



QUEENSLAND  
COURTS

SUPREME COURT  
BRISBANE

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The Honourable Lawrence Springborg MP  
Minister for Health  
Queensland Health Building  
147-163 Charlotte Street  
BRISBANE QLD 4000

Dear Minister

Please find enclosed my report, under s 435 of the *Mental Health Act 2000*, detailing the operation of the Mental Health Court and its registry for the period 1 July 2012 - 30 June 2013.

Yours faithfully

**The Hon Justice A Lyons**

## **The Mental Health Court**

*Registry:*

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ISSN: 1447-4972

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## **Introduction**

The Mental Health Court is constituted under the *Mental Health Act 2000*. It is comprised of a Supreme Court judge who sits with two assisting psychiatrists.

During the year in review the Honourable Justice A Lyons was President of the Mental Health Court while the Honourable Justice D Boddice was a member of the Court.

During the relevant period the panel of assisting psychiatrists consisted of Dr J M Lawrence AM, Dr E N McVie, Dr F T Varghese, Dr J N Chalk, Dr A S Davison, Dr M L Khoo and Dr J J Sundin.

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 offences on indictment, to determine appeals from the Mental Health Review Tribunal, and to inquire into the lawfulness of patients' detention in authorised mental health services.

## **Sittings**

At each sitting video links with regional hospitals and correctional centres were utilised in the hearing of matters. This practice continues to provide a cost effective and efficient means of hearing matters, while also eliminating additional stress for mentally ill patients and defendants.

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

Decisions that are not delivered ex tempore are generally delivered within one month of hearing.

During the 2012/2013 year, the Court sat on 74 days, (compared with 80.5 days the previous year).

During this period the Court heard a total of 286 matters (compared with 335 matters for the previous year) consisting of 211 references, 71 appeals and four applications.

Details of the matters heard by the Court for the year comprise:

**Table 1: Matters heard by the Mental Health Court 2012/2013**

	Number of Cases		
	Lodged	Finalised	Active
<b>References</b>			
Director of Mental Health	120	94	78
Director of Public Prosecutions	8	4	6
Director of Forensic Disability	1	1	0
Legal Representative	125	109	107
Defendant	1	2	2
Court of Law	1	1	0
Attorney General	0	0	0
<b>Total References</b>	<b>256</b>	<b>211</b>	<b>193</b>
<b>Amended References</b>			
Director of Mental Health	29	-	-
Director of Public Prosecutions	1	-	-
Director of Forensic Disability	1	-	-
Legal Representative	32	-	-
Defendant	1	-	-
Court of Law	0	-	-
Attorney General	0	-	-
<b>Total Amended References</b>	<b>62</b>	<b>-</b>	<b>-</b>
<b>Appeals</b>			
Director of Mental Health	0	0	0
Legal Representative	3	2	1
Patient	55	45	11
Attorney General	18	25	2
<b>Total Appeals</b>	<b>76</b>	<b>71</b>	<b>14</b>
<b>Amended Appeals</b>			
Director of Mental Health	0	-	-
Legal Representative	0	-	-
Patient	7	-	-
Attorney General	2	-	-
<b>Total Amended Appeals</b>	<b>9</b>	<b>-</b>	<b>-</b>
<b>Applications</b>			
Applications to enquire into detention	1	1	0
Application to move out of Queensland	0	0	0
Application to change forensic order type			
Director of Mental Health	3	4	0
Director of Forensic Disability	0	0	0
<b>Total Applications</b>	<b>4</b>	<b>4</b>	<b>0</b>
<b>TOTAL</b>	<b>336*</b>	<b>286</b>	<b>207</b>

\*This figure does not include amended references or appeals as they are attached to matters already referred or appealed.

## References

During the period under review the Court heard 211 references (compared with 205 references in the previous year).

The Court dealt with 14 references for persons charged with murder or attempted murder.

The Court dealt with references in respect of ten persons charged with murder (compared to seven cases in 2011/2012). In one of these references, the Court found the defendant to be of unsound mind and made a forensic order. In one reference, a finding of diminished responsibility, fit for trial was made with the matter continuing through the criminal courts. In two references, the Court determined that there was a dispute pursuant to s 268 of the *Mental Health Act 2000*. One of these references was withdrawn. In one reference, the Court determined there was a dispute pursuant to s269 of the *Mental Health Act 2000*. In three references, there was a finding that the defendant was not of unsound mind or diminished responsibility and the proceedings were ordered to continue according to law. In two matters the references were withdrawn with the proceedings continuing in the criminal courts.

The Court also dealt with four references concerning persons charged with attempted murder. In three of these references, the Court found the defendants to be of unsound mind and made forensic orders for detention to an authorised mental health service. In one reference, the Court found the defendant to be not of unsound mind with proceedings to continue in the criminal courts.

## Appeals from Mental Health Review Tribunal

The *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 Director of Mental Health has 60 days from the date of the decision in which to lodge an appeal.

The Office of Legal Aid Queensland continues to fulfil an important role in making representation available to patients on appeals. In addition, the practice of the Director of Mental Health in electing to become a party on appeals also assists the Court.

During the 2012/2013 year, the Court dealt with 71 appeals, (compared with 119 appeals in the 2011/2012 year).

**Table 2: Matters\*\* disposed of by the Mental Health Court 2012/2013 – references**

<b>Findings and orders of the Mental Health Court</b>	<b>2012/2013</b>
References:	
• Of unsound mind - forensic order (Mental Health Court)	114
• Of unsound mind - forensic order (Mental Health Court - Disability)	4
• Of unsound mind - no forensic order	19
• Of unsound mind - non contact order	1
• Not of unsound mind and fit for trial	36
• Not of unsound mind, of diminished responsibility and fit for trial	1
• Not of unsound mind, not of diminished responsibility and fit for trial	2
• Not of unsound mind and unfit for trial (unfitness not permanent) – forensic order (Mental Health Court)	3
• Not of unsound mind and unfit for trial (unfitness not permanent) - forensic order (Mental Health Court - Disability)	1
• Not of unsound mind and unfit for trial (unfitness permanent) – forensic order (Mental Health Court)	9
• Not of unsound mind and unfit for trial (unfitness permanent) – forensic order (Mental Health Court - Disability)	4
• Not of unsound mind and unfit for trial (unfitness permanent) - no forensic order	2
• Reasonable doubt and fit for trial	18
• Reasonable doubt and unfit for trial (unfitness not permanent) - forensic order (Mental Health Court)	2
• Reasonable doubt and unfit for trial (unfitness not permanent) - forensic order (Mental Health Court - Disability)	1
• Reasonable doubt and unfit for trial (unfitness permanent) - forensic order (Mental Health Court)	4
• Reasonable doubt and unfit for trial (unfitness permanent) - forensic order (Mental Health Court - Disability)	2
• Reasonable doubt and unfit for trial (unfitness permanent) - no forensic order	1
• Material dispute of facts and fit for trial	2
• Material dispute of facts and unfit for trial (unfitness permanent) – forensic order	1
• Reference struck out	8
• Reference withdrawn	10
<b>Total</b>	<b>245</b>

\*\* includes 24 matters where 2 decisions were made, 4 matters where 3 decisions were made and 1 matter where 4 decisions were made

Appeals from the Mental Health Review Tribunal were disposed of as follows:

**Table 3: Matters disposed of by the Mental Health Court 2012/2013 - appeals**

<b>Findings of the Mental Health Court</b>	<b>2012/2013</b>
<b>Appeals:</b>	
• Withdrawn	19
• Dismissed	41
• Allowed	11
<b>Total</b>	<b>71</b>

#### **Applications for Inquiries into Detention**

In the year under review there was one application filed with it being dismissed by the Court.

#### **Court examination orders**

Court examination orders are an important function of the Mental Health Court in its deliberations on a reference or on an appeal from the Mental Health Review Tribunal. Such orders are generally made on the recommendation of an Assisting Psychiatrist to the Court. In the year 2012/2013, 150 such orders were made, compared with 162 in 2011/2012. There is a concern that due to budgetary constraints there is a limit on the number of orders that can be made per month. This will inevitably lead to a delay in the hearing of matters which will be reflected in the 2013 – 2014 year.

#### **Matters adjourned as at 30 June 2013**

**Table 4: Matters adjourned by the Mental Health Court as at 30 June 2013**

<b>Type of Matter</b>	<b>2012/2013</b>
<b>References:</b>	
• Adjourned to a date to be fixed	9
<b>Appeals:</b>	
• Adjourned to a date to be fixed	3
<b>Total</b>	<b>12</b>



**Decisions reserved as at 30 June 2013**

**Table 5: Decisions reserved by the Mental Health Court as at 30 June 2013**

Type of Matter	2012/2013
Reference	1
Appeal	0

**Matters pending as at 30 June 2013**

There are 208 matters pending as at 30 June 2013 compared with 169 matters pending as at 30 June 2012.

**Table 6: Matters pending in the Mental Health Court as at 30 June 2013**

Type of Matter	2012/2013
<b>References by:</b>	
• Director of Mental Health	78
• Director of Forensic Disability	1
• Director of Public Prosecutions	6
• Legal Representative	107
• Defendant	2
• Court of Law	0
• Attorney General	0
<b>Appeals against the decisions of the Mental Health Review Tribunal by:</b>	
• Director of Mental Health	0
• Legal Representative	1
• Patient	11
• Attorney-General	2
<b>Applications</b>	
• Applications to enquire into detention	0
• Application to move out of Queensland	0
• Application to change forensic order type by:	
Director of Mental Health	0
Director of Forensic Disability	0
<b>Total</b>	<b>208*</b>

\* This figure includes a matter part heard where the reference has been finalised with the amended reference still pending.

## Registry

Ms Jade Madden, Senior Deputy Registrar undertook the role of Acting Registrar in 2012/2013 year as Ms Lisa Blackmore, Registrar has been on maternity leave.

The registry is also staffed by Ms Kerry Woods, Acting Senior Deputy Registrar and Ms Amanda Button, Administration Officer. Other staff have also assisted on a temporary basis with Ms Alice Newbery currently occupying the Deputy Registrar position.

All staff have provided dedicated and effective assistance to the Court. The Registry staff have borne a particularly onerous burden due to the significant reduction in staff numbers which has required staff to assume a demanding workload. They are to be commended for their efforts.

## 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/>). The Court's judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act 2000* (<http://www.sclqld.org.au/qjudgment/>).