



# Preparing for an MHRT Hearing

## Confidentiality orders – For requestors

This information is to assist you in understanding and completing a Request for Confidentiality Order regarding information or documents you are providing to the MHRT.

### What is a confidentiality order?

The *Mental Health Act 2016 (Act)* entitles the person who is the subject of the hearing (e.g. the patient) to access the information and documents the MHRT will take into account when making a decision UNLESS there is a confidentiality order that restricts the person from having access.

The MHRT may restrict the disclosure of any of the following to the person by making a confidentiality order (see section 722 of the Act):

- information given before the MHRT
- matters contained in documents filed with or received by the MHRT
- the reasons for the MHRT's decision on a proceeding.

A confidentiality order is not required for victim impact statements as the Act states that victim impact statements are confidential and must not be disclosed to the person except in certain circumstances.

### When will the MHRT consider making a confidentiality order?

The MHRT can itself decide whether to consider making a confidentiality order. Alternatively, the MHRT will consider making a confidentiality order if it receives a request to do so.

The MHRT may only make a confidentiality order if it is satisfied the disclosure of the documentation or information to the person would:

- cause serious harm to the health of the person; or
- put the safety of someone else at serious risk.

### Who can request that the MHRT make a confidentiality order?

Persons who are giving documents or information to the MHRT may request the MHRT make a confidentiality order in respect of those documents or information.

### How is a request for a confidentiality order made?

It is the MHRT's preference that all requests are made using the template Request for Confidentiality Order form, which can be found on the MHRT's website.

The form should be completed and lodged with the MHRT at least 7 days prior to the relevant hearing.

The completed form should be lodged with the relevant documentation or information. If the request relates to only part of a document, the relevant section(s) should be clearly marked.



## **What happens when the MHRT receives a request for confidentiality order?**

When the MHRT receives a request, a lawyer will be appointed to represent the person at the hearing, at no cost to the person (if they do not already have a lawyer representing them). The request form and relevant documentation or information will be provided to the person's lawyer. The lawyer **MUST NOT** disclose the documentation or information to the person.

## **How is the confidentiality order decided?**

The person submitting the request may be asked by the MHRT to attend the hearing and answer questions about the request to assist the MHRT in making the decision about whether to make the confidentiality order.

If the request relates to:

- a report prepared by the Community Forensic Outreach Service (known as CFOS) – the person attending from the treating team should have a good understanding of why CFOS has requested a confidentiality order so that they can answer questions from the MHRT at the hearing.
- the clinical report – the treating psychiatrist should attend the hearing.

The MHRT will ordinarily consider the request at the beginning of the hearing. This will be done in the absence of the person, with the appointed lawyer speaking on their behalf. The MHRT may ask questions of the attendees at the hearing and will allow the person's lawyer the opportunity to make submissions. The MHRT members may require some time to privately deliberate on their decision. Generally, the MHRT's decision will be announced at the hearing.

## **What decision can the MHRT make in relation to a confidentiality order?**

In response to a request, the MHRT will decide to either make the confidentiality order or refuse the request.

The confidentiality order can only apply to the provision of certain documentation or information to the person the subject of the hearing.

Where time allows, the MHRT will then continue the hearing to make a decision in relation to the substantive matter being considered. If there is not sufficient time to conduct the hearing, the MHRT may adjourn the hearing and it will be rescheduled at a later date.

## **What happens if the MHRT makes a confidentiality order?**

The documentation or information listed in the confidentiality order must not be disclosed to the person by anyone. This continues to apply even after the hearing, including at future hearings. The person's lawyer will be provided with a document setting out the reasons that the MHRT made the confidentiality order.

Generally, the MHRT will allow the attendees to ask questions or make submissions about the confidential documentation or information while the person is not present at the hearing. When the person is present at the hearing, the confidential information must not be mentioned.



### **What happens if the MHRT does not make the requested confidentiality order?**

The documentation or information that was the subject of the request will be made available to the person for the purposes of the hearing. Depending on the nature and length of the documentation and information, the matter may be paused for a short period or adjourned to another date to allow the person sufficient time to consider the content and prepare their response.

The template request form asks the requestor if they would like the documentation or information to be withdrawn if the confidentiality order is not made. If the material is withdrawn, it would not be considered by the MHRT in its decision making and it would not be provided to the person. However, it is ultimately a decision for the MHRT whether to allow material to be withdrawn and in some circumstances, the MHRT may refuse the request for the material to be withdrawn.

### **Where can I find more information?**

Treating teams can refer to the Confidentiality Orders Flow Chart for AMHSs for more information.

Otherwise, you can contact the MHRT on telephone (07) 3338 8300 or via email to [MHRT.Enquiry@mhrt.qld.gov.au](mailto:MHRT.Enquiry@mhrt.qld.gov.au).