoked.

If the QHVSS, after making reasonable efforts, is unable to contact an Information Notice holder, they may make a recommendation to Chief Psychiatrist or Director of Forensic Disability that the Information Notice may be revoked.

What happens after the Information Notice ends?

When an Information Notice is ended or revoked, a written notice of the decision is provided within 7 days of the decision being made, including reasons why the Notice has ended (and how to appeal the decision if relevant).

If the Information Notice holder does not agree with the decision, they may appeal to the Mental Health Review Tribunal (Tribunal) within 28 days of receiving the decision.

While no longer able to receive patient information, the person may wish to remain in contact with the QHVSS for counselling, information about the mental health and legal system and other support services.

Information about classified patients

The Chief Psychiatrist may disclose particular information to a victim or other person affected by an unlawful act relating to a person admitted to an authorised mental health service from a court or place of custody (classified patient).

The types of information provided about classified patients are explained in the factsheet *Victim Information – Classified Patients*

Useful Links

Mental Health Act 2016

www.health.qld.gov.au/mental-health-act

Queensland Health Victim Support Service

Phone: 1800 208 005

Email: Victim.Support@health.qld.gov.au

Web: www.health.qld.gov.au/qhvss

Resources

Form: [Application for Information Notice](#)

Factsheet: [Forensic Orders](#)

Factsheet: [Treatment Support Orders](#)

Factsheet: [Individuals with an intellectual disability](#)

Factsheet: [Victim Information – Classified Patients](#)