

# Submission

## Victims' Commissioner's review of Charter of Victims' Rights

This submission provides an overview of the provisions in the *Mental Health Act 2016* (Qld) (the MHA 2016) which support victims, details the alignment of the MHA 2016 with the principles within the Charter of Victims' Rights (the Charter), and considers questions relevant to the Victim Commissioner's review.

### Background

The MHA 2016 and the Charter are closely aligned, with both aiming to ensure the protection, dignity, and participation of victims in decisions which may impact them.

The MHA 2016 explicitly recognises victims and their close relatives, defining their rights to information, participation, and support within legal processes which are governed by the MHA 2016. The framework ensures victims receive timely notification about proceedings, decisions, and treatment matters related to alleged offenders, aligning with the Charter's emphasis on transparency, empowerment, and dignity for victims.

The MHA 2016 also incorporates principles such as respect, compassion, and participation, which mirror and operationalise the Charter's fundamental objectives. Both frameworks promote trauma-informed, victim-centred approaches, ensuring victims' experiences are acknowledged and that victims are supported throughout the justice and mental health systems.

### *Mental Health Act 2016*

#### Definition of a victim

The MHA 2016 defines a victim as:

- a) a victim of an unlawful act;
- b) a close relative of a victim of an unlawful act; and
- c) another individual who has suffered harm because of an unlawful act committed against a person mentioned in paragraph (a).

An unlawful act is defined as being done by a person and includes an act or omission of the person constituting an offence with which the person is charged.

#### Principles

The MHA 2016 establishes a set of principles in relation to victims of unlawful acts. These principles apply to the administration of the Act in relation to victims and support the operation of two of the main objects of the MHA 2016 which relate to diversion away from the criminal justice system and protection of the community.

The principles are closely aligned to the rights and principles outlined in the Charter.

The principles are as follows:

- 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 MHA 2016 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 the 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; and
- 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 this Act must be recognised.

## Information notices

Under the MHA 2016, victims may receive information under 'information notices' that are approved by the Chief Psychiatrist<sup>1</sup>. The MHA 2016 mandates criteria and timeframes application decisions.

The two pathways to an information notice are:

- 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 for an information notice. An application may be made by:
  - a) a victim of the relevant unlawful act;
  - b) a close relative of a victim, and
  - c) 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.
- The Chief Psychiatrist may also disclose information to a victim or other person affected by an unlawful act about a person admitted to an authorised mental health service from a court or place of custody (known as a classified patient).

An information notice provides approved applicants with particular information about the relevant patient. Information is provided via the Queensland Health Victim Support Services (QHVSS). The MHA 2016 also supports an eligible person nominating another person to receive the information notices on their behalf.

Information provided may include:

- 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;
- whether approval has been given for the person to have some or all of their mental health treatment 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);

<sup>1</sup> The Director of Forensic Disability may approve an information notice for a person who is the alleged victim of a client of the Forensic Disability Service.

- that the person has returned to the authorised mental health service (if the notice of the absence was given), and
- the start and end of a classified patient admission.

Information is to be given to the approved applicant as soon as practicable after the Chief Psychiatrist becomes aware of it.

As part of this information sharing framework, the MHA 2016 also includes confidentiality provisions, including:

- the Chief Psychiatrist (or other person performing a function under the MHA 2016) 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 must not publish the information unless it is permitted by law. If information is shared with the public (for example, published on social media) the information notice may be cancelled and there is a financial penalty unit available with MHA 2016 if required.

Information notices can be ended or revoked under particular circumstances as outlined in the MHA 2016. A person who is dissatisfied with the decision of the Chief Psychiatrist to end or revoke an information notice may appeal the decision to the Tribunal.

## Victim impact statements

The MHA 2016 supports victims to provide victim impact statements to the Mental Health Court and the Tribunal. 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. Additionally, if a victim gives a prosecuting authority (such as the Director of Public Prosecutions) a victim impact statement, this statement must be submitted to the Court. Victim impact statements can include specific requests, such as the request for the Mental Health Court to impose a condition on an order that the person not contact the victim, close relative or other person.

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

When the Mental Health 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, it must be considered by the Tribunal and a new victim impact statement is not required. However, a new statement may be prepared by the victim at any time 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.

## Support for victims

The QHVSS is a statewide service that operates out of Metro North Hospital and Health Service. The QHVSS was established in response to the *2006 Butler Review Promoting balance in the forensic mental health system – Final Report – review of the Queensland Mental Health Act 2000* and provides specialised counselling, support and information to victims of crime when the person charged has been assessed as having a mental illness or intellectual disability. It is a free statewide service.

The QHVSS carries out all communication with victims which are required under the MHA 2016 on behalf of the Chief Psychiatrist. The QHVSS works closely with the Office of the Chief Psychiatrist, treating teams and other stakeholders such as the Queensland Police Service and the Office of the Director of Public Prosecutions, to ensure victims are supported when an alleged offender interacts with the MHA 2016 framework.

## The Charter Rights and intersection with MHA 2016

The MHA 2016 framework supports the Charter by ensuring victims affected by unlawful acts by a person with a mental illness or intellectual disability are not excluded from rights to information, participation, and support, and are expressly recognised within Queensland's legal framework. Through aligned provisions and principles, the MHA 2016 operationalises the Charter's rights within the specific context of mental health law, creating a consistent, integrated approach to victim rights, protection, and wellbeing in Queensland.

### Addressing Charter Review Questions

The MHA 2016 provisions and processes address the current Charter review questions as follows:

- The distinct victim provisions within the MHA 2016 ensure that the rights, experiences, and needs of victims are not marginalised.
- The principles requiring compassion, timely notification, consultative opportunities, and access to information mirror the objectives of the Charter.
- The MHA 2016 requires, in practice, regular communication with victims regarding significant events, including revocation of orders or transfers.
- Ongoing support and recognition of harm, in both procedural and substantive terms, demonstrate the MHA 2016 adaptability to diverse victim experiences. These mechanisms should be reflected in the Charter to improve enforceability, transparency, and accountability.

In relation to the review's consideration of whether the Charter should specifically include rights of victims whose matters have been diverted to the Mental Health Court, the Office of the Chief Psychiatrist considers instead that the current Charter definition of victim may benefit from expansion.

The Charter defines a victim as a person who:

- has been harmed by a violent crime committed against them
- is a family member or dependent of a person who has died or suffered harm because of a violent crime
- has suffered harm because they are a family member of an unborn baby who died as a result of a violent crime
- has suffered harm because they intervened to help a person who has died or suffered harm because of a violent crime.

The MHA 2016 definition is broader than the Charter. The definition of victim also varies across other government agencies and departments. It is recommended that the Charter definition of victim be broad enough to capture victims outside of the criminal justice system, which would replace any need to specifically reference mental health matters.

It is important that the principles for victims in the MHA 2016 continue to exist as they provide legislated protections and principles for victims. This recognition within the legislation was a fundamental change introduced in 2016 to provide clarity and achieve a greater balance between the rights of patients and the rights of victims within the MHA 2016 framework.

The Charter and the MHA 2016 intersect to ensure that victims are treated with dignity, offered support and receive relevant information.

### Recommendations for Charter Revision

It would be beneficial to the functions and operations of the MHA 2016 that its principles, especially those relating to victim rights and support, are explicitly referenced and adopted within any revision of the Charter of Victims' Rights. This will help ensure that the rights of vulnerable groups such as those that have been harmed by a person diagnosed with a mental illness are supported both under the MHA 2016 and under the Charter:

- The Charter must reflect and reinforce the MHA 2016 provisions regarding timely notification, involvement in proceedings, access to information, and respect for privacy.

- Support for victims must be ongoing, encompassing both initial impact and recovery phases, aligning with the MHA 2016 framework.
- Incorporation of the MHA 2016 principles will strengthen the alignment between victim support, procedural fairness, and therapeutic outcomes in both justice and mental health domains.

By directly incorporating and referencing the MHA 2016 and its principles, the Charter will be equipped to meet the contemporary needs of victims of crime, especially in matters where a person is subject to the MHA 2016, ensuring robust protection, procedural clarity, and effective support.