



LBR 2/00 The Queensland Mental Health Bill 2000: Reforms to Victims' Rights in Relation to Proceedings and Notification Orders

The *Mental Health Act 1974* (Qld) currently regulates the system for determining the mental state, treatment and care of a person with a mental illness or an intellectual disability who commits an offence. A review of the Act has raised concerns about the openness and accountability of decision-making and the role of victims in the process.

The Mental Health Bill 2000 proposes a number of reforms to the mental health system, some of which specifically address the needs of victims of crime. These reforms are designed to ensure that the mental health system fulfils the goal of balancing the rights of mentally ill persons charged with a criminal offence with the necessary protection of the community, victims and families by processes that are just, open and accountable.

Changes which address the role of victims under the Bill include proposals to enable victims of crime, in defined circumstances, to provide relevant information to the new Mental Health Court or to the new Mental Health Review Tribunal and to receive notification of certain hearings and decisions about the offender.

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LEGISLATION BRIEF

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CONTENTS

1	INTRODUCTION	1
2	VICTIMS OF CRIME AND PROCEEDINGS IN RESPECT OF AN OFFENDER UNDER THE <i>MENTAL HEALTH ACT 1974</i> (QLD).....	2
3	INCLUSION OF INPUT OF VICTIMS IN DETERMINATION	5
3.1	THE CURRENT LEGISLATION	5
3.2	THE 1999 DISCUSSION PAPER	5
3.3	THE MENTAL HEALTH BILL 2000	7
3.4	OTHER JURISDICTIONS	8
4	NOTIFICATION OF RELEASE AND LEAVE DETERMINATIONS... 10	
4.1	THE CURRENT LEGISLATION.....	10
4.2	THE 1999 DISCUSSION PAPER	10
4.3	THE MENTAL HEALTH BILL 2000	12
4.4	OTHER JURISDICTIONS	15
5	CONCLUSION.....	16

1 INTRODUCTION

On 14 March 2000, the Honourable W M Edmond, Minister for Health, introduced the Mental Health Bill into the Legislative Assembly. The Bill, in part, seeks to “recognise the role of victims of crime where the offender has a mental illness”.¹

In Queensland, the system for determining the mental state, treatment and care of people who have a mental illness or suffer from an intellectual disability is currently regulated under the *Mental Health Act 1974* (Qld). If an alleged offender comes within one of these categories, he or she may become subject to proceedings in the Mental Health Tribunal (MHT) or the Patient Review Tribunal (PRT).

A review of the forensic provisions of the *Mental Health Act 1974* (Qld) which provides for such proceedings was recently conducted as part of a wider review of the *Mental Health Act 1974* (Qld). One of the criticisms which emerged from the review process is that the *Mental Health Act 1974* (Qld), in its current form, does not specifically address the rights and interests of victims in cases where an alleged offender is mentally ill or has an intellectual disability.²

The Mental Health Bill 2000 proposes a number of reforms to the mental health system, some of which specifically address the needs of victims of crime. These reforms are designed to ensure that the mental health system fulfils the goal of balancing the rights of mentally ill persons charged with a criminal offence with the necessary protection of the community, victims and families³ by processes that are just, open and accountable.⁴

This Legislation Brief discusses two of the proposed changes under the Bill to the current mental health system, which relate to victims of crime. These proposals involve the provision of relevant information to the Mental Health Court (which replaces the MHT) and the Mental Health Review Tribunal (which replaces the PRT) and the notification of sufficiently interested persons of certain hearings and decisions about an alleged offender.

¹ Mental Health Bill 2000 (Qld), *Explanatory Notes*, p 8.

² Queensland Health, Mental Health Unit, *Victims of Crime and the Mental Health Act*, Discussion Paper, March 1999, p 21.

³ ‘Input to Tribunal’, *Courier Mail*, 15 March 2000, p 4.

⁴ Mental Health Bill 2000 (Qld), Second Reading Speech, Hon WM Edmond MLA, Minister for Health, *Queensland Parliamentary Debates*, 14 March 2000, p 345.

Further aspects of the Mental Health Bill 2000 are discussed in related publications of the Parliamentary Library: Legislation Bulletins 4/00 and 5/00.⁵

2 VICTIMS OF CRIME AND PROCEEDINGS IN RESPECT OF AN OFFENDER UNDER THE *MENTAL HEALTH ACT 1974 (QLD)*

In 1999, the Australian Institute of Criminology published a report about crime victimisation in Australia. The report noted that the impact of the commission of a crime upon a victim could be long lasting and diverse:

*The consequences of crime can in some cases include physical injuries or death; many involve financial loss or property damage; and, less obvious but sometimes more devastating, psychological and emotional wounds.*⁶

The report also suggested that:

*A criminal justice system that provides no opportunity for victims to participate in proceedings tends to foster feelings of helplessness and lack of control. Victim involvement and the opportunity to voice concerns is necessary for satisfaction with justice, psychological healing and restoration.*⁷

The rights and needs of crime victims have become subject to an increased emphasis since the emergence, in the 1940's, of a "victim movement" in Australia. This trend has more recently resulted in legal and social reforms that reflect an increased acknowledgment of the rights of victims of crime to participate in, and be kept informed about, the process and outcome of the prosecution of the offence.

Examples of this trend in Queensland are evidenced by the adoption of the United Nations *Declaration of Basic Principles of Justice for Victims of Crime Abuse and Power* by the Queensland Government in 1989, the enactment of the *Crime Offences Victims Act 1995 (Qld)* and the development of government and non-government victim support and information services. These reforms have generally

⁵ Karen Sampford, *The Queensland Mental Health Bill 2000: Involuntary Assessment and Treatment Procedures*, Legislation Bulletin 4/00, Queensland Parliamentary Library, April 2000.

Nicolee Dixon, *The Queensland Mental Health Bill 2000: The New Regime for Tribunal and Court Review*, Legislation Bulletin 5/00, Queensland Parliamentary Library, April 2000.

⁶ Australian Institute of Criminology, Research and Public Policy Series No 19, *Victim's Needs, Victim's Rights: Policies and Programs for Victims of Crime in Australia*, 1999, p 39.

⁷ Australian Institute of Criminology, p 77.

related to the treatment of a victim where an offender is dealt with within the criminal justice system.⁸

A small number of alleged offenders, about whom questions arise as to their soundness of mind at the time of their offence or their fitness to stand trial, may be diverted to the mental health system for the determination of these questions.⁹

In Queensland, the current MHT is empowered under the *Mental Health Act 1974* (Qld) to decide whether a person accused of an indictable offence was suffering from unsoundness of mind, or in the case of murder, diminished responsibility, at the time of the alleged offence or is fit to stand trial in the criminal justice system. Although juries are also empowered under the *Criminal Code* (Qld) to decide these questions, they are usually decided by the MHT.¹⁰

In general, the possible results of this process in the MHT are that the offender is either made liable to detention as a forensic patient or is returned to the criminal justice system for the continued prosecution of the offence.

⁸ Other Australian jurisdictions have also enacted legislation that relates to the rights of a victim of crime as a participant in the criminal justice system. These rights generally include the right to be kept informed of the progress and the outcome of a criminal prosecution and to submit a victim impact statement to the court. See, for example: *Victims Rights Act 1996* (NSW); *Mental Health (Criminal Procedure) Act* (NSW); *Victims of Crime Act 1994* (ACT); *Crimes Act 1900* (ACT); *Sentencing (Victims Impact Statement) Act 1994* (Vic); *Criminal Law (Sentencing Act) 1988* (SA); *Sentencing Act 1997* (Tas); *Sentencing Act 1995* (NT); *Sentencing Act 1995* (WA). Note that s 10 of the *Victims of Crime Act 1994* (WA) provides that arrangements should be made so that the victim's views and concerns can be considered when a decision is being made about whether or not to release the offender from custody. There is also an avenue for victims to receive compensation even where the offender is not convicted in the criminal justice system, eg as a result of mental impairment or unfitness for trial. See, for example: *Victims Compensation Act 1996* (NSW); *Victims of Crime Assistance Act 1996* (Vic); *Criminal Injuries Compensation Act 1978* (SA); *Victims of Crime Compensation Act 1994* (Tas); *Criminal Injuries Compensation Act 1976* (Tas); *Crimes (Victims Assistance) Act* (NT) and *Criminal Injuries Compensation Act 1985* (WA).

⁹ In 1998-1999, the Mental Health Tribunal heard and made findings in respect of 216 references: Supreme Court of Queensland, *Annual Report 1998-1999*, p 52.

¹⁰ Questions of criminal responsibility can also be decided by a jury at a criminal trial (*Criminal Code*, s 647). A jury may also be called upon to determine if an accused person is fit to stand trial (*Criminal Code*, ss 613, 645). The incidence of juries exercising these powers has occurred less frequently since the Mental Health Tribunal was established in 1984: See Pamela Sweetapple, , *The Queensland Law Handbook*, Caxton Street Legal Service Inc., (5th ed), 1997, p 411.

If an offender is detained upon a finding of unsoundness of mind or unfitness for trial, the PRT thereafter determines whether the involuntary treatment and detention of a patient should be continued.¹¹

The MHT also has jurisdiction to hear appeals from a decision of the PRT and to determine applications to remove patients regulated by the *Mental Health Act 1974* (Qld) out of Queensland.

One of the criticisms which emerged from the review process is that the *Mental Health Act 1974* (Qld) does not specifically provide for any role for victims of crime in the context of the mental health system.¹²

In 1999, the Mental Health Unit of Queensland Health released a discussion paper (the “1999 Discussion Paper”) that examined a number of issues raised in relation to the interests of victims of crime in proceedings under the *Mental Health Act 1974* (Qld).¹³

The 1999 Discussion Paper highlighted some of the possible consequences for a victim when the offender is diverted to the mental health system. The role of victims in the mental health system differs from their role in the criminal justice system. Proceedings in the mental health system are generally focussed on the offender rather than the victim. As a result, the effect of the crime upon the victim may be of less relevance in such proceedings. Further, a victim may not be able to achieve a sense of ‘psychological closure’ in relation to the offence when the criminal proceedings are not resolved.

Another concern raised was that victims and their families have no apparent entitlement to be informed if the PRT has released or granted an offender leave or the offender is otherwise no longer in custody.¹⁴

¹¹ See also Queensland Parliamentary Library, Legislation Bulletins Nos 4/00 and 5/00.

¹² The *Criminal Offences Victims Act 1995* (Qld) provides a statement of the rights of a victim in the criminal justice system. It imposes a number of positive obligations on the prosecuting authority in respect of crime victims. One of these obligations is to provide information about the outcome of any proceeding. It appears that a finding by the MHT is not likely to abrogate any rights of a victim under the Act. The Queensland Office of the Director of Public Prosecutions has developed procedures under the *Criminal Offences Victims Act 1995* (Qld) for the dissemination of information to victims in MHT proceedings relating to offenders.

¹³ Queensland Health, Discussion Paper 1999.

¹⁴ Queensland Health, Discussion Paper 1999, pp 33, 34. See also: Sarah Bradford, ‘Fury over release of insane’, *Courier Mail*, 6 March 1999, p 5; Chris Griffith, ‘Mental Patient Alert: violent offenders among 37 missing’, *Sunday Mail*, 7 March 1999, p 6.

The 1999 Discussion Paper also sought public comment in relation to proposals for change to the *Mental Health Act 1974* (Qld) which aimed to address the interests of victims of crime in proceedings conducted under that Act.

3 INCLUSION OF INPUT OF VICTIMS IN DETERMINATION

3.1 THE CURRENT LEGISLATION

The MHT is invested with the powers conferred by the *Commissions of Inquiries Act 1950* (Qld).¹⁵ Its proceedings are judicial and are conducted publicly. The MHT can combine both adversarial and inquisitorial procedures in the conduct of its hearings which enables it to accept and consider material otherwise inadmissible in a criminal court. The critical issue for the MHT, in particular, is the state of mind of the offender at the time the offence was committed, rather than the effect of the crime on the victim.

In contrast, when an offender is convicted of an offence in a criminal court, the victim is entitled to submit a victim impact statement that details the impact of the crime upon the victim to the court.¹⁶

The PRT also has the discretion to make inquiries to ensure that it is adequately informed.¹⁷ For example, as part of the process of review of a forensic patient's liability for continued detention, the PRT must take into account the patient's own welfare and the protection of other persons. The patient cannot be released or granted a leave of absence unless the Tribunal has had regard to these matters.¹⁸

3.2 THE 1999 DISCUSSION PAPER

The 1999 Discussion Paper raised the issue of whether a victim of crime should be able to place material before the MHT or PRT. One suggestion noted in the 1999 Discussion Paper was that victims would be more satisfied that the process under

¹⁵ *Mental Health Act 1974* (Qld), s 28(C)(4).

¹⁶ *Criminal Offence Victims Act 1995* (Qld), s14; *Penalties and Sentences Act 1992* (Qld), s 9(2)(c).

¹⁷ *Mental Health Act 1974* (Qld), s 15(4), (7); *Mental Health Regulation 1985* (Qld), s 35 (Power of Chairperson to summons witness and examine on oath); Queensland Health, Discussion Paper 1999, p 16.

¹⁸ *Mental Health Act 1974* (Qld), s 36(b).

the *Mental Health Act 1974* (Qld) had taken their interests into account if they were able to directly contribute material for the consideration of both the MHT and the PRT.¹⁹

The 1999 Discussion Paper questioned whether the primary purpose of direct input material from victims of crime should be to:

- Allow the victim an opportunity to publicly express the effect an offence has had upon them, or
- Contribute evidence which the MHT and PRT should include in considering the state of mind of an alleged offender.²⁰

The Discussion Paper noted three methods by which material from victims could be admitted in proceedings before the MHT or the PRT, which are discussed below.

Input Via A Written Statement Supplied By The Director Of Public Prosecutions

Under this proposal, the Director of Public Prosecutions, in appropriate cases, could assume responsibility for submitting a statement setting out the concerns of the victim to the MHT. The statement would then form part of the material for consideration by the PRT in any further proceedings concerning the alleged offender. This proposal would encompass statements of victims that do not form part of the police brief of evidence.²¹

Input As-Of-Right Via A Direct Written Statement

The proposal in this instance is that a victim could directly submit a written statement, which focussed on the effects and impact of the offence on him or her, to the MHT. This statement would also form part of the material that would be considered in subsequent proceedings before the PRT. The purpose of this proposal would be to recognise and assist victims in dealing with the effects that an offence has had on him or her and assist the relevant tribunal in considering conditions it may impose when coming to a determination. Any finding of admissibility of the statement would be noted on the tribunal record and the victim advised of any such finding.²²

¹⁹ Queensland Health, Discussion Paper 1999, p 27.

²⁰ Queensland Health, Discussion Paper 1999, p 28.

²¹ Queensland Health, Discussion Paper 1999, pp 29, 30.

²² Queensland Health, Discussion Paper 1999, pp 30, 31.

The MHT and PRT would also retain the discretion to seek further information from the victim that is relevant to determinations and would continue to exercise that discretion where it is necessary to ensure that they are fully informed.²³

The 1999 Discussion Paper noted that the advantages of this approach are that it would allow victims to make a statement near to the time of the offence and would not require the victim to re-visit their experience at a later time. Additionally, the alleged offender would have the opportunity to examine and answer such material as required under the rules of natural justice. The perceived disadvantage of this approach is that these statements may contribute to the detention of the patient on grounds other than his or her mental state, dangerousness and need for treatment.²⁴

Input At The Discretion Of The Mental Health Tribunal Or Patient Review Tribunal

Currently, both the MHT and the PRT have the discretion to inquire into facts and circumstances of any case in order to be satisfied that they are adequately informed, thereby ensuring that all relevant material has been considered in any particular case. The Discussion Paper suggests that this may not satisfy the victim of a crime that all relevant material has been considered²⁵.

3.3 THE MENTAL HEALTH BILL 2000

The Bill proposes to give to a person who is not a party to a hearing the opportunity, in some circumstances, to present evidence that is relevant to a determination of the Mental Health Review Tribunal (which is proposed to replace the PRT) or the Mental Health Court (which is proposed to replace the MHT).²⁶ It is expressly contemplated in the Bill that a **non-party** could include persons such as the victim of an offence or a relative, carer or neighbour of the patient.²⁷

²³ Queensland Health, Discussion Paper 1999, p 31.

²⁴ Queensland Health, Discussion Paper 1999, p 31.

²⁵ Queensland Health, Discussion Paper 1999, pp 31, 32.

²⁶ For example, evidence relevant to the proceedings may include information about the demeanour or actions of the patient shortly before the crime occurred: Second Reading Speech, p 351.

²⁷ Second Reading Speech, p 351.

In the Explanatory Notes, it is explained that material which may not have been relevant to the police investigation such as a statement of a victim about the mental condition of the alleged offender prior to the offence may therefore be able to be submitted to the court or tribunal if it fulfils the required conditions.²⁸ It is important to note that the pre-condition for such admission is relevance.

In making a decision in a proceeding, the MHRT can take into account material submitted by a person who is not a party to a proceeding before it if:

- The material is not already before it, and
- The Tribunal is satisfied the material is relevant to the decision (**clause 464(1)**).

In deciding the weight to place on the material, the MHRT must take into account:

- Whether the person the subject of the proceeding has had sufficient opportunity to examine and reply to the material
- Material previously submitted by the person
- For a forensic patient – the circumstances of the offences leading to the patient becoming a forensic patient
- Any other matter the Tribunal considers appropriate (**clause 464(2)**).

It should be noted that the requirement to take these factors into account is not imposed on the MHC. Material submitted to the MHC, however, is required to be sworn.²⁹ In addition, the victim cannot submit the material to the MHC directly - a party to the proceeding such as a prosecutor must submit it to the Court (**clause 284(2)**). These procedural differences appear to reflect the more formal status of the MHC.

A person does not have a right of appearance before the MHRT or the MHC unless otherwise ordered by that body (**MHRT: clause 464(3), MHC: clause 284(3)**).

In its decision, the MHC or MHRT must give reasons for receiving in evidence, or refusing to receive in evidence, material submitted by a non-party. (**MHC: clause 285, MHRT: clause 465**)

3.4 OTHER JURISDICTIONS

In Victoria, the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) provides that a victim may make a statement to the Supreme or County Court,

²⁸ Mental Health Bill 2000, *Explanatory Notes*, pp 8,10.

²⁹ Mental Health Bill 2000 (Qld), cl 284(1)(a).

as the case may be, that sets out particulars of any injury, loss or damage suffered by the victim as a direct result of the offence.³⁰ The purpose of the report is to assist counselling and treatment processes for all people affected by an offence and assist the court in determining any conditions it may impose on an order made against a person under the Act.³¹

It is interesting to note that the Community Development Committee in Victoria, in its *Review Of Legislation Under Which Persons Are Detained At The Governor's Pleasure In Victoria* in 1995, stated that there was an important distinction between the use of a victim impact statement in sentencing a person found guilty of an offence and the use of a victim report when a court is making or varying the supervisory conditions of a person found not guilty on the ground of criminal impairment.³²

The Committee explained the distinction in these terms:

*People in the latter category have been judged unable to appreciate the nature and quality of the criminal act, or have been unable to appreciate that the act was wrong because they were suffering from a mental impairment ...the purpose of a victim impact statement is to assist the court in making an appropriate sentence, which properly takes into account the effect of the crime and the remorsefulness of the offender. The Committee believes that a judge should make a disposition affecting a person found not guilty on the ground of mental impairment on the basis of the condition of the person and the safety of the community. The Committee fails to see the relevance of victim impact statements in this context.*³³

In Tasmania, the *Criminal Justice (Mental Impairment) Act 1999 (Tas)* provides that the court must be provided with, and consider, a report, prepared by the Attorney-General, which states the views of the victims and next of kin for any proceedings relating to the making or reduction of a supervision order.³⁴ Furthermore, the court must not make a determination unless the victims and next-of-kin are given reasonable notice of the proceedings.³⁵

³⁰ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)*, ss 42(3).

³¹ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)*, ss 42(1).

³² Victoria, Parliament, Community Development Committee, *Review Of Legislation Under Which Persons Are Detained At The Governor's Pleasure In Victoria*, 1995, p 144.

³³ Victoria, Parliament, Community Development Committee, 1995, pp 144, 145.

³⁴ *Criminal Justice (Mental Impairment) Act 1999 (Tas)*, s 33.

³⁵ *Criminal Justice (Mental Impairment) Act 1999 (Tas)*, s 35.

In South Australia, a criminal court or relevant jurisdiction, when determining an application for a supervision order, must be provided with a report setting out the views of the victim, relatives of the victim (if the victim is deceased) or the defendant's next of kin.³⁶ The court, however, does not require a report if the proceeding is to determine whether a defendant who has been released on license, should be detained, subjected to greater supervision or have his or her conditions of release varied in minor respects.³⁷

There is no express provision for victims of crime in the mental health legislation of New South Wales, Western Australia, the Australian Capital Territory or the Northern Territory.

4 NOTIFICATION OF RELEASE AND LEAVE DETERMINATIONS

4.1 THE CURRENT LEGISLATION

The *Mental Health Act 1974* (Qld) does not specifically provide for the notification of a victim about determinations of release and leave determinations for an offender who has been found of unsound mind by a jury or by the MHT and subsequently detained in an authorised mental health service (a 'forensic patient').³⁸

4.2 THE 1999 DISCUSSION PAPER

One of the matters raised in the Discussion Paper was whether a victim should be notified of release and leave determinations for a forensic patient.

The Discussion Paper noted a range of factors relevant to the matter of notification, including:

- The process of empowerment for a crime victim requires a level of knowledge about decisions made in relation to proceedings against the offender that are likely to affect them. Where an alleged offender is a

³⁶ *Criminal Law Consolidation Act 1935* (SA), s 269R(1).

³⁷ *Criminal Law Consolidation Act 1935* (SA), s 269R(2).

³⁸ Note also s 34 of the *Mental Health Regulation 1985* (Qld) which provides for notice of an application to the PRT to be given to defined persons including the nearest relative of the patient to whom the application relates (where the applicant is a relative other than the nearest relative).

forensic patient, notification of his or her leave or release from detention is one such decision that may impact upon the victim's sense of empowerment. For example, if a victim is notified of the possibility that a forensic patient may re-enter the same community, he or she can make a considered decision about their own course of action.³⁹

- It is not uncommon for a forensic patient to return into the same community as the victim. A forensic patient who is suitable for release or conditional leave generally continues to require treatment, ideally in a safe and secure environment (which may sometimes be provided by their family members). The most appropriate area for the patient to receive treatment may also be the same community where the offence occurred. This situation may cause concern or anxiety to a victim, particularly if not previously notified of the decision.⁴⁰
- There could be a possibility of reverse-victimisation of the forensic patient if the victim or others in the community do not accept either the reasons for the decision of unsoundness of mind or the decision to release the patient, or the efficacy of the patient's treatment.⁴¹
- Victims may have the perception that the patient is "targeting" them.⁴²
- The efficacy and validity of community-based treatment may not be apparent to persons not involved with the provision of mental health services.⁴³
- The restrictions placed on the rights of a forensic patient are limited to their need for detention to address their level of dangerousness to the public or themselves, and their need for treatment. These limitations are different to those placed on the rights of convicted offenders.⁴⁴

The Discussion Paper concluded that it was essential for the issue of notification to be handled in a manner which enabled victims to be aware of all decisions about a

³⁹ Queensland Health, Discussion Paper 1999, p 33.

⁴⁰ Queensland Health, Discussion Paper 1999, p 33.

⁴¹ Queensland Health, Discussion Paper 1999, p 33.

⁴² Queensland Health, Discussion Paper 1999, p 34.

⁴³ Queensland Health, Discussion Paper 1999, p 34.

⁴⁴ Queensland Health, Discussion Paper 1999, p 34.

patient which affect the victim's safety or well-being without leading to a false perception that there is a continuing connection between the victim and patient.⁴⁵

One suggestion noted in the Discussion Paper was that victims could obtain information about a forensic patient from a register administered by the PRT. This type of register was envisaged to be similar in concept to the Concerned Persons Register operated by the Queensland Corrective Services Commission. One difficulty noted in the practical operation of such a register was that in order to be effective the information must be timely and accurate. This would require the identification and implementation of procedures for the provision of information to the PRT.⁴⁶

4.3 THE MENTAL HEALTH BILL 2000

The Bill enables victims to be notified of certain hearings and decisions about the patient, including a hearing to discharge the patient. These proposals also apply to other people who are not parties to the proceedings such as a relative or carer who may have a sufficient interest in being notified of a forthcoming hearing or decision due to the nature of their relationship with the patient.⁴⁷

⁴⁵ Queensland Health, Discussion Paper 1999, p 34.

⁴⁶ Queensland Health, Discussion Paper 1999, pp 35, 36.

⁴⁷ Second Reading Speech, p 351.

The provisions contained in **Chapter 6, Part 5** give the proposed new MHRT the discretionary power to make a **notification order** about a forensic patient who has been found of unsound mind by a jury or by the MHC.⁴⁸

A notification order is an order that a person be given notice of one or more of the following:

- When a review for the patient is to be carried out
- A review decision⁴⁹ about the patient
- An approval that the patient move out of Queensland
- An order that the patient be transferred from one authorised mental health service to another authorised mental health service
- The transfer, under an interstate agreement, of the patient to another State.⁵⁰

If the Tribunal is satisfied it can make a notification order, it must consider:

- If an application is made for the order – the grounds of the application
- Whether as a consequence of the order the patient's treatment or rehabilitation is likely to be adversely affected
- The patient's views
- Other matters the Tribunal considers appropriate.⁵¹

A notification order can only be made if the Tribunal is satisfied the person for whom the order is to be made has a **sufficient personal interest** in being given notice of the matter under the order (**clause 223(2)**). In deciding whether a person has a sufficient personal interest the Tribunal must consider:

- Whether the patient represents a risk to the safety of the person for whom the order is to be made
- Whether it is likely the patient will come into contact with the person

⁴⁸ Clause 299(b)(1) (Forensic order made by a court following a jury finding that a person charged with an indictable offence was of unsound mind at the time the alleged offence was committed under s 647 of the Criminal Code (Acquittal on the grounds of insanity); cls 267 –271 (Decision on reference to Mental Health Court about unsoundness of mind and diminished responsibility); cl 288(1)(a) (Mental Health Court may make forensic order of unsoundness of mind). See also Nicolee Dixon, *The Queensland Mental Health Bill 2000: The New Regime for Tribunal and Court Review*, Legislation Bulletin 5/00, Queensland Parliamentary Library, April 2000, p 16.

⁴⁹ See: Mental Health Bill 2000 (Qld), Chapter 6, Part 3.

⁵⁰ Mental Health Bill 2000 (Qld), cl. 221(1).

⁵¹ Mental Health Bill 2000 (Qld), cl 224.

- The nature and seriousness of the offence that led to the patient becoming a forensic patient.⁵²

The Bill gives as examples of persons who may have a sufficient personal interest:

- A victim of a criminal offence committed, or alleged to have been committed, by the patient
- A personal attorney⁵³ or personal guardian⁵⁴ of the patient
- The spouse or a relative or dependent of the patient

The Tribunal can make a notification order on application by a person or on its own initiative (**clause 221(1)**).

Clause 453 deals with the rights of appearance of a person at hearing of an application for a notification order. A patient or an applicant may appear in person at the hearing. A lawyer or agent may also represent a patient – if the patient is unrepresented, the Tribunal may appoint a representative. The Tribunal can also grant leave for an applicant to be represented by a lawyer or agent. If an application is made during the hearing for a review of the patient, the applicant for the notification order only has the right to appear for the hearing of the application and not the review.

The Tribunal must refuse an application for an order if it is frivolous or vexatious (**clause 223(1)**).

In the Explanatory Notes, it is explained that in limited circumstances, it will be inappropriate for the MHRT to disclose certain information to a patient who is the subject of an application for a notification order.⁵⁵ **Clause 458** provides that a restriction on such information can only be ordered where the Tribunal is satisfied that disclosure would cause serious harm to the patient or put the safety of anyone else at serious risk. The Tribunal, however, must supply the information to the patient's lawyer or agent. If the patient is unrepresented, the Tribunal must ensure the appointment of a lawyer or agent to receive the restricted information on the patient's behalf.

⁵² Mental Health Bill 2000 (Qld), cl 223(3).

⁵³ An attorney for a personal matter under the *Powers of Attorney Act 1998* (Qld).

⁵⁴ A guardian for a personal matter under the *Powers of Attorney Act 1998* (Qld).

⁵⁵ *Explanatory Notes*, p 101.

A person for whom a notification order is made must comply with any conditions of the order. (**clause 225**). A maximum penalty of 40 penalty units (\$3000) is imposed for contravention of the conditions.

If a notification order is made, the Tribunal must give a copy of the order to the patient, the person for whom the order is made or the applicant, the administrator of the patient's treating health service and the Director of Mental Health. If the Tribunal refuses to make the notification order, it must give written notice of the decision to those same people. The Tribunal is automatically required to furnish written reasons for its decision to the patient and to the person for whom the order was made or the applicant. A confidentiality order⁵⁶, however, may displace the requirement to give the reasons to the patient. The Tribunal must also give reasons to the Director of Mental Health within 7 days of receiving a request to do so (**clause 226**).

A notification order may be varied or revoked upon application by the patient, Director of Mental Health or person for whom a notification order is made. If such an application is made by the patient or the Director, the Tribunal must give written notice of its decision and reasons on the application to the person for whom the order is made (**clause 228**).

Clause 527 makes it an offence to publish information contained in a notice given under a notification order. (Maximum penalty 200 penalty units (\$15 000) or 2 years imprisonment).

4.4 OTHER JURISDICTIONS

In Victoria, the Forensic Leave Panel has the function of hearing applications for leave applications and appeals in respect of forensic patients and forensic residents subject to supervision orders.⁵⁷

A notice of any hearing before the Forensic Leave Panel must be given to a family member or victim.⁵⁸ Any person served with such a notice is subsequently entitled to appear and be heard at the hearing and may appear in person or, with the leave of the panel, authorise another person to represent them.⁵⁹ In its 1995 Report, the

⁵⁶ Mental Health Bill 2000 (Qld), cl 458.

⁵⁷ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic), s 60.

⁵⁸ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic), s 74.

⁵⁹ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic), s 70(3)(a).

Community Development Committee proffered the view that adequate counselling may assist in reducing the need for victim notification, as victims and next of kin may have developed a greater understanding of the system.⁶⁰

In South Australia, if an application is made that might result in the release of a defendant, the Minister for Health must ensure that counselling services are made available to the victim, or next-of-kin of the victim (if the victim was killed) and the defendant's next of kin.⁶¹

As noted in section 3.4 of this Legislation Brief, in Tasmania, a court may not discharge a restriction order, release a defendant, or significantly reduce the degree of a defendant's supervision unless it is satisfied that the defendant's next-of-kin and any victims of the offence have been given reasonable notice of the proceedings.⁶²

5 CONCLUSION

The reforms proposed under the Mental Health Bill 2000 reflect an increased acknowledgment of the rights of a victim of crime to participate in, and be kept informed about, proceedings involving offenders with a mental illness. These rights are not absolute but are subject to the discretion of the proposed MHC and MHRT which must safeguard the rights of the offender to receive a just determination in proceedings under the Bill and appropriate care and treatment while taking into account the concerns of the victim and the wider community.

⁶⁰ Victoria. Parliament. Committees (Community Development). *Review Of Legislation Under Which Persons Are Detained At The Governor's Pleasure In Victoria*, 1995, pp 145, 146.

⁶¹ *Criminal Law Consolidation Act 1935 (SA)*, s 269Z(1).

⁶² *Criminal Justice (Mental Impairment) Act 1999 (Tas)*, s 35(2)(c).



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Related Publications:

LB 5/00 *The Queensland Mental Health Bill 2000: The New Regime for Tribunal and Court Review* (QPL April 2000)

LB 4/00 *The Queensland Mental Health Bill 2000: Involuntary Assessment and Treatment Procedures* (QPL April 2000)

LB 1/00 *Guardianship and Administration Bill 1999* (QPL Feb 2000)

RB 5/98 *Concerned Persons' Register: Empowering Victims of Crime* (QPL Jul 1998)

LB 12/97 *Powers of Attorney Bill 1997* (QPL Oct 1997)