



Mental Health Court
Report 1 July 2004 – 30 June 2005

The Mental Health Court

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CHAMBERS OF JUSTICE C E HOLMES
SUPREME COURT OF QUEENSLAND

9 November 2005

The Honourable Stephen Robertson, MP
Minister for Health
Queensland Health Building
147-163 Charlotte Street
BRISBANE QLD 4000

Dear Minister,

I enclose my report, under s 435 of the *Mental Health Act* 2000, on the operation of the Mental Health Court and its registry for the period 1 July 2004 – 30 June 2005.

Yours sincerely,

The Hon. Justice C E Holmes

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Introduction

The Mental Health Court is constituted by a Judge of the Supreme Court assisted by two psychiatrists from a panel of three appointed under the *Mental Health Act 2000*. The Honourable Justice Wilson was the Judge constituting the Court until the end of her term on 28 February 2005; the Honourable Justice Holmes now presides. The panel of assisting psychiatrists consists of Dr D A Grant, Dr J M Lawrence AM and Dr J F Wood. 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

During the 2004/2005 year, the Mental Health Court sat on 56 days; two of those days were used for a sitting in Townsville. In order to deal with an increasing volume of work, every sittings day is now allocated to hearings, with no allowance for reading time.

The Mental Health Court continues to use the video-conference facilities at the Supreme Court (Court No. 15) in cases involving persons detained in authorised mental health services or held in correctional centres in regional Queensland. This minimises the need for parties to travel under escort to Brisbane, with the dual advantage of saving costs to the services and eliminating the anxiety of long distance travel for mentally ill patients.

The defendants and patients concerned retain, of course, the right to legal representation; commonly their legal representatives appear in Brisbane.

Matters heard comprised: -

Table 1: Matters heard by the Mental Health Court 2004/2005

Type of Matter	2004-05
References by:	
• Director of Mental Health	95
• Director of Public Prosecutions	3
• Defendant or Legal Representative	114
• Court of Law	5
• Attorney-General	3
Appeals against the Mental Health Review Tribunal by:	
• Director of Mental Health	6
• Attorney-General	3
• Patient	32
Applications to inquire into detention:	
• Patient	3
Total	264

References

Table 2: Matters* disposed of by the Mental Health Court 2004/2005 – references

Findings and orders of the Mental Health Court	2004-05
References	
• Of unsound mind (forensic order)	89
• Of unsound mind (no forensic order)	9
• Of unsound mind (no forensic order) – non contact order made	1
• Not of unsound mind and fit for trial	39
• Fit for trial – fitness only referred to MHC	1
• Not of unsound mind, of diminished responsibility and fit for trial	2
• Not of unsound mind, not of diminished responsibility and fit for trial	2
• Not of unsound mind, not of diminished responsibility and unfit for trial (unfitness not permanent)	1
• Not of unsound mind and unfit for trial (unfitness not permanent)	12
• Unfit for trial (unfitness not permanent) – fitness only referred to MHC	1
• Not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	5
• Not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	8
• Reasonable doubt and fit for trial	14
• Reasonable doubt and fit for trial – custody order made	2
• Reasonable doubt and unfit for trial (unfitness not permanent)	6
• Reasonable doubt and unfit for trial (unfitness permanent and forensic order made)	2
• Reasonable doubt and unfit for trial (permanent and no forensic order made)	5
• Reasonable doubt and unfit for trial (permanent and no forensic order made) – non contact order made	1
• Reference struck out	14
• Reference withdrawn	13
Total	227

* includes 21 matters where two decisions were made & two matters where three decisions were made

The court heard references in respect of 15 persons charged with murder, seven of whom were found to have been of unsound mind at the time of the killing and another one temporarily unfit for trial. Forensic orders were made in those instances, with the patient in each case detained in a high-security hospital. Two were found to have been of diminished responsibility; proceedings continued on the charge of manslaughter. The remaining five went to trial on murder charges. Another person was referred on the charge of killing an unborn child and was found to be of unsound

mind. Again a forensic order was made and that person was detained in a high-security hospital.

In 93 referred cases, the primary diagnosis was of a disorder in the schizophrenia group while 28 references concerned persons whose primary diagnosis was of a substance related disorder. In 20 cases the primary diagnosis was one of mental retardation.

The question of what order should be made where a finding of unsoundness or unfitness for trial is made in respect of an individual who suffers from intellectual impairment but no psychiatric disorder has proved problematic for the Court and may reflect a hiatus in the *Mental Health Act 2000*. A forensic order provides for involuntary treatment in a mental health service; that may not be appropriate in the case of a person who suffers no psychiatric disorder, but there exists no alternative means of ensuring supervision of an intellectually impaired person who poses a risk of re-offending. An associated difficulty in structuring orders is the lack of placement options for such individuals.

Court examination Orders

Court examination orders are an important function of the Mental Health Court in its deliberations on a reference or 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 under review 189 such orders were made.

Appeals from Mental Health Review Tribunal

Following amendments to the *Mental Health Act 2000* which came into force on 29 April 2005, the period allowed to file an appeal from the Mental Health Tribunal was increased, for appellants, from 28 days to 60 days after receipt of the decision and for the Director of Mental Health, from 28 days to 60 days after the decision was made.

The increase in the period was designed to allow more time for parties to consider the Tribunal's reasons for finding before deciding whether to file an appeal.

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

Table 3: Matters disposed of by the Mental Health Court 2004/2005 - appeals

Findings of the Mental Health Court	2004-05
Appeals:	
• withdrawn	14
• dismissed	18
• upheld	9
Total	41

The Legal Aid Office Queensland has made representation available to patients on appeals, providing great assistance to both appellants and the Court. The Director of Mental Health has also elected to become a party on appeals, a practice which again gives the Court considerable assistance.

Applications for Inquiries into Detention

In the year under review there were 3 applications to inquire into detention. In each case the applicants had also filed an appeal from the Mental Health Review Tribunal. Two applications were refused, the Court concluding that the issues raised could best be dealt with in the exercise of its powers on appeal from the Tribunal.

In relation to the remaining application, the Court ordered that a legal practitioner inquire into the applicant's detention and report to the Court.

Table 4: Matters disposed of by the Mental Health Court 2004/2005 – applications for enquiries into detention

Findings of the Mental Health Court	2004-05
Applications:	
• refused	2
• Detention deemed not unlawful	1
Total	3

Matters pending as at 30 June 2005

Table 5: Matters pending in the Mental Health Court as at 30 June 2005

Type of Matter	2004-05
References by:	
• Director of Mental Health	65
• Director of Public Prosecutions	5
• Defendant of Legal Representative	84
• Court of Law	4
• Attorney-General	3
Appeals against the Mental Health Review Tribunal by:	
• Patient	9
• Legal Representative	1
Total	171

Table 6: Matters adjourned by the Mental Health Court as at 30 June 2005

Type of Matter	2004-05
References: <ul style="list-style-type: none">• Adjourned to a date to be fixed	18
Total	18

As at 30 June 2005 there were no reserved decisions.

Registry

The Registrar, Mr Barry Weychardt, Deputy Registrar, Mrs Lisa Blackmore, and administrative assistant, Ms Corinne Meade, have continued to provide dedicated and effective assistance.

The Registry occupies premises in the Queensland Health Building where facilities are less than optimal. The issues of office space, resources, counter facilities, storage space, security and privacy remain and have been outlined in previous reports.

Some progress has been made towards the creation of a court management system, but the development, testing, and implementation stages are yet to be completed. The lack of a proper court management system places enormous strain on the registry staff, given there are only three of them.

It may be that on the implementation of Mr Forster's Queensland Health Systems Review some of the issues raised in this and previous reports concerning the Registry will be addressed.

Website

Information about the Mental Health Court (including a description of its work, contact details, forms and practice notes) has been made available on the Queensland Courts website (http://www.courts.qld.gov.au/about/role_mhc.asp). Its judgments are published on the internet, subject to relevant restrictions contained in the *Mental Health Act* (<http://www.courts.qld.gov.au/qjudgment/mhc.asp>).

Summary of Recommendations

It is recommended that consideration be given to whether the *Mental Health Act 2000* requires amendment to provide for a form of order specific to the needs of individuals, not suffering from any psychiatric disorder, who are found to be of unsound mind or unfit for trial.