

Mental Health Court

Annual Report 2016 - 2017

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1. Introduction

The Mental Health Court is constituted under the *Mental Health Act 2016*. It was previously constituted under the now repealed *Mental Health Act 2000*. It is comprised of a Supreme Court Judge who is assisted by one or two clinicians.

The functions of the Court are to determine:

- references concerning questions of unsoundness of mind and fitness for trial in relation to persons charged with criminal offences
- whether or not a person charged with murder ought only stand charged with manslaughter by reason of diminished responsibility
- appeals from the Mental Health Review Tribunal.

During the year in review, the Honourable Justice Dalton was appointed President of the Mental Health Court, replacing the Honourable Justice Boddice. The Honourable Justice Flanagan also became a member of the Court upon appointment by Governor in Council.

During 2016/2017 the panel of assisting clinicians consisted of Dr E N McVie, Dr F T Varghese, Dr J Sundin, Dr J Reddan, Dr S Harden, Dr R Phillipson, Dr C Gray and Dr A Davison.

2. Workload

During 2016/2017, 261 references were filed (compared with 223 references the previous year). There were 71 amended references filed (compared with 115 amended references in the previous year).

The noticeable increase in references, and decrease in amended references, is attributable to the commencement of the *Mental Health Act 2016* on 5 March 2017. After the commencement of the Act, when a lodging authority refers additional charges to the Court, the Court requires that a new reference be filed, rather than any existing reference under the *Mental Health Act 2000* be amended.

In 2016/2017, 45 appeals from the Mental Health Review Tribunal were filed in the Court (compared with 50 appeals the previous year).

Table 1, page 5, shows new matters filed in the Mental Health Court for this reporting year.

3. Court sittings

During 2016/2017, the Court sat on 49 days (compared with 52 days the previous year). During this period the Court heard a total of 291 matters (compared with 268 matters for the previous year), consisting of 243 references and 48 appeals.

At each sitting, video-links with regional health facilities and correctional centres are used in hearing matters. This practice continues to provide a cost effective and highly efficient means of hearing matters, while also eliminating additional stress for patients and defendants.

Patients and defendants have the right to legal representation, with legal representatives commonly appearing in the Court.

Ordinarily, decisions are delivered orally at the conclusion of the hearing of a matter. Decisions in matters where an important point of law is raised, or which are factually complex, are reserved, and delivered in writing after the Judge has had time to consider the issues raised.

A callover of matters is held once every month. During 2016/2017, the number of matters called over each month was increased in an effort to ensure that the matters in the Court progress more quickly, and that matters involving the offence of murder are progressed as efficiently as possible.

3.1 Disposal of references

During 2016/2017, the Court heard 243 references (compared with 218 references in the previous year).

The Court heard seven references where the defendants were charged with the offence of murder (compared to six in the previous year). In respect to these matters, the Court made the following orders:

- One reference: the Court found the defendant was of unsound mind and a forensic order was made for the defendant's detention to an authorised mental health service.
- Two references: the Court found reasonable doubt that the defendant allegedly committed the offence and that the defendant was fit for trial. The Court ordered that the matters should proceed to trial in the normal course.
- Two references: the Court found the defendant was not of unsound mind but was of diminished responsibility; that the defendant was fit for trial, and should stand trial for manslaughter only.
- Two references: the Court reserved its decision.

Table 2, on page 6, summarises the findings and orders of the Court for this reporting year.

3.2 Disposal of appeals from Mental Health Review Tribunal

The *Mental Health Act 2016* (and previously the repealed *Mental Health Act 2000*), provides that patients, or their representatives, have 60 days after receipt of the decision of the Mental Health Review Tribunal in which to file an appeal. The Chief Psychiatrist and the Attorney-General also have 60 days from the date of the decision in which to lodge an appeal.

During 2016/2017, the Court dealt with 48 appeals (compared with 50 appeals in the 2015/2016 year). The Court allowed 6 appeals and dismissed 29 appeals. Twelve were withdrawn prior to the hearing, and 1 appeal was struck out.

4. Court examination orders

The making of court examination orders is an important function of the Mental Health Court. It provides the Court with adequate medical information on the defendant or patient. By a Court examination order, the Court in effect commissions a report from a qualified practitioner addressing the matters the Court must determine.

While this involves considerable cost, there is an adequate budget for these reports to be commissioned for matters to be determined by the Court.

The number of reports which must be completed each year, the complexity of the matters to be dealt with, and the relatively small pool of qualified practitioners available to write them, means that good management of this process is crucial to the efficient progress of matters through the Mental Health Court. The Registrar, assisting psychiatrists and Judges are very much aware of this, and make every effort towards efficiency.

During 2016/2017, applications were sought from qualified practitioners to undertake the work involved by examining practitioners under a Court examination order. A number of additional practitioners were engaged, expanding the pool of qualified practitioners.

5. Matters pending as at 30 June 2017

There were 327 matters pending as at 30 June 2017 (compared with 311 matters pending as at 30 June 2016), consisting of 320 references and 7 appeals.

There were 2 matters reserved as at 30 June 2017.

As at 30 June 2017, 25.99% of matters pending were greater than 12 months old, but less than 24 months old. Only 2.44% of matters pending were over 24 months old.

6. Introduction of the *Mental Health Act 2016*

The *Mental Health Act 2016* was introduced on 5 March 2017 replacing the *Mental Health Act 2000*.

As part of the Court's involvement with introducing the *Mental Health Act 2016*, new forms were developed. These have streamlined the administrative processes and efficiency of the Court.

Under the new Act assisting clinicians, other than psychiatrists, can sit with the Mental Health Court Judges to assist them as part of the Court hearing. This change reflects the fact that the Court deals with people with intellectual disabilities, as well as people with mental illness. The appointment of the new assisting clinicians will be finalised in 2017/2018.

The President of the Mental Health Court has spent some time liaising with the Chief Magistrate and Deputy Chief Magistrate concerning the new jurisdiction of the Magistrates Court under the new Act.

The Mental Health Court Registry has invested considerable time making administrative and process changes to ensure the smooth implementation of the provisions of the Act. The transition has been as smooth as could have been hoped. It is envisaged that the Court will still be dealing with matters under the transitional provisions through 2017/2018.

7. Liaison with institutional stakeholders

The President of the Mental Health Court has put in place a twice yearly meeting between the Judges and the assisting clinicians and, separately, between the Judges and the Director of Public Prosecutions; the Director of Legal Aid; the Chief Psychiatrist, and a representative from Crown Law on behalf of the Attorney General.

The Registrar has also implemented more contact with the lawyers who represent these institutional parties, with the aim of building a working relationship that achieves quality outcomes in the Mental Health Court jurisdiction.

8. Education

In an effort to improve the knowledge base of clinicians and lawyers working in the Mental Health Court, the Judges have attended The Park Centre for Mental Health Service on three occasions to give presentations and briefings. Further, two educational sessions have been scheduled for 2017/2018 at the Supreme Court.

9. Registry

Members of the Registry are thanked for their ongoing dedication and assistance to the Court.

The Registry is a unit within the Department of Health. Its role is to provide administrative support to the Court. It comprises four full time employees.

This year saw a thorough-going review of the Registry. The Department of Health and the Department of Justice together arranged the review of Registry practices and functions. A new Registrar was appointed on a permanent basis. Reporting structures between the Registrar and the Department of Health were changed. The result is a markedly more efficient and effective Registry.

The lack of an electronic case management system remains an on-going issue for the Registry. However it is envisaged that the Registry will introduce a new case and file management system in 2017/2018.

10. Website

Information about the Mental Health Court (including a description of its work, contact details, forms and practice notes) is available on the Queensland Courts website (<http://www.courts.qld.gov.au/>).

A selection of the Court's judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act 2016* (Qld) (<http://www.sclqld.org.au/caselaw/QMHC>). As well, important judgments from other jurisdictions have been added to the website.

Table 1: Matters filed in the Mental Health Court during 2016/2017

References and Amended References filed by:	References	Amended References
Chief Psychiatrist*	108	34
Director of Public Prosecutions	1	0
Director of Forensic Disability	0	0
Legal Representative	149	37
Defendant	0	0
Court of Law	3	0
Total	261	71
Appeals filed by:	Appeals	
Chief Psychiatrist*	0	
Legal Representative	2	
Patient	34	
Interested Person acting on behalf of the person	1	
Attorney General	8	
Total Appeals	45	
Originating Applications filed:	Applications	
Applications to enquire into detention	1	
Total Applications	1	

*Formerly known as *Director of Mental Health* under repealed *Mental Health Act 2000*.

Table 2: References - Findings and orders made by the Mental Health Court

References - Findings and orders made by the Mental Health Court	2016/2017
Unsound mind - Forensic Order	78
Unsound mind - Forensic Order & non-contact order	4
Unsound mind - Forensic Order (Disability)	3
Unsound mind - no Forensic Order	29
Not of unsound mind and fit for trial*	50
Not of unsound mind and unfit (unfitness not permanent) - Forensic Order	3
Not of unsound mind and unfit (unfitness not permanent) - Forensic Order (Disability)	1
Not of unsound mind and unfit (unfitness permanent) - Forensic Order*	10
Not of unsound mind and unfit (unfitness permanent) - Forensic Order (Disability)	22
Not of unsound mind and unfit (unfitness permanent) - no Forensic Order	17
Not of unsound mind, was of diminished responsibility, fit for trial	2
Reasonable doubt and fit for trial	35
Reasonable doubt and unfit for trial (unfitness permanent) - Forensic Order	2
Reasonable doubt and unfit for trial (unfitness permanent) - Forensic Order (Disability)	4
Reasonable doubt and unfit for trial (unfitness permanent) - no Forensic Order	5
Material dispute of facts and fit for trial	3
Reference Struck Out	9
Reference Dismissed	2
Reference Withdrawn	16
Total	295

includes 50 References where two or more decisions were made

*includes orders made under *Mental Health Act 2016*