



Role of the Mental Health Review Tribunal: information for victims

The Queensland Health Victim Support Service (**QHVSS**) has been established to assist victims to navigate the forensic mental health system. The QHVSS is a free, state-wide service that provides specialised counselling, information and support to victims of crime where the person accused of the crime is on a forensic order or treatment support order. Contact details for QHVSS are set out below.

Victims should contact QHVSS as their point of contact in relation to Tribunal hearings. QHVSS can assist victims:

- by answering questions victims may have about Tribunal proceedings.
- to obtain an information notice so that the victim can receive information about Tribunal hearings.
- to provide a victim impact statement.

The Queensland Forensic Mental Health System and the Mental Health Court

Queensland has a unique legal system for responding to persons with a mental illness or intellectual disability who have committed a serious offence. A specialised Mental Health Court has been established to determine whether a person with a mental illness and/or intellectual disability is of “unsound mind” or “unfit for trial” in relation to a criminal offence.

Where this is the case, the person is not considered to be criminally responsible for the offence and is diverted from the criminal justice system. Instead, the person may be placed on a **forensic order** or a **treatment support order** for treatment or care, and for management of their risks to the community.

If an order is made, the Mental Health Court will also decide if the person must live in an inpatient mental health unit (inpatient category) or if the person can receive treatment and care while living in the community (community category). The Court may also make the order subject to conditions which require the person to do certain things (e.g. live at a certain place) or not do certain things (e.g. not drink alcohol).

The Mental Health Review Tribunal

The Mental Health Review Tribunal (known as the Tribunal or the MHRT) has responsibility for reviewing forensic and treatment support orders each six months. At each review, the Tribunal will determine if the order needs to continue, the category of the order (inpatient or community) and decide if any conditions should be removed, changed or made on the order.

For each forensic order or treatment support order review, the Tribunal will be made up of 3 to 5 Tribunal members, but will always include at least a legal member, a psychiatrist member and a community member.



In addition to six-monthly reviews, a review will occur when requested by the patient (or an interested person on their behalf), the Attorney-General or the Chief Psychiatrist or the Director of the Forensic Disability (as applicable). The Tribunal may also initiate a review at any time on its own initiative.

When making decisions, the Tribunal must consider the rights and principles set out under the Queensland *Human Rights Act 2019* and the principles set out in the *Mental Health Act 2016*.

There are two sets of principles in the *Mental Health Act 2016*, one for persons with mental illness and one for victims and others (which apply to victims of an unlawful act, a close relative of a victim of an unlawful act and other individuals who have suffered harm because of an unlawful act committed against a victim). The victims' principles are:

- 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 this Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised.
- the benefits to the victim of being advised in a timely way of proceedings under this Act against a person in relation to the unlawful act must be recognised.
- the benefits to the victim of being advised in a timely completion of proceedings against a person in relation to the unlawful act must be recognised.
- the benefits to the victim of being advised in a timely way of a decision to allow a person to be treated in the community must be recognised.
- the benefits to the victim of being given the opportunity to express the victim's views on the impact of the unlawful act to decision-making entities under the *Mental Health Act 2016* must be recognised.

Who can attend a Tribunal hearing?

Under the *Mental Health Act 2016*, Tribunal hearings are not open to the public and proceedings are confidential.

Generally, attendees will include:

- the patient and their legal representative, advocate or support person.
- the treating team (psychiatrist, case manager or forensic liaison officer) who attend to give evidence about the person's progress, treatment and risk issues.
- the Attorney-General's representative who has a right to attend all forensic order hearings and whose role is to represent the public interest.

Victims are not permitted to attend Tribunal hearings.

Reviews of forensic orders and treatment support orders

The *Mental Health Act 2016* sets out the decisions that the Tribunal must make, and the considerations the Tribunal must take into account and the criteria the Tribunal must apply when making those decisions.

The Tribunal will receive written evidence in the form of medical reports and submissions and may hear oral evidence from the patient, the treating team or other experts about matters relevant to their



decision-making, including the person's treatment, their level of ongoing risk and the mental health service's plans to manage the risk.

Confirm or revoke the order

The Tribunal **MUST** confirm (i.e. continue) a forensic order or treatment support order if it considers the order is *necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.*

The *Mental Health Act 2016* requires the Tribunal to consider:

- the patient's "relevant circumstances" that is, their mental state and psychiatric history, any intellectual disability, their social circumstances and response to treatment and care, as well as their willingness to receive appropriate treatment and care and their response to any previous treatment in the community.
- the nature of the offence and the time that has passed since.
- any victim impact statement.
- any recommendations about intervention program made by the Mental Health Court.

Deciding the category

In the case of a forensic order, the Tribunal may only make the order community category if satisfied there is not an unacceptable risk to the safety of the community, otherwise the category must be inpatient.

In the case of a treatment support order, the Tribunal must make the category of the order community unless the Tribunal considers one or more of the following can not reasonably be met if the category is community:

- the patient's treatment and care needs;
- the safety and welfare of the patient; or
- the safety of others.

Conditions

The Tribunal may also impose or remove a condition on the order. Examples of conditions include that:

- the person must not initiate contact with a victim (or other specified person).
- the person must not use illicit drugs or alcohol and must comply with testing for these.
- the person must not have unsupervised contact with children under the age of 18.
- the person must not drive a motor vehicle without the permission of the treating psychiatrist.

Conditions are made when the Tribunal decides, after considering evidence about risk and relevance, they are needed to mitigate risk. For example, if illicit drug use was a factor in the original offence, this would be highly relevant to the Tribunal. If drugs or alcohol use have not been a feature of the person's history, or there is evidence of long-term abstinence, the Tribunal may not consider these conditions relevant to ensuring the safety of the community.

What the Tribunal does not do

- **Treatment:** the Tribunal does not manage a patient's treatment and care – that is the responsibility of the authorised mental health service or forensic disability service.



- **Clinicians:** the Tribunal does not assess clinicians' practice or decision-making for a particular patient.
- **Services:** the Tribunal does not provide any health services to patients.
- **Compliance with the *Mental Health Act 2016*:** the Tribunal does not monitor compliance with the Act by clinicians and mental health services.

Victim involvement

The *Mental Health Act 2016* supports victims in two main ways:

- victims are entitled to provide a written submission (known as a **victim impact statement**) to the Mental Health Court or the Mental Health Review Tribunal.
- victims may receive information, via an **information notice**, from the Office of the Chief Psychiatrist about the patient's Tribunal hearings, absences and relevant treating service.

Further information about both of these supports is provided below.

Victim Impact Statements

For the purposes of victim impact statements 'victim' has a narrower meaning than when considering the victims principles set out above, meaning only victims and close relatives of victims.

Victims are encouraged to participate in Tribunal reviews through providing a written victim impact statement. If a victim impact statement was provided to the Mental Health Court, it will subsequently be provided to the Tribunal. Victims may also provide a victim impact statement directly to the Tribunal.

The Tribunal is obliged to have regard to any victim impact statement at each hearing.

Contents of a victim impact statement

A victim impact statement means a written statement that:

- is signed and dated.
- states the particulars of the harm caused to a victim, or close relative of the victim, by the unlawful act.
- may have attached to it:
 - documents supporting the particulars; or
 - photographs, drawings or other images.

A victim impact statement enables a victim:

- to express the impact of the unlawful act on the victim and the harm they have suffered (e.g. impacts may be physical, emotional, social or financial).
- to request specific conditions, such as a condition prohibiting the patient contacting the victim, be imposed.

The Tribunal retains the discretion to endorse or remove conditions on a person's order and utilises a wide variety of information, including the information within a victim impact statement, to make this decision.



Confidentiality of victim impact statements

Generally, victim impact statements are kept confidential from the patient.

However, the victim impact statement may be provided to the patient if:

- the author of the victim impact statement requests it be provided to the patient; AND
- the Tribunal is satisfied the disclosure of the victim impact statement will not adversely affect the health and wellbeing of the patient.

Victim impact statements are disclosed to the Attorney-General's representative and may be disclosed to the patient's treating team or legal representative.

Additional victim impact statements

The victim impact statement will be provided to the Tribunal panel at the next scheduled hearing and for each hearing after that.

Victims are also entitled to provide a new or updated victim impact statement as and when they would like to do so. Victims are not obliged to update, or replace, their victim impact statement and the Tribunal acknowledges that for many victims revisiting the events of what occurred will be distressing.

Victims may wish to provide a new victim impact statement:

- to inform the Tribunal of any emerging or ongoing issues that are meaningful for the victim.
- if there have been changes in the way in which the offending has impacted the victim.
- if the victim's own circumstances have changed (e.g. they have moved so any restrictions on the patient travelling to the victim's residential suburb may need be changed).

If a new victim impact statement is received, the new victim impact statement only (not any previous victim impact statements) will be provided to the Tribunal at the next scheduled hearing and each hearing after that. The exception to this general rule is where the author of the victim impact statement specifically requests that the previous victim impact statement/s continue to be provided to the Tribunal.

Where the Tribunal is considering significant change to an order (such as the removal of conditions, extending leave, changing the category from inpatient to community or revocation of the order), the views of a victim through an updated victim impact statement can be highly relevant to a decision. While the Tribunal will not be able to let victims know ahead of time when changes may be considered, it is a reason for considering the submission of a new victim impact statement in the above circumstances. This is one of the areas in which QHVSS can assist victims on an ongoing basis.

Information Notices

An information notice allows a victim to be provided with certain information about the patient from the Chief Psychiatrist, via QHVSS.

The information to be provided under the information notice is:

- the date and time of hearings.
- information about applications to the Tribunal to transfer the patient out of Queensland.



- a written statement of a decision of the Tribunal identifying the date of the decision and the decision made. If the Tribunal's decision increased the extent of treatment in the community received by the patient, a brief explanation of the reasons for the decision.
- information about any appeals relating to the patient's order.
- information about the patient being absent without approval only if the Chief Psychiatrist is satisfied the information is relevant to the recipient's safety and welfare.
- the name of the authorised mental health service responsible for the patient.
- the fact that the patient has transferred from one mental health service to another.

It is important that victims advise the QHVSS of any changes to contact details so it can advise you of the outcomes of a Tribunal hearing.

The existence of an information notice and the name of any person who has requested it is confidential and will not be disclosed to a patient except in very limited circumstances and only when a victim requests that such information be provided to the patient.

Further Information

Further information about the Queensland Health Victim Support Service can be found at [Queensland Health Victim Support Service | Queensland Health](https://www.health.qld.gov.au/victim-support). QHVSS can be contacted at victim.support@health.qld.gov.au or phone (free call) 1800 208 005.

The Office of the Chief Psychiatrist has produced factsheets including in relation to Victim Impact Statements and Information Notices. Further details can be found at [Victim Support | Queensland Health](https://www.health.qld.gov.au/victim-support).

For further information about the role of the Tribunal, the Tribunal's Policy Officer can assist. They can be contacted at PolicyOfficer@mhrt.qld.gov.au or telephone 07 3338 8300. Further information about the Tribunal can also be found at www.mhrt.qld.gov.au.