

# Classified Patient Information Orders and Register System

## TABLE OF CONTENTS

<b>Introduction</b> .....	<b>4</b>
Policy context .....	4
Overview of legislative and administrative processes .....	5
<b>Classified patients charged with an offence</b> .....	<b>6</b>
Notifying victims of a classified patient admission .....	6
Proactive identification of victims .....	6
Balancing victim and patient interests.....	6
Factors in determining whether to inform a victim of admission .....	6
Timing of the Director’s notification.....	7
Process for informing victims of a classified patient admission .....	7
Advising patients of legislative processes .....	8
Applications for a Classified Patient Information Order .....	8
Persons eligible to apply for a Classified Patient Information Order .....	8
Applicant’s nominee.....	9
Undertaking to not disclose for public dissemination .....	9
Determination of applications for a Classified Patient Information Order .....	9
Applications made by persons under 18 years of age .....	9
Assessment of health and safety risks.....	10
Other relevant factors in determining an application.....	12
Informing the applicant and patient of decision on application, reasons for decision and review processes .....	12
Notifiable matters .....	14
Detention of a classified patient.....	14
Limited community treatment.....	14
Absence without approval.....	15
Transfer .....	17
Cessation of classified patient status.....	17
Process for informing victims of notifiable matters.....	18
Revocation of Classified Patient Information Orders .....	18
Mandatory revocation .....	18
Discretionary revocation .....	18
Informing the applicant and patient of revocation of Classified Patient Information Order .....	19
<b>Classified patients serving a sentence of imprisonment</b> .....	<b>20</b>
Notifying persons on the Eligible Persons Register of a classified patient admission .....	20
Assessment of likely duration of admission .....	20
Process for notifying a potential applicant of a classified patient admission .....	20
Timing of the Director’s notification.....	21
Advising patients of legislative processes .....	21

Applications for a Classified Patient information Order .....	22
Persons eligible to apply .....	22
Applicant's nominee.....	22
Undertaking to not disclose for public dissemination .....	22
Determination of applications for a Classified Patient Information Order .....	22
Applications made by persons under 18 years of age .....	22
Assessment of health and safety risks.....	23
Other relevant factors in determining an application.....	25
Informing the applicant and patient of decision on application, reasons for decision and review processes .....	25
Notifiable matters .....	26
Detention of a classified patient .....	27
Limited community treatment.....	27
Absence without approval.....	28
Transfer .....	29
Cessation of classified patient status.....	29
Process for informing victims of notifiable matters.....	30
Revocation of a Classified Patient Information Order.....	30
Mandatory revocation .....	30
Discretionary revocation .....	30
Informing the applicant and patient of revocation of Classified Patient Information Order .....	31

**Flowcharts**

Classified patients charged with an offence

- Flowchart 1 – Notifying victims of a classified patient admission
- Flowchart 2 – Determining applications
- Flowchart 3 – Notifiable matters

Classified patients serving a sentence of imprisonment

- Flowchart 4 – Notifying victims of a classified patient admission
- Flowchart 5 – Determining applications
- Flowchart 6 – Notifiable matters

## INTRODUCTION

### Policy context

The *Review of the Queensland Mental Health Act 2000* undertaken by Brendan Butler AM SC in 2006 (the Butler Review)<sup>1</sup> recommended the establishment of a register system to manage the provision of information to victims in relation to classified patients<sup>2</sup>.

In broad terms, the register system aims to ensure victim entitlement to information is maintained when a person remanded in custody or serving a sentence of imprisonment is diverted to the mental health system.

In the criminal justice system, victim entitlements are set out in the *Criminal Offence Victims Act 1995* (COVA) and the *Corrective Services Act 2006*. COVA provides fundamental principles for addressing the needs of victims, including principles that relate to the provision of information. COVA also requires law enforcement officers to provide victims with information about the progress of an investigation and proceedings, and matters relating to custody arrangements for the person.

In addition, the *Corrective Services Act 2006* establishes an Eligible Persons Register that enables victims to receive information relating to the location and release of a sentenced prisoner.

Consistent with these schemes, the classified patient information register aims to ensure:

- victims are informed of matters relating to proceedings (ie that proceedings are stayed as a result of the person's admission as a classified patient) and
- victims are able to access information about the person's detention arrangements (eg the patient's level of community access and when the patient's status as a classified patient has ceased).

In providing for the information entitlements of victims, it is also important to ensure that the interests of patients are appropriately protected. Due regard must be given to health and safety considerations<sup>3</sup> and, as far as possible, to protecting the patient's right to confidential health care<sup>4</sup>. Information provided to victims is therefore strictly limited to matters relating to the patient's detention arrangements, and safeguards apply to protect against public disclosure of information<sup>5</sup>.

<sup>1</sup> The *Final Report of the Review of the Mental Health Act 2000 – Promoting balance in the forensic mental health system* (December 2006) is available at [www.reviewmha.com.au](http://www.reviewmha.com.au).

<sup>2</sup> Classified patient status applies to a person who is transferred to a mental health service from court or custody. An information register has also been established to manage the provision of information in relation to forensic patients (a person for whom a forensic order is made after a finding that the person was of unsound mind or is not fit for trial).

<sup>3</sup> Information cannot be disclosed where this is likely to result in serious harm to the patient's health or place the safety of any person at risk.

<sup>4</sup> *Health Services Act 2001*, Part 7A protects the right of all public health care recipients to have their health care information protected.

<sup>5</sup> Registered persons are required to sign an undertaking to not disclose information for public dissemination. A person may be removed from the register if information is disclosed.

### Overview of legislative and administrative processes

The *Mental Health Act 2000* establishes processes for making Classified Patient Information Orders (CPIO) and sets out information that may be disclosed under a CPIO.

The Director of Mental Health is responsible for determining CPIOs. A CPIO may be made in relation to:

- a classified patient charged with an offence or
- a classified patient serving a sentence of imprisonment<sup>6</sup>.

The Director of Mental Health is also responsible for providing the relevant information to the victim when a CPIO is made. Administrative arrangements exist to convey information to victims through the Queensland Health Victim Support Service. This includes advising the victim of the Director's decision on an application for a CPIO and, if a CPIO is made, communicating patient information under the CPIO. While the Director of Mental Health determines the application and information to be provided, the Director's responsibility to inform the victim is delegated to the Manager of the Victim Support Service.

The Classified Patient Information Register (CPIR) is established administratively within the Mental Health Act Information System; a database for recording information about Mental Health Act processes.

The CPIR records the Director of Mental Health's decision in relation to the making of a CPIO as well as information authorised by the Director to be disclosed to a registered person. It also tracks the activity of the Victim Support Service in conveying this information to the registered person, thereby enabling the Director to monitor delegated functions.

Information contained on the CPIR is only accessible to the Office of the Director of Mental Health and the Victim Support Service. While mental health service staff are aware that a CPIO is made in relation to a patient, service staff do not have access to information contained on the CPIR.

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<sup>6</sup> The Terms of Reference for the Butler Review did not encompass matters relating to sentenced prisoners. Sentenced classified patients have been included to provide a consistent policy approach in the *Mental Health Act 2000*.

## **CLASSIFIED PATIENTS CHARGED WITH AN OFFENCE**

### **Notifying victims of a classified patient admission**

#### ***Proactive identification of victims***

The Butler Review promoted a proactive approach to identifying victims and offering early information and support<sup>7</sup>. While there has always been capacity for victims to receive advice of a person's admission as a classified patient (eg where a police officer is aware of the admission and advises the victim in accordance with COVA provisions), the Butler Review recommendations necessitate a more systematic approach to identifying and informing victims of a classified patient admission.

Under the *Mental Health Act 2000*, the Director of Mental Health is routinely advised of classified patient admissions. The Director has discretionary authority<sup>8</sup> to notify a person of a classified patient admission where the Director reasonably believes the person may apply for a CPIO in relation to the patient<sup>9</sup>. In line with the intent of the Butler Review, all classified patient admissions are reviewed with a view to identifying potential CPIO applicants. An assessment of relevant factors is undertaken to inform the Director's decision about notifying a potential applicant of the patient's admission.

#### ***Balancing victim and patient interests***

The purpose of informing the victim of the admission of a classified patient is to ensure the victim receives relevant information about the impact on criminal justice processes (ie proceedings are stayed) and their entitlement to seek information (ie by applying for a CPIO) about the patient's detention arrangements. However, the need to inform victims must be balanced against the patient's entitlement to have information relating to their health care needs (ie the fact that they have been admitted to a mental health facility) protected from unnecessary or unwarranted disclosure.

The Director's discretion to advise the victim of a classified patient admission is exercised with regard to the interests of both the victim and the patient, and with the purpose of ensuring the notification is appropriate in each circumstance.

#### ***Factors in determining whether to inform a victim of admission***

In determining whether to advise a victim of a classified patient admission, the Director may take account of any relevant factors. However, in all instances, consideration is given to the nature of the alleged offence and the anticipated duration of the patient's admission as a classified patient.

<sup>7</sup> Recommendation 3.12 of the Butler Review requires that all reasonable efforts be made to identify and contact the victim where the classified patient is charged with a serious sexual or other violent offence.

<sup>8</sup> *Mental Health Act 2000*, Section 70 (Giving information about detention).

<sup>9</sup> Persons eligible to apply for a Classified Patient Information Order are identified in the 'Applications for a Classified Patient Information Order' section of this policy.

### Nature of the offence

The Director has broad discretion to give notice of admission to a potential CPIO applicant and is not limited by the nature of the alleged offence. However, in line with the Butler Review recommendations<sup>10</sup> and schemes operating under COVA<sup>11</sup> and the *Corrective Services Act 2006*<sup>12</sup>, the Director gives particular attention to offences that involve personal violence or threat of violence, and sexual offences.

In circumstances where the alleged offence does not involve personal violence or threat of violence (eg property offences, fraud, etc), the Director will not advise a victim of the classified patient admission unless the Director is satisfied that there are exceptional circumstances that warrant notification.

### Anticipated duration of admission

Classified patient admissions vary in duration, depending on the patient's assessment and treatment needs, and processes in the criminal justice system (eg the granting of bail results in the patient ceasing to be a classified patient). Giving notice of a classified patient admission in circumstances where the admission is of limited duration is generally not in the interests of the patient or the victim (ie an application for a CPIO will not benefit the victim if the classified patient status ceases shortly after the application is made).

The Director's Office seeks advice about the likely duration of the patient's admission from the treating psychiatrist as soon as practicable after admission. If the treating psychiatrist considers that the admission will be less than 4 weeks duration, the Director will not ordinarily advise a victim of the admission. Where the anticipated duration of the admission is unclear, the Director's Office monitors and reviews the timeframe in consultation with the treating psychiatrist.

### Timing of the Director's notification

The timing of the Director's notification to a victim about a classified patient admission is dependent on the availability of relevant information. For example, where the gravity of the charge is evident (eg murder, unlawful wounding) and the treating psychiatrist advises soon after admission that the patient is likely to need an extended period of inpatient treatment, notification to the victim may occur within a short timeframe (eg within a week of the patient's admission). In all matters, the Director aims to make a decision on notifying the victim within 4 weeks of the patient's admission.

### Process for informing victims of a classified patient admission

Where the Director determines that a victim may be advised of the classified patient's admission, communication with the victim is managed through the Victim Support Service. The Victim Support Service liaises with relevant parties (ie Queensland Police Service or

<sup>10</sup> Recommendation 3.12 of the Butler Review requires that all reasonable efforts be made to identify and contact the victim where the classified patient is charged with a 'serious sexual or other violent offence'.

<sup>11</sup> The COVA provisions generally relate to offences that involve violence committed against a person in a direct way.

<sup>12</sup> The *Corrective Services Act* Eligible Persons Register provisions apply to offences of violence and sexual offences.

victim liaison officers in the Office of the Director of Public Prosecutions) to inform the victim of the accused's admission as a classified patient.

Initial contact with the victim may be made by either the Victim Support Service, a victim liaison officer or a police officer. The victim liaison officer or police officer will refer the person to the Victim Support Service for further information. The Victim Support Service's role is to explain the implications of the classified patient admission and the victim's entitlement to apply to the Director of Mental Health for a CPIO. The Victim Support Service is also available to assist the victim in making the application.

**Flowchart 1 sets out processes for notification about a classified patient admission for a person changed with an offence.**

### Advising patients of legislative processes

Classified patients are routinely informed about *Mental Health Act 2000* processes relating to disclosure of their personal information. As a minimum requirement, patients are informed that:

- the Director of Mental Health is authorised to inform a victim of the patient's admission as a classified patient and the intended purpose of providing this information to victims
- an application for a CPIO to the Director may be made by a victim, the information that may be provided to a victim under a CPIO and the statutory safeguards to protect against information being disclosed for public dissemination
- the circumstances in which the Director of Mental Health may refuse an application for a CPIO
- the requirements and process for the Director to consult the patient if an application is made and the circumstances in which the Director will determine the application without consulting the patient.

Information is provided to patients in writing (by way of pamphlet/fact sheet) and is explained in person by a health professional.

### Applications for a Classified Patient Information Order

#### Persons eligible to apply<sup>13</sup>

An application for a CPIO may be made by:

- a direct victim of the alleged offence<sup>14</sup>
- the direct victim's parent or guardian (if the direct victim is under 18 years of age or has a legal incapacity)

<sup>13</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(6) defines 'eligible persons' for the purpose of an application.

<sup>14</sup> Direct victim is the person against whom the alleged offence was committed (*Mental Health Act 2000*, Schedule 2)

- an immediate family member<sup>15</sup> of the direct victim (if the direct victim is deceased as a result of the offence).

In order to verify the applicant's entitlement to apply for a CPIO, proof of identity is required to be provided with the application. Where the applicant is not the direct victim, the person's relationship to the direct victim must also be verified. This can be achieved by providing additional documentation (eg birth certificate, or a document that verifies that the applicant is the victim's legal guardian).

Alternatively, the Victim Support Service may, with the applicant's agreement, seek to confirm the applicant's relationship with the victim through another process (eg contact with the police or victim liaison officer in the Office of the Director of Public Prosecutions where the applicant has established contact).

### **Applicant's nominee**

In making the application, the applicant may nominate another person to receive information on their behalf<sup>16</sup>. If the CPIO is granted, patient information that may be given under the order will be provided to the nominee instead of the applicant. The applicant may also request that the Director's decision on the application be provided to the nominee instead of the applicant.

A nominee may be submitted or changed any time after a CPIO is made<sup>17</sup>. The victim's written authorisation is required to make or change a nominee.

### **Undertaking to not disclose for public dissemination**

In making the application, the applicant is required to sign an undertaking to not disclose information for public dissemination. The undertaking does not limit the applicant's ability to discuss information received with individuals in their personal support network (eg the victim's family, friends, counsellor). However, broad disclosure of patient information (eg through the media, internet or other public forum) either directly or indirectly, constitutes grounds to revoke a CPIO. The undertaking confirms the applicant's understanding that they cannot disclose information for public dissemination and that they understand the implications of doing so.

Nominees are also required to sign an undertaking not to disclose information for public dissemination.

## **Determination of applications for a Classified Patient Information Order**

### **Applications made by persons under 18 years of age**

If an application is made by a person under 18 years of age, the Director of Mental Health must be satisfied that the CPIO is in the best interests of the applicant. The Director is

<sup>15</sup> Immediate family member includes spouse, child, step-child, parent, step-parent, brother, sister, stepbrother, stepsister, grandparent, guardian or personal guardian (*Mental Health Act 2000*, Schedule 2).

<sup>16</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(4) provides for a nominee.

<sup>17</sup> *Mental Health Act 2000*, Section 318H (Nominee to receive classified patient information).

required to consult with the applicant's parent or guardian in deciding what is in the applicant's best interests. However, consultation with the parent or guardian is not required where:

- the parent or guardian is under 18 years and the application is made on behalf of their child or
- the Director is satisfied it would not be appropriate to consult the parent or guardian in the circumstances<sup>18</sup>.

The Director requests assistance from professional officers within the Victim Support Service in assessing whether a CPIO is in the applicant's best interests and the appropriateness of consultation with the applicant's parent or guardian.

The role of the Victim Support Service is to advise the Director on matters relevant to the Director's determinations including:

- the applicant's circumstances (eg their relationship with their parent or guardian or the reasons for the application being made by the minor rather than by the parent or guardian on behalf of the minor) and wishes
- the applicant's maturity and ability to understand the implications of the CPIO
- the harm suffered by the applicant as a result of the alleged offence
- the likely impact of receiving information on the applicant's health and safety.

While the process may vary depending on the age and circumstances of the applicant, the Victim Support Service ordinarily contacts the applicant directly in the first instance. If, having regard to information provided by the Victim Support Service, the Director does not consider it appropriate to consult the applicant's parent or guardian, no contact is made. In any other case, the Victim Support Service ensures that, as far as possible, contact with the parent or guardian occurs with the applicant's knowledge and agreement.

### Assessment of health and safety risks

The *Mental Health Act 2000* prohibits the Director from making a CPIO<sup>19</sup> where the order is likely to:

- cause serious harm to the classified patient's health or
- put the safety of the patient or someone else at risk.

The Act also requires the Director to provide the patient with reasonable opportunity to make a submission on these matters<sup>20</sup>. However, the Director is not required to consult the patient if advising the patient of an application is likely to:

- have an adverse effect on the health of the patient or the applicant or

<sup>18</sup> *Mental Health Act 2000*, Section 318D (Applications by minor).

<sup>19</sup> *Mental Health Act 2000*, Section 318E (Restrictions on making classified patient information order).

<sup>20</sup> *Mental Health Act 2000*, Section 318F (Patient to be given opportunity to make submission).

- put the safety of the patient, the applicant or another person at risk.

### **Advising the patient of an application**

Consultation with the patient is important to the Director's assessment of health and safety risks that may result from the making of a CPIO. As far as possible, the patient is advised of an application, the identity of the applicant, and is provided an opportunity to make a submission to the Director on issues of risk. Information is conveyed to the patient through the treating psychiatrist with an opportunity for the patient to advise the psychiatrist of any relevant concerns and/or to make a separate submission to the Director.

However, prior to seeking the patient's views, the Director considers any potentially adverse consequences that are likely to result from advising the patient of an application or the identity of an applicant. While the Director may take account of any relevant information, the Director routinely considers information received from the applicant and the patient's treating psychiatrist.

### **Information received from the applicant**

Where an applicant is concerned about the patient being informed of an application or the applicant's identity, they are encouraged to discuss their concerns with the Victim Support Service prior to making the application. The role of the Victim Support Service is to provide the victim with information about the process and safeguards (eg the patient is not provided with a copy of the application and does not have access to the victim's contact details).

Where necessary, the Victim Support Service is able to assist the victim to document their concerns; in particular, the ways in which the patient's knowledge of the application or the identity of the applicant will impact on the victim's health or safety, or the safety of another person. This information is submitted with the application.

The Director of Mental Health may require the applicant to provide information from their doctor or health practitioner in relation to any adverse impact on the victim's health. A health practitioner's statement may be provided through the Victim Support Service where the applicant has contact with that Service.

If the applicant has requested that information (ie their identity or the fact of the application) be withheld from the patient and the Director determines that the information will not be withheld, the applicant will be advised before the application is progressed.

### **Information received from the treating psychiatrist**

The Director consults with the patient's treating psychiatrist in writing in relation to all applications for a CPIO. The Director's correspondence will:

- advise the treating psychiatrist that an application for a CPIO has been made and, where relevant, any decision of the Director to withhold the fact of the application or the identity of the applicant from the patient (ie on the basis of information provided by the applicant)

- seek the treating psychiatrist's opinion in relation to any adverse impact which is likely to result from advising the patient of the application and the basis for this opinion, if the Director has not determined that the fact of the application be withheld from the patient
- request that the treating psychiatrist inform the patient of the application (unless the Director has determined that the patient not be advised, or the psychiatrist considers it is not in the interests of the patient's health or the safety of any person to do so) and the patient's entitlement to provide information to the Director either through the psychiatrist or directly
- seek the opinion of the treating psychiatrist in relation to the making of the CPIO (in particular, whether the CPIO is likely to cause serious harm to the patient's health or put the safety of any person at risk) and the basis of this opinion.

The Director seeks a written response from the treating psychiatrist within 7 days.

### **Other relevant factors in determining an application**

The duration of admission and the nature of the offence (ie factors considered in determining whether to advise the victim of the patient's admission) are equally relevant to the Director's determination about the making of a CPIO. In most instances, assessment of these factors will have already been undertaken prior to the Director notifying the victim of the patient's admission. Where this is not the case (eg where the victim is made aware of the person's classified patient admission through another source), the Director will obtain and consider the relevant information.

### **Informing the applicant and patient of decision on application, reasons for decision and review processes**

#### **Decision on application**

Written notice<sup>21</sup> of the Director's decision on the application must be provided within 21 days to:

- the applicant
- the patient and the patient's allied person and
- the administrator of the patient's treating health service.

Where the patient is a minor or the Director is aware that the patient has a guardian or attorney, notice of the decision is also given to the parent, guardian or attorney.

However, the Director is not required to give notice of the decision to the patient if the Director believes that advising the patient of the decision is likely to:

- have an adverse effect on the health of the patient or the applicant or
- put the safety of the patient, the applicant or another person at risk.

<sup>21</sup> *Mental Health Act 2000*, Section 318G (Notice of decision on application).

The Director does not give the patient notice of the decision if the Director determines that the patient not be advised of an application for a CPIO. Similarly, the identity of the person for whom the CPIO is made is not provided to the patient if this information was withheld in the process of consulting the patient on the application. If notice of the decision or the identity of CPIO recipient is withheld from the patient, it is also withheld from the patient's allied person and, where relevant, the patient's parent, guardian or attorney.

Notice of the decision to the applicant is provided through the Victim Support Service. The notice may be given to the applicant's nominee instead of the victim where the victim requests this in the application.

The notice of decision on an application also includes information relating to review processes (discussed below).

### **Reasons for decision on application**

If the Director does not grant an application for a CPIO, the reasons for the Director's decision are routinely provided to the applicant (or nominee) with the Director's decision.

The reasons for the Director's decision to grant or refuse an application for a CPIO are routinely provided to the patient. However, the Director is not required to provide the patient with reasons if this is likely to:

- have an adverse effect on the health of the patient or the applicant or
- put the safety of the patient, the applicant or another person at risk.

In considering these matters, the Director considers concerns raised by the victim in the application process and seeks advice from the patient's treating psychiatrist.

### **Review of Director's decision on application**

The applicant or the patient may request review of the Director's decision on an application for a CPIO<sup>22</sup>.

When a review is requested, this is undertaken by two senior psychiatrists independent of the mental health service where the patient is detained. The role of the reviewing psychiatrists is to review all relevant material and advise the Director on any aspects of the decision or the material that warrant the Director's reconsideration. The reviewing psychiatrists may seek further information for the purposes of assessing the circumstances (eg from the applicant, the patient or the patient's treating psychiatrist). The Director will consider the advice and recommendations of the reviewing psychiatrists prior to making a final determination.

### ***Flowchart 2 sets out the processes for determining an application for a Classified Patient Information Order.***

<sup>22</sup> Recommendation 3.10 of the Butler Review requires that victims have access to an internal process of review in relation to the Director's decision. The review process also applies to patients to enable the patient to seek review of risk issues.

### Notifiable matters

A person for whom a CPIO is made (the 'registered person') may be provided information<sup>23</sup> in relation to:

- the patient's detention a classified patient
- limited community treatment (LCT) for the patient
- the patient's absence without approval
- the patient's transfer
- cessation of the classified patient status.

Provision of patient information to the registered person (or nominee) is at the discretion of the Director of Mental Health. While the Director takes account of the circumstances in each instance, the following sections set out the Director's general considerations and the parameters for providing patient information to the registered person.

#### *Detention of a classified patient*

The making of a CPIO effectively confirms that the patient is detained in an authorised mental health service as a classified patient.

For safety reasons, the location of the in-patient facility at which the patient is detained is not provided<sup>24</sup>.

#### *Limited community treatment*

##### **Legislative and administrative processes<sup>25</sup>**

Limited community treatment enables the patient to undertake treatment and rehabilitation in the community<sup>26</sup>. For classified patients, LCT may only be approved by the Director of Mental Health, subject to the Director being satisfied that certain legislative requirements are met (eg the LCT does not pose an unacceptable risk to the safety or welfare of the patient or others). The Director's approval may include conditions for LCT that assist to ensure the welfare and safety of the patient and others while the patient is receiving LCT.

The Director's approval of LCT is given for a specified period (eg one or two weeks) to enable the Director to review the patient's progress. A graduated process of approval applies. That is, LCT approvals commence with arrangements that enable close monitoring or supervision (eg staff escorted LCT or LCT in the grounds of the health service) and restrictions are gradually decreased according to the patient's progress. The Director takes account of the patient's mental health and progress when considering any further LCT authorisation.

<sup>23</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(1) sets out the information that may be provided under a CPIO.

<sup>24</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(2)(a) prohibits disclosure of the name and address of the in-patient facility.

<sup>25</sup> *Mental Health Act 2000*, Section 129 (Authorising limited community treatment).

<sup>26</sup> *Mental Health Act 2000*, Schedule 2.

Actual instances of LCT are authorised by the patient's authorised doctor. That is, the authorised doctor determines when the patient has LCT within the period of approval given by the Director. The authorised doctor is responsible for ensuring that the LCT is consistent with the Director's approval (ie the level/type of LCT and conditions) and that the patient is appropriately assessed prior to undertaking LCT.

The Director of Mental Health may also revoke an approval for LCT.

### **Notification under the Classified Patient Information Order**

Notifications relating to LCT will provide:

- the level of LCT approved by the Director; in particular, whether the LCT approval provides for:
  - staff escorted LCT on the grounds of the health service
  - staff escorted LCT off the grounds of the health service
  - unescorted LCT on the grounds of the health service
  - unescorted LCT off the grounds of the health service
  - overnight LCT
  - more than overnight LCT.
- the date and duration of the Director's approval
- any conditions relevant to the victim's safety (eg conditions that prohibit the patient from contacting the victim or being within a specified distance of the victim's place of residence or workplace).

Instances of LCT authorised by the authorised doctor are not permitted to be disclosed under a CPIO.

Notice of a decision by the Director to revoke an LCT approval is also provided under the CPIO.

### ***Absence without approval***

#### **Legislative and administrative processes<sup>27</sup>**

A classified patient's absence without approval may result from:

- the patient leaving an inpatient facility without the required approval
- the patient not returning from LCT at the end of the approved period or when LCT is ended (eg where the treating psychiatrist considers this necessary because the patient has not complied with conditions of LCT or the psychiatrist is concerned about the patient's health or safety issues).

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<sup>27</sup> *Mental Health Act 2000*, Sections 507 and 508 provide for the return of patients absent without approval.

The Director of Mental Health has established operational procedures that require mental health service staff to inform the Director without delay when a classified patient becomes absent without permission.

Mental health service staff are also required to notify the Queensland Police Service of a classified patient's absence to assist with locating and returning the patient to the mental health service. Where there are identified risks relating to individual safety (either that of the patient or another person) this information is provided to police. This enables police to inform relevant individuals whose safety may be at risk.

### **Notification under the Classified Patient Information Order**

Information about a patient's absence without approval is provided under a CPIO where the absence is relevant to the registered person<sup>28</sup>. In determining whether to notify the registered person (or nominee), the Director considers:

- the circumstances of the patient's absence and
- the potential impact of the patient's absence without permission on the registered person.

When notifying the Director of the patient's absence without permission, mental health service staff provide information about the circumstances of the patient's absence and action taken to locate the patient. In some instances, the patient is able to be promptly located and returned to the service. Notification is not ordinarily given to the registered person (or nominee) in these instances.

The Director also considers whether notification to the registered person (or nominee) is necessary to avert potentially adverse impact on the registered person. Notification is given as promptly as possible where the circumstances indicate that the registered person may encounter the patient (eg where it is considered that the patient may return to his/her home and the registered person resides in the same vicinity) or that the registered person may be made aware of the patient's absence through another means (eg through relatives or associates of the patient who are also known to the registered person).

It is important to recognise that the purpose of the notification is not to protect the registered person against risk that a patient may pose. Where risk to any person is identified, immediate communication through the police (as discussed above) should be made. While the patient may not represent a risk to the registered person's safety, it is appropriate that the distress that may result from an unexpected encounter with the patient is averted as far as possible.

The Director consults with the Victim Support Service and mental health service staff when assessing these factors.

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<sup>28</sup> 318C (Director may make classified patient information order). Subsection 318C(1)(e) relates to notifications about absence without permission.

Where notification of the patient's absence under a CPIO is given, notification will also be made when the patient is returned to the mental health service.

### Transfer

#### Legislative and administrative processes<sup>29</sup>

A classified patient's transfer from one authorised mental health service to another is authorised by the Director of Mental Health.

#### Notification under the Classified Patient Information Order

Where the Director orders a patient's transfer, notification of the Director's order for transfer and the date of the transfer will be given under the CPIO.

### Cessation of classified patient status

#### Legislative and administrative processes

A patient's status as classified patient may cease as a result of a number of different events, including:

- when the Director of Mental Health is satisfied that the patient does not need to continue to be detained for treatment of mental illness and the patient is returned to court or custody<sup>30</sup>
- when a court grants bail (under the *Bail Act 1980*) in relation to the charge/s against the patient<sup>31</sup>
- on a decision by the Director of Public Prosecutions that the charges against the patient are to be continued or discontinued under the Act<sup>32</sup>
- when the prosecution for the offences is discontinued (eg by police or the Director of Public Prosecutions) for any other reason<sup>33</sup> or
- when the Mental Health Court determines a reference in relation to charges against the patient<sup>34</sup>.

#### Notification under the Classified Patient Information Order

Notifications relating to cessation of classified patient status will provide:

- the date of the cessation and
- the reason for the cessation.

<sup>29</sup> *Mental Health Act 2000*, Sections 166 (Transfer orders – other patients).

<sup>30</sup> *Mental Health Act 2000*, Chapter 3, Part 5 (Return of classified patient to court or custody).

<sup>31</sup> *Mental Health Act 2000*, Section 78 (When patient ceases to be a classified patient).

<sup>32</sup> *Mental Health Act 2000*, Section 253 (When patient ceases to be a classified patient).

<sup>33</sup> *Mental Health Act 2000*, Section 253 (When patient ceases to be a classified patient).

<sup>34</sup> *Mental Health Act 2000*, Section 287 (When person ceases to be a classified patient).

### ***Process for informing victims of notifiable matters***

The Director's decision on a notifiable matter is communicated to the victim through the Victim Support Service. The role of the Victim Support Service is to inform the registered person (or nominee) of the Director's decision, and to provide information and support to assist the victim to understand relevant legislative and service system processes.

### ***Flowchart 3 sets out the processes for informing victims of a notifiable matter***

## **Revocation of a Classified Patient Information Order**

Revocation of a CPIO may be mandatory<sup>35</sup> or at the discretion of the Director of Mental Health<sup>36</sup>.

### ***Mandatory revocation***

The Director of Mental Health must revoke a CPIO if:

- the patient ceases to be a classified patient
- the patient dies
- the registered person dies
- the registered person asks the Director to revoke the CPIO
- the Director reasonably believes that disclosure of patient information under the CPIO is likely to:
  - cause serious harm to the classified patient's health or
  - put the safety of the patient or someone else at risk.

### ***Discretionary revocation***

A CPIO may be revoked in other circumstances at the discretion of the DMH. However, before revoking the CPIO, the Director must advise the registered person of the grounds for revoking the order and provide the registered person with an opportunity to make a submission about the revocation of the CPIO.

While the circumstances under which the Director may consider revoking a CPIO are not limited, the CPIO will be routinely reviewed where:

- information disclosed under the order is publicly disseminated or
- the Director considers that continuing to provide information under the CPIO will unreasonably affect the patient's treatment or the well-being of any person (eg the registered person making contact with the patient or a relative of the patient).

Notification of the proposed revocation will be provided to the registered person through the Victim Support Service. The Victim Support Service is available to assist the person in making a submission in response to the proposed revocation of the CPIO.

<sup>35</sup> *Mental Health Act 2000*, Section 318I (Mandatory revocation).

<sup>36</sup> *Mental Health Act 2000*, Section 318J (Discretionary revocation).

In circumstances where it is reasonably established that public disclosure of patient information resulted from a notification under the CPIO, the CPIO will be revoked unless the Director is satisfied that the disclosure resulted from exceptional circumstances (eg. the CPIO recipient did not intend and could not have reasonably anticipated that their actions would result in information being publicly disseminated) and that appropriate measures are in place to prevent recurrence.

In circumstances where the Director considers that the CPIO will unreasonably affect the patient's treatment or the well-being of any person, the CPIO will be revoked unless the Director is satisfied that appropriate measures are in place to prevent adverse effects (eg an undertaking by the CPIO recipient and/or nominee to not contact the patient, relative or member of the treating team).

### **Informing the applicant and patient of revocation of Classified Patient Information Order**

Written notice<sup>37</sup> of the Director's decision to revoke a CPIO must be provided within 7 days to:

- the registered person
- the patient and the patient's allied person and
- the administrator of the patient's treating health service.

Where the patient is a minor or the Director is aware that the patient has a guardian or attorney, notice of the decision is also given to the parent, guardian or attorney.

However, the Director is not required to notify the patient, the allied person or the patient's parent, guardian or attorney if these parties were not notified of the CPIO.

Notice of the decision to the registered person is provided through the Victim Support Service.

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<sup>37</sup> *Mental Health Act 2000*, Section 318G (Notice of decision on application).

## CLASSIFIED PATIENTS SERVING A SENTENCE OF IMPRISONMENT

The *Corrective Services Act 2006* establishes an Eligible Persons Register which enables registered persons to receive information about a prisoner who has been sentenced to a period of imprisonment for an offence of violence or a sexual offence<sup>38</sup>.

The CPIO provisions in *Mental Health Act 2000* aim to ensure the information entitlements of a person on the Eligible Persons Register are maintained upon the prisoner's transfer to a mental health service as a classified patient. A CPIO may be made for any person who was registered on the Corrective Services Eligible Persons Register immediately prior to the prisoner's transfer as a classified patient.

### Notifying persons on the Eligible Persons Register of a classified patient admission

#### *Assessment of likely duration of admission*

The Director of Mental Health has discretionary authority<sup>39</sup> to notify a person of a classified patient admission if the Director reasonably believes the person may apply for a CPIO in relation to the patient<sup>40</sup>. All classified patient admissions are reviewed with a view to identifying potential CPIO applicants. An assessment of relevant factors is undertaken to inform the Director's decision about notifying a potential applicant of the patient's admission.

In particular, the Director considers the anticipated duration of the patient's admission as a classified patient. Classified patient admissions vary in duration, depending on the patient's assessment, treatment needs, and sentencing arrangements. Giving notice of a classified patient admission in circumstances where the admission is of limited duration is generally not in the interests of the patient or the victim (ie an application for a CPIO will not benefit the victim if the classified patient status is ceased shortly after the application is made).

The Director's Office seeks advice about the likely duration of the patient's admission from the treating psychiatrist as soon as practicable after admission. If the treating psychiatrist considers that the admission will be less than 4 weeks duration, the Director will not ordinarily advise a victim of the admission. Where the anticipated duration of the admission is unclear, the Director's Office monitors and reviews the timeframe in consultation with the treating psychiatrist.

#### *Process for notifying a potential applicant of a classified patient admission*

Where the Director considers that the patient is likely to require an extended period of admission (ie more than 4-6 weeks), notice of the admission will be provided through the Victims Register, Queensland Corrective Services.

<sup>38</sup> *Corrective Services Act 2006*, Section 320 (Eligible persons register)

<sup>39</sup> *Mental Health Act 2000*, Section 70 (Giving information about detention).

<sup>40</sup> For a classified patient serving a sentence of imprisonment, an eligible person is a person registered on the *Corrective Services Act 2006* Eligible Persons Register immediately prior to the patient's admission.

The Victims Register, Queensland Corrective Services is responsible for notifying relevant person(s) (ie person(s) registered on the Eligible Person's Register in relation to the prisoner) that the prisoner has been admitted to an authorised mental health service as a classified patient. The Victims Register, Queensland Corrective Services also provides information relating to CPIOs, the process for applying for a CPIO, and the services available through the Victim Support Service.

The Victim Support Service is available to explain CPIO processes and to assist the person with making an application.

### **Timing of the Director's notification**

The timing of the Director's notification to a potential CPIO applicant (through the Victims Register, Queensland Corrective Services) is dependent on the treating psychiatrist's assessment of the likely duration of the patient's admission. While the patient's likely need for an extended period of inpatient treatment may be evident soon after admission, this will not be the case in all circumstances. The Director will seek to provide notice as early as possible and, in all cases, within 4 weeks of the patient's admission.

***Flowchart 4 sets out processes for notification about a classified patient admission for a serving sentence prisoner.***

### **Advising patients of legislative processes**

Classified patients are routinely informed about *Mental Health Act 2000* processes relating to disclosure of their personal information. As a minimum requirement, patients are informed that:

- the Director of Mental Health is authorised to inform a person on the Corrective Services Eligible Persons Register of the patient's admission as a classified patient
- a person registered on the Corrective Services Eligible Persons Register may make an application for a CPIO to the Director, the information that may be provided to a victim under a CPIO and the statutory safeguards to protect against information being disclosed for public dissemination
- the circumstances in which the Director of Mental Health may refuse an application for a CPIO
- the requirements and process for the Director to consult the patient if an application is made and the circumstances in which the Director will determine the application without consulting the patient.

The information is provided to patients in writing (by way of pamphlet/fact sheet) and is explained in person by a health professional.

## Applications for a Classified Patient Information Order

### Persons eligible to apply<sup>41</sup>

An application for a CPIO may be made by a person registered on the Corrective Services Act Eligible Persons Register immediately prior to the patient's admission as a classified patient.

In order to verify the applicant's entitlement to apply for a CPIO, proof of identity is required to be provided with the application.

### Applicant's nominee

In making the application, the applicant may nominate another person to receive information on their behalf.<sup>42</sup> If the CPIO is granted, patient information that may be given under the order will be provided to the nominee instead of the applicant. The applicant may also request that the Director's decision on the application be provided to the nominee instead of the applicant.

A nominee may be submitted or changed any time after a CPIO is made.<sup>43</sup> The victim's written authorisation is required to make or change a nominee.

### Undertaking to not disclose for public dissemination

In making the application, the applicant is required to sign an undertaking to not disclose information for public dissemination. The undertaking does not limit the applicant's ability to discuss information received with individuals in their personal support network (eg the victim's family, friends, counsellor). However, broad disclosure of patient information (eg through the media, internet or other public forum), either directly or indirectly, constitutes grounds to revoke a CPIO. The undertaking confirms the applicant's understanding that they cannot disclose information for public dissemination and that they understand the implications of doing so.

Nominees are also required to sign an undertaking not to disclose information for public dissemination.

## Determination of applications for a Classified Patient Information Order

### Applications made by persons under 18 years of age

When an application is made by a person under 18 years of age, the Director of Mental Health must be satisfied that the CPIO is in the best interests of the applicant. The Director is required to consult with the applicant's parent or guardian in deciding what is in the applicant's best interests. However, consultation with the parent or guardian is not required where:

<sup>41</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(6) defines 'eligible persons' for the purpose of an application.

<sup>42</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(4) provides for a nominee.

<sup>43</sup> *Mental Health Act 2000*, Section 318H (Nominee to receive classified patient information).

- the parent or guardian is under 18 years and the application is made on behalf of their child or
- the Director is satisfied it would not be appropriate to consult the parent or guardian in the circumstances.<sup>44</sup>

The Director requests assistance from professional officers within the Victim Support Service in assessing whether a CPIO is in the applicant's best interests and the appropriateness of consultation with the applicant's parent or guardian.

The role of the Victim Support Service is to advise the Director on matters relevant to the Director's determinations including:

- the applicant's circumstances (eg their relationship with their parent or guardian or the reasons for the application being made by the minor rather than by the parent or guardian on behalf of the minor) and wishes
- the applicant's maturity and ability to understand the implications of the CPIO
- the harm suffered by the applicant as a result of the alleged offence
- the likely impact of receiving information on the applicant's health and safety.

While the process may vary depending on the age and circumstances of the applicant, the Victim Support Service ordinarily contacts the applicant directly in the first instance. If, having regard to information provided by the Victim Support Service, the Director does not consider it appropriate to consult the applicant's parent or guardian, no contact is made. In any other case, the Victim Support Service ensures that, as far as possible, contact with the parent or guardian occurs with the applicant's knowledge and agreement.

### Assessment of health and safety risks

The *Mental Health Act 2000* prohibits the Director from making a CPIO<sup>45</sup> where the order is likely to:

- cause serious harm to the classified patient's health or
- put the safety of the patient or someone else at risk.

The Act also requires the Director to provide the patient with reasonable opportunity to make a submission on these matters<sup>46</sup>. However, the Director is not required to consult the patient if advising the patient of an application is likely to:

- have an adverse effect on the health of the patient or the applicant or
- put the safety of the patient, the applicant or another person at risk.

<sup>44</sup> *Mental Health Act 2000*, Section 318D (Applications by minor).

<sup>45</sup> *Mental Health Act 2000*, Section 318E (Restrictions on making classified patient information order).

<sup>46</sup> *Mental Health Act 2000*, Section 318F (Patient to be given opportunity to make submission).

### **Advising the patient of an application**

Consultation with the patient is important to the Director's assessment of health and safety risks that may result from the making of a CPIO. As far as possible, the patient is advised of an application, the identity of the applicant, and is provided an opportunity to make a submission to the Director on issues of risk. Information is conveyed to the patient through the treating psychiatrist with an opportunity for the patient to advise the psychiatrist of any relevant concerns and/or to make a separate submission to the Director.

However, prior to seeking the patient's views, the Director considers any potentially adverse consequences that are likely to result from advising the patient of an application or the identity of an applicant. While the Director may take account of any relevant information, the Director routinely considers information received from the applicant and the patient's treating psychiatrist.

### **Information received from the applicant**

Where an applicant is concerned about the patient being informed of an application or the applicant's identity, they are encouraged to discuss their concerns with the Victim Support Service prior to making the application. The role of the Victim Support Service is to provide the victim with information about the process and safeguards (eg the patient is not provided with a copy of the application and does not have access to the victim's contact details).

Where necessary, the Victim Support Service is able to assist the victim to document their concerns; in particular, the ways in which the patient's knowledge of the application or the identity of the applicant will impact on the victim's health or safety, or the safety of another person. This information is submitted with the application.

If the applicant has requested that information (ie their identity or the fact of the application) be withheld from the patient and the Director determines that the information will not be withheld, the applicant will be advised before the application is progressed.

### **Information received from the treating psychiatrist**

The Director consults with the patient's treating psychiatrist in writing in relation to all applications for a CPIO. The Director's correspondence will:

- advise the treating psychiatrist that an application for a CPIO has been made and, where relevant, any decision of the Director to withhold the fact of the application or the identity of the applicant from the patient (ie on the basis of information provided by the applicant)
- seek the treating psychiatrist's opinion in relation to any adverse impact which is likely to result from advising the patient of the application and the basis for this opinion, if the Director has not determined that the fact of the application be withheld from the patient
- request that the treating psychiatrist inform the patient of the application (unless the Director has determined that the patient not be advised, or the psychiatrist considers

it is not in the interests of the patient's health or the safety of any person to do so) and the patient's entitlement to provide information to the Director either through the psychiatrist or directly

- seek the opinion of the treating psychiatrist in relation to the making of the CPIO (in particular, whether the CPIO is likely to cause serious harm to the patient's health or put the safety of any person at risk) and the basis of this opinion.

The Director seeks a written response from the treating psychiatrist within 7 days.

### ***Other relevant factors in determining an application***

The duration of admission is equally relevant to the Director's determination about the making of a CPIO. In most instances, this assessment will have already been undertaken prior to the Director giving notice of the patient's admission. Where this is not the case (eg where the applicant has been made aware of the person's classified patient admission through another source), the Director will obtain and consider the relevant information.

### ***Informing the applicant and patient of decision on application, reasons for decision and review processes***

#### **Decision on application**

Written notice<sup>47</sup> of the Director's decision on the application must be provided within 21 days to:

- the applicant
- the patient and the patient's allied person and
- the administrator of the patient's treating health service.

Where the patient is a minor or the Director is aware that the patient has a guardian or attorney, notice of the decision is also given to the parent, guardian or attorney.

However, the Director is not required to give notice of the decision to the patient if the Director believes that advising the patient of the decision is likely to:

- have an adverse effect on the health of the patient or the applicant or
- put the safety of the patient, the applicant or another person at risk.

The Director does not give the patient notice of the decision if the Director determined that the patient should not be advised of an application for a CPIO. Similarly, the identity of the person for whom the CPIO is made is not provided to the patient if this information was withheld in the process of consulting the patient on the application. If notice of the decision or the identity of CPIO recipient is withheld from the patient, it is also withheld from the patient's allied person and, where relevant, the patient's parent, guardian or attorney.

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<sup>47</sup> *Mental Health Act 2000*, Section 318G (Notice of decision on application).

Notice of the decision to the applicant is provided through the Victim Support Service. The notice may be given to the applicant's nominee instead of the victim where the victim requests this in the application.

The Director's notice of decision on an application also includes information relating to review processes (discussed below).

### Reasons for decision on application

If the Director does not grant an application for a CPIO, the reasons for the Director's decision are routinely provided to the applicant (or nominee) with the Director's decision.

The reasons for the Director's decision to grant or refuse an application for a CPIO are routinely provided to the patient. However, the Director is not required to provide the patient with reasons if this is likely to:

- have an adverse effect on the health of the patient or the applicant or
- put the safety of the patient, the applicant or another person at risk.

In considering these matters, the Director considers concerns raised by the applicant in the application process and seeks advice from the patient's treating psychiatrist.

### Review of Director's decision on application

The applicant or the patient may request review of the Director's decision on an application for a CPIO.<sup>48</sup>

When a review is requested, this is undertaken by two senior psychiatrists independent of the mental health service where the patient is detained. The role of the reviewing psychiatrists is to review all relevant material and advise the Director on any aspects of the decision or the material that warrant the Director's reconsideration. The reviewing psychiatrists may seek further information for the purposes of assessing the circumstances (eg from the applicant, the patient or the patient's treating psychiatrist). The Director will consider the advice and recommendations of the reviewing psychiatrists prior to making a final determination.

### ***Flowchart 5 sets out the processes for determining an application for a Classified Patient Information Order***

### Notifiable matters

A person for whom a CPIO is made (the 'registered person') may be provided information<sup>49</sup> in relation to:

- the patient's detention a classified patient

<sup>48</sup> Recommendation 3.10 of the Butler Review requires that victims have access to an internal process of review in relation to the Director's decision. The review process also applies to patients to enable the patient to seek review of risk issues.

<sup>49</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(1) sets out the information that may be provided under a CPIO.

- limited community treatment (LCT) for the patient
- the patient's absence without approval
- the patient's transfer
- cessation of the classified patient status.

Provision of patient information to the registered person (or nominee) is at the discretion of the Director of Mental Health. While the Director takes account of the individual circumstances in each instance, the following sections set out the Director's general considerations and the parameters for providing patient information to the registered person.

### **Detention of a classified patient**

The making of a CPIO effectively confirms that the patient is detained in an authorised mental health service as a classified patient.

For safety reasons, the location of the in-patient facility at which the patient is detained is not provided<sup>50</sup>.

### **Limited community treatment**

#### **Legislative and administrative processes<sup>51</sup>**

Limited community treatment enables the patient to undertake treatment and rehabilitation in the community<sup>52</sup>. For classified patients serving a sentence of imprisonment, the patient must be accompanied by a health service employee while undertaking LCT (ie staff escorted LCT). Staff escorted LCT may be limited to the grounds of the health service facility or may be in the broader community.

Staff escorted LCT may only be approved by the Director of Mental Health, subject to the Director being satisfied that certain legislative requirements are met (eg the LCT does not pose an unacceptable risk to the safety or welfare of the patient or others). The Director's approval may include conditions for LCT that assist to ensure the welfare and safety of the patient and others while the patient is receiving LCT.

The Director's approval of LCT is given for a specified period (eg one or two weeks) to enable the Director to review the patient's progress. Actual instances of LCT are authorised by the patient's authorised doctor. That is, the authorised doctor determines when the patient has LCT within the period of approval given by the Director. The authorised doctor is responsible for ensuring that the LCT is consistent with the Director's approval (ie LCT is authorised on the conditions established by the Director) and that the patient is appropriately assessed prior to undertaking LCT.

<sup>50</sup> *Mental Health Act 2000*, Section 318C (Director may make classified patient information order). Subsection 318C(2)(a) prohibits disclosure of the name and address of the in-patient facility.

<sup>51</sup> *Mental Health Act 2000*, Section 129 (Authorising limited community treatment) and Section 132 (Particular patients to be accompanied while undertaking limited community treatment).

<sup>52</sup> *Mental Health Act 2000*, Schedule 2.

The Director of Mental Health may also revoke an approval for LCT.

### **Notification under the Classified Patient Information Order**

Notifications relating to LCT will provide:

- the level of LCT approved by the Director; in particular, whether the LCT approval provides for:
  - staff escorted LCT on the grounds of the health service
  - staff escorted LCT off the grounds of the health service.
- the date and duration of the Director's approval.
- any conditions relevant to the victim's safety (eg conditions that prohibit LCT from being undertaken within a specified distance of the victim's place of residence or workplace).

Instances of LCT authorised by the authorised doctor are not permitted to be disclosed under a CPIO.

Notice of a decision by the Director to revoke an LCT approval is also provided under the CPIO.

### ***Absence without approval***

#### **Legislative and administrative processes<sup>53</sup>**

A classified patient's absence without approval may result from the patient leaving an inpatient facility without the required approval or absconding from the supervision of health service staff while undertaking LCT.

The Director of Mental Health has established operational procedures that require mental health service staff to inform the Director without delay when a classified patient becomes absent without permission.

Mental health service staff are also required to notify the Queensland Police Service of a classified patient's absence to assist with locating and returning the patient to the mental health service. Where there are identified risks relating to individual safety (either that of the patient or another person) this information is provided to police. This enables police to inform relevant individuals whose safety may be at risk.

### **Notification under the Classified Patient Information Order**

Information about a patient's absence without approval is provided under a CPIO where the absence is relevant to the registered person<sup>54</sup>. In determining whether to notify the registered person (or nominee), the Director considers:

- the circumstances of the patient's absence and

<sup>53</sup> *Mental Health Act 2000*, Sections 507 and 508 provide for the return of patients absent without approval.

<sup>54</sup> 318C (Director may make classified patient information order). Subsection 318C(1)(e) relates to notifications about absence without permission.

- the potential impact of the patient's absence without permission on the registered person.

In notifying the Director of the patient's absence without permission, the mental health service provides information about the circumstances of the patient's absence and action taken to locate the patient. In some instances, the patient is able to be promptly located and returned to the service. Notification is not ordinarily given to the registered person (or nominee) in these instances.

The Director also considers whether notification to the registered person (or nominee) is necessary to avert potentially adverse impact on the registered person. Notification is given as promptly as possible where the circumstances indicate that the registered person may encounter the patient (eg where it is likely that the patient will return to his/her home and the registered person resides in the same vicinity) or that the registered person may be made aware of the patient's absence through another means (eg through relatives or associates of the patient who are also known to the registered person).

It is important to recognise that the purpose of the notification is not to protect the registered person against risk that a patient may pose. Where risk to any person is identified, immediate communication through the police (as discussed above) should be made. While the patient may not represent a risk to the registered person's safety, it is appropriate that the distress that may result from an unexpected encounter with the patient is averted as far as possible. The Director consults with the Victim Support Service and mental health service staff is assessing these factors.

Where notification of the patient's absence under a CPIO is given, notification will also be made when the patient is returned to the mental health service.

### Transfer

#### Legislative and administrative processes<sup>55</sup>

A classified patient's transfer from one authorised mental health service to another can only be authorised by the Director of Mental Health.

#### Notification under the Classified Patient Information Order

Where the Director orders a patient's transfer, notification of the Director's order for transfer and the date of the transfer will be given under the CPIO.

### Cessation of classified patient status

#### Legislative and administrative processes

A patient's status as classified patient ceases:

- when the Director of Mental Health is satisfied that the patient does not need to continue to be detained for treatment of mental illness and the patient is returned to custody<sup>56</sup>

<sup>55</sup> *Mental Health Act 2000*, Sections 166 (Transfer orders – other patients).

- at the end of the patient's period of imprisonment or on the patient's parole.<sup>57</sup>

### **Notification under the Classified Patient Information Order**

Notifications relating to cessation of classified patient status will provide:

- the date of the cessation and
- the reason for the cessation.

### **Process for informing victims of notifiable matters**

The Director's decision on a notifiable matter is communicated to the victim through the Victim Support Service. The role of the Victim Support Service is to inform the registered person (or nominee) of the Director's decision, and to provide information and support to assist the victim to understand relevant legislative and service system processes.

**Flowchart 6 sets out the processes for informing victims of a notifiable matter**

### **Revocation of a Classified Patient Information Order**

Revocation of a CPIO may be mandatory<sup>58</sup> or at the discretion of the Director of Mental Health.<sup>59</sup>

#### **Mandatory revocation**

The Director of Mental Health must revoke a CPIO if:

- the patient ceases to be a classified patient
- the patient dies
- the registered person dies
- the registered person asks the Director to revoke the CPIO
- the Director reasonably believes that disclosure of patient information under the CPIO is likely to:
  - cause serious harm to the classified patient's health or
  - put the safety of the patient or someone else at risk.

#### **Discretionary revocation**

A CPIO may be revoked in other circumstances at the discretion of the DMH. However, before revoking the CPIO, the Director must advise the registered person of the grounds for revoking the order and provide the registered person with an opportunity to make a submission about the revocation of the CPIO.

<sup>56</sup> *Mental Health Act 2000*, Chapter 3, Part 5 (Return of classified patient to court or custody).

<sup>57</sup> *Mental Health Act 2000*, Section 99 (When patient ceases to be a classified patient).

<sup>58</sup> *Mental Health Act 2000*, Section 318I (Mandatory revocation).

<sup>59</sup> *Mental Health Act 2000*, Section 318J (Discretionary revocation).

While the circumstances under which the Director may consider revoking a CPIO are not limited, the CPIO will be routinely reviewed where:

- information disclosed under the order is publicly disseminated or
- the Director considers that continuing to provide information under the CPIO will unreasonably affect the patient's treatment or the well-being of any person (eg the registered person making contact with the patient or a relative of the patient).

Notification of the proposed revocation will be provided to the registered person through the Victim Support Service. The Victim Support Service is available to assist the person in making a submission in response to the proposed revocation of the CPIO.

In circumstances where it is reasonably established that public disclosure of patient information resulted from a notification under the CPIO, the CPIO will be revoked unless the Director is satisfied that exceptional circumstances exist (eg. the CPIO recipient did not intend and could not have reasonably anticipated that their actions would result in information being publicly disseminated).

In circumstances where the Director considers that the CPIO will unreasonably affect the patient's treatment or the well-being of any person, the CPIO will be revoked unless the Director is satisfied that appropriate measures are taken to prevent adverse effects (eg an undertaking by the CPIO recipient and/or nominee to not contact the patient, relative or member of the treating team).

### **Informing the applicant and patient of revocation of Classified Patient Information Order**

Written notice<sup>60</sup> of the Director's decision to revoke a CPIO must be provided within 7 days to:

- the registered person
- the patient and the patient's allied person and
- the administrator of the patient's treating health service.

Where the patient is a minor or the Director is aware that the patient has a guardian or attorney, notice of the decision is also given to the parent, guardian or attorney.

However, the Director is not required to notify the patient, the allied person or the patient's parent, guardian or attorney if these parties were not notified of the CPIO.

Notice of the decision to the registered person is provided through the Victim Support Service.

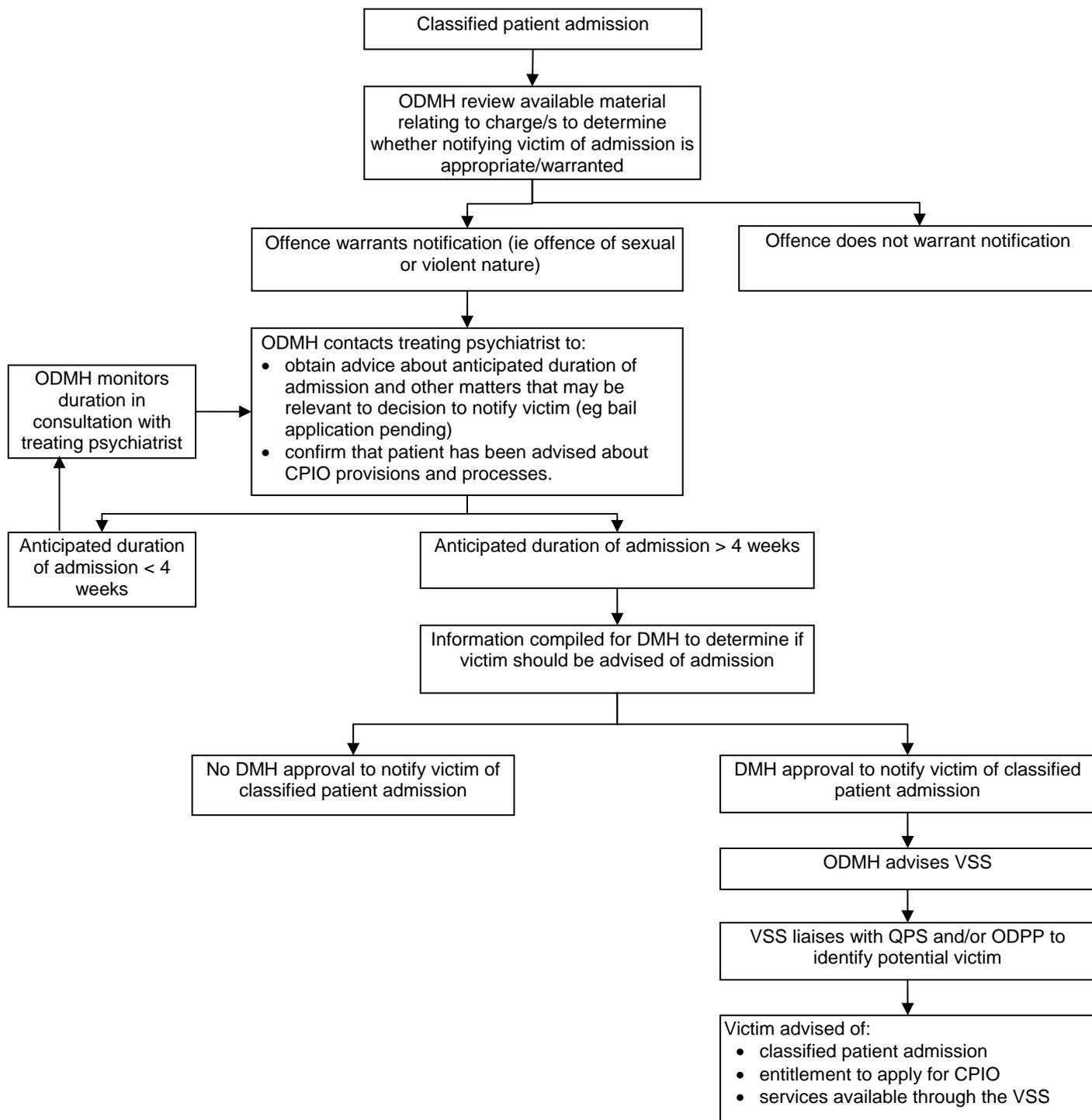
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<sup>60</sup> *Mental Health Act 2000*, Section 318G (Notice of decision on application).

# Classified patients charged with an offence

Flowchart 1

## Notifying victims of a classified patient admission



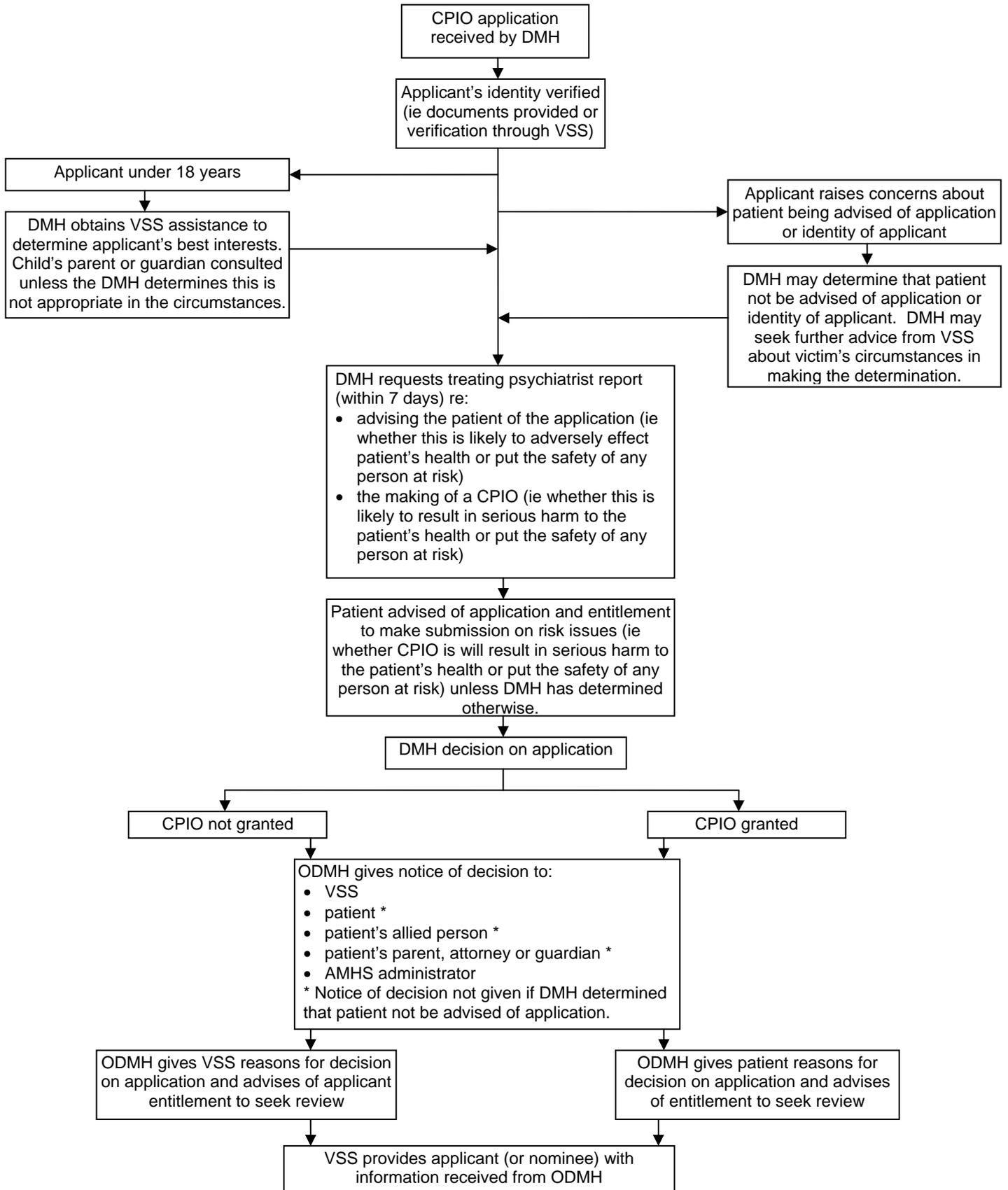
CPIO Classified Patient Information Order  
DMH Director of Mental Health

ODMH Office of Director of Mental Health  
ODPP Office of Director of Public Prosecutions

QPS Queensland Police Service  
VSS Victim Support Service

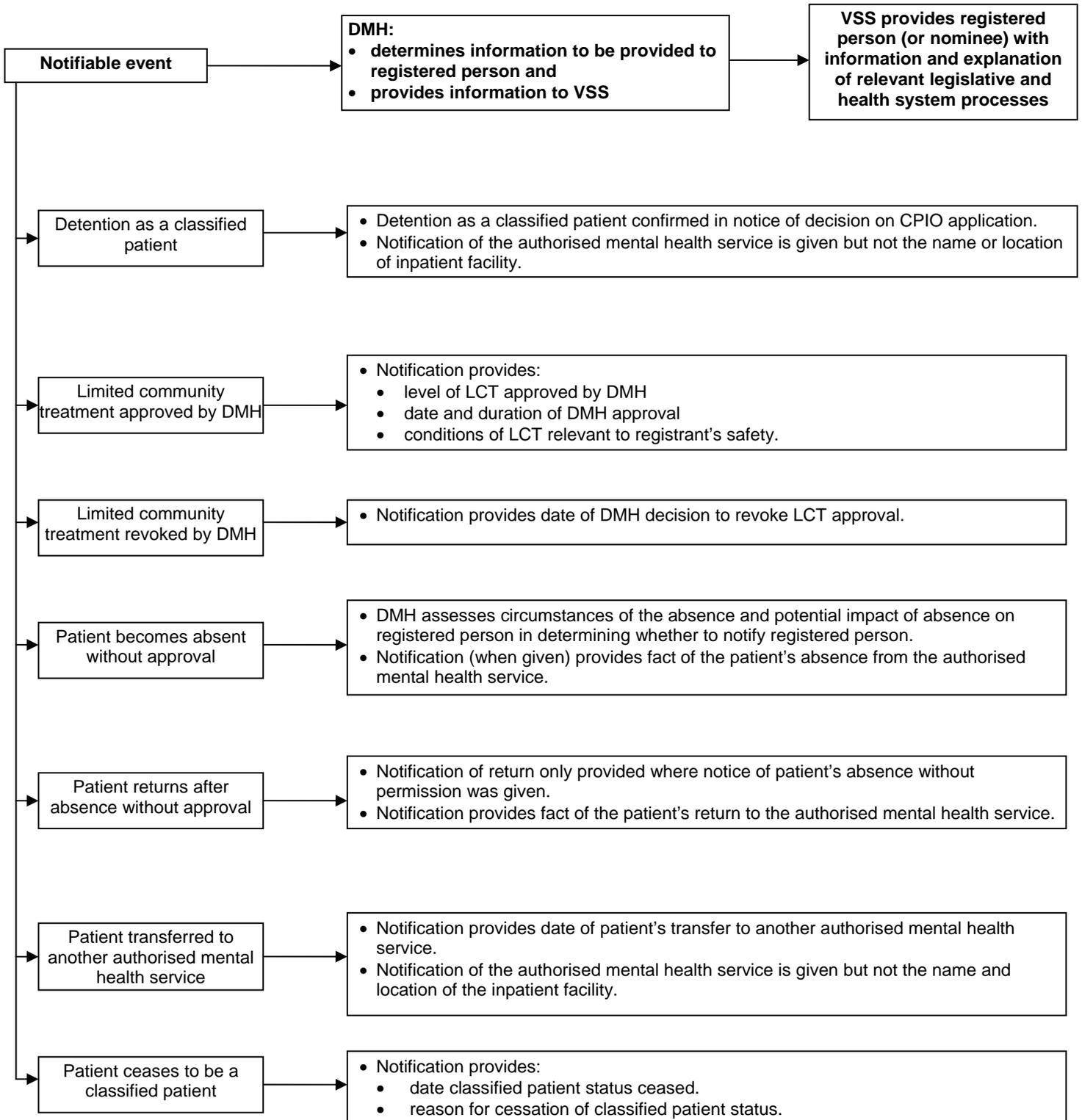
# Classified patients charged with an offence

## Determining applications



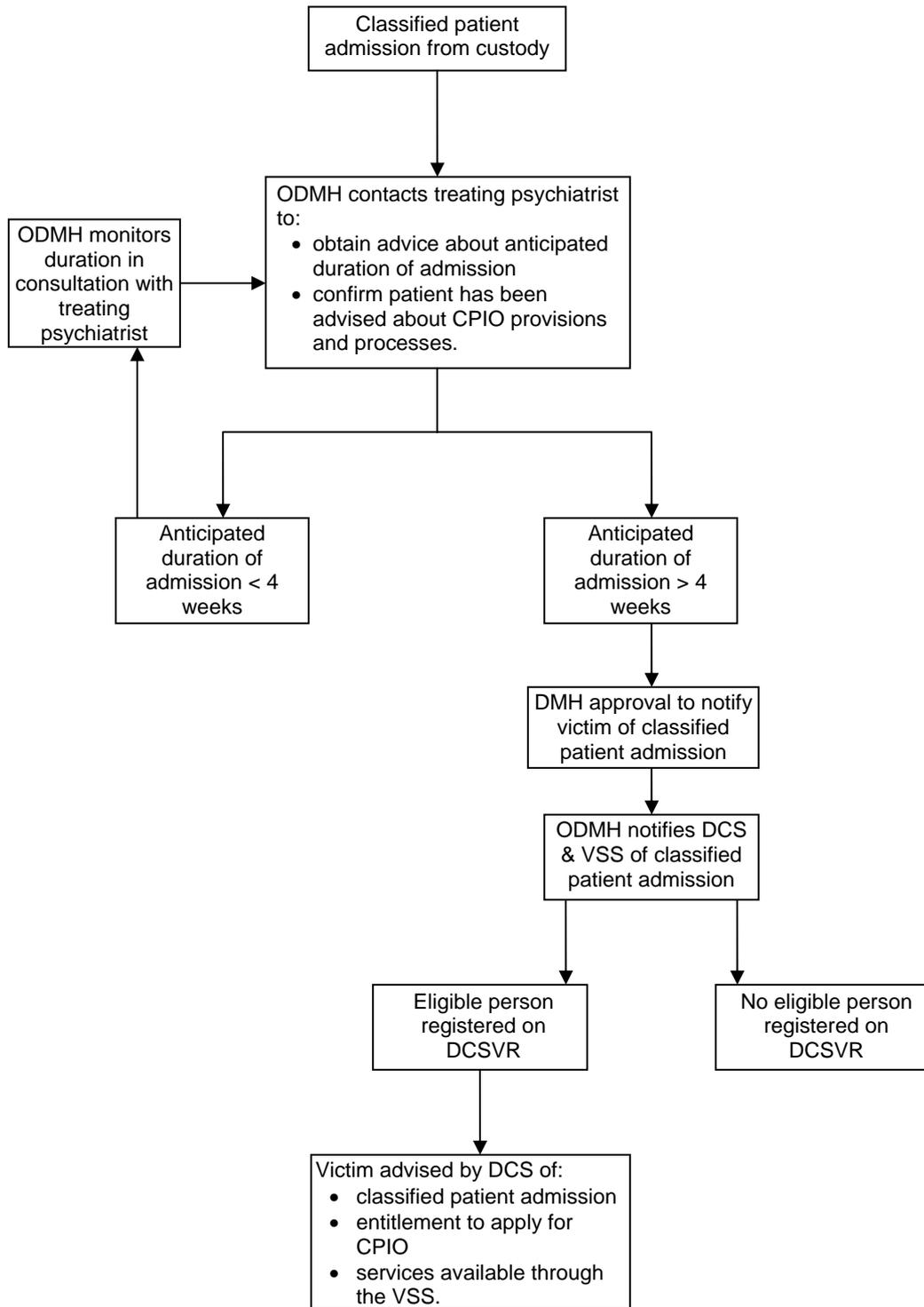
# Classified patients charged with an offence

## Notifiable matters



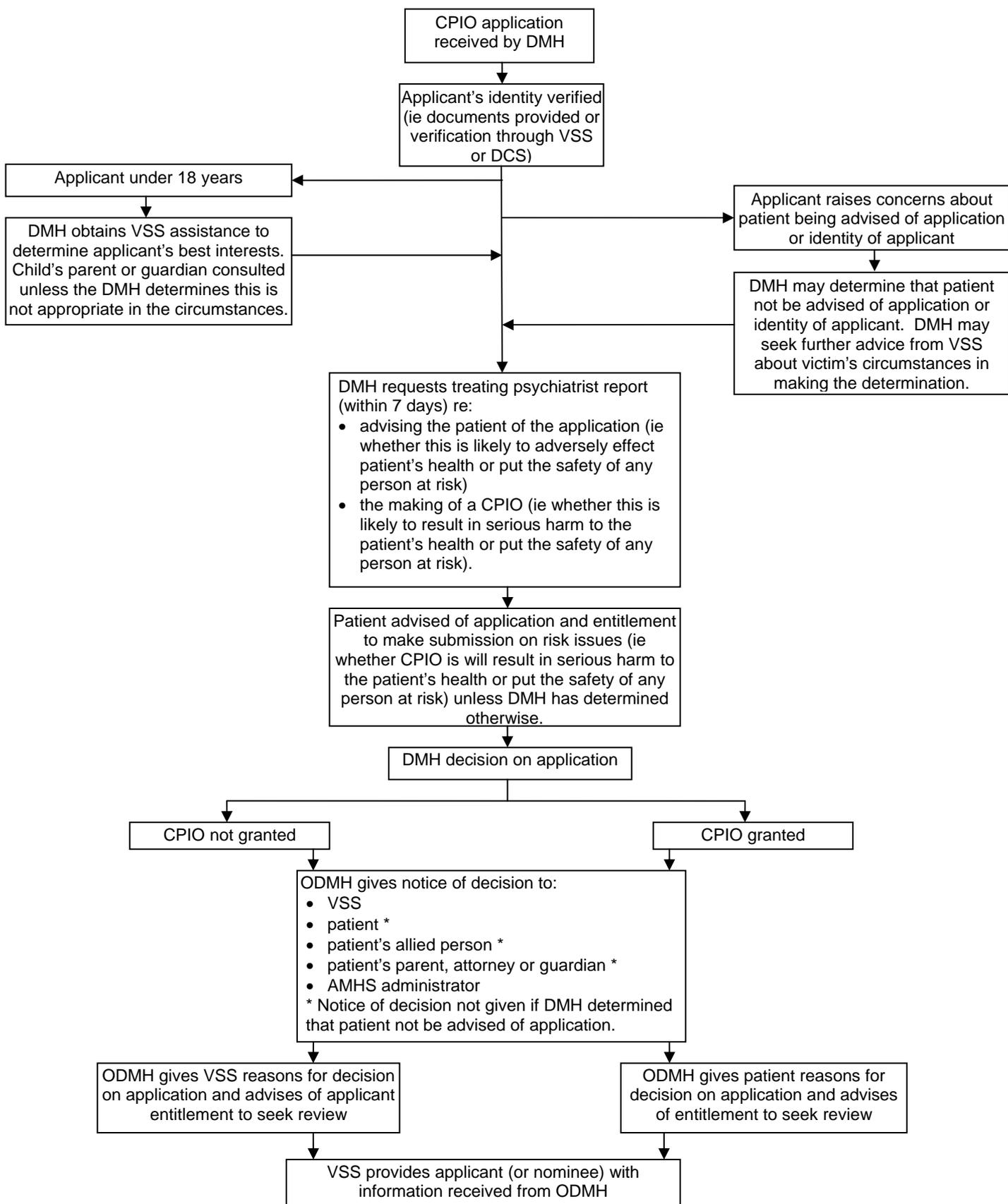
# Classified patients serving a sentence

## Notifying victims of a classified patient admission



# Classified patients serving a sentence

## Determining applications



# Classified patients serving a sentence

## Notifiable matters

