



# **Mental Health Court**

**Annual Report  
2010 – 2011**



QUEENSLAND  
COURTS

SUPREME COURT  
BRISBANE

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15 November 2011

The Honourable Geoff Wilson 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 2010 - 30 June 2011.

Yours faithfully

**The Hon Justice A Lyons**

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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 Phillipides was President of the Mental Health Court until the Honourable Justice A Lyons was appointed President on 14 February 2011. Justice Phillipides' enormous contribution to the efficient disposition of the Court's workload during her Presidency is gratefully acknowledged. The Honourable Justice D Boddice was appointed a member on 14 February 2011.

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 G J Byrne, Dr A S Davison, Dr M L Khoo and Dr J J Sundin. Dr Byrne retired on 28 February 2011 and his contribution to the court is acknowledged. Dr Khoo and Dr Sundin were appointed assisting psychiatrists on 1 March 2011.

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 2010/2011 year, the Court sat on 76 days, (compared with 81 days the previous year).

During this period the Court heard a total of 290 matters (compared with 305 matters for the previous year). The next six months will see an increase in the number of sittings and will assist in reducing the number of matters awaiting hearing.

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

**Table 1: Matters heard by the Mental Health Court 2010/2011**

	Number of Cases		
	Lodged	Finalised	Active
<b>References</b>			
Director of Mental Health	94	102	48
Director of Public Prosecutions	12	9	9
Legal Representative	115	108	100
Defendant	7	4	4
Court of Law	5	3	3
Attorney General	0	0	0
<b>Total References</b>	<b>233</b>	<b>226</b>	<b>164</b>
<b>Appeals</b>			
Director of Mental Health	1	1	0
Patient or Legal Representative	46	39	17
Attorney General	37	24	19
<b>Total Appeals</b>	<b>84</b>	<b>64</b>	<b>36</b>
Applications to enquire into detention	0	0	0
<b>Total Applications</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>317</b>	<b>290</b>	<b>200</b>

## References

During the period under review the Court heard 226 references (compared with 209 references in the previous year).

The Court dealt with 24 references for persons charged with murder or attempted murder.

The Court dealt with references in respect of 12 persons charged with murder. In two of these references, the Court found the defendants to be of unsound mind and made forensic orders for detention in a high security authorised mental health service. In one reference, a finding of diminished responsibility was made. In three references, the Court determined that there was a dispute pursuant to s 268 or s 269 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 three matters the reference was withdrawn with the proceedings continuing in the criminal courts.

The Court also dealt with 12 references concerning persons charged with attempted murder. In six of these references, the Court found the defendants to be of unsound mind and made forensic orders for detention in an authorised mental health service. In one reference, the Court determined that there was a dispute pursuant to s 268 or s 269 of the *Mental Health Act 2000*. In three references, there was a finding that the defendant was not of unsound mind and the proceedings were ordered to continue according to law. In two matters the reference was withdrawn with the proceedings continuing in the criminal courts.

**Table 2: Matters\*\* disposed of by the Mental Health Court 2010/2011 – references**

<b>Findings and orders of the Mental Health Court</b>	<b>2010/2011</b>
References:	
• Of unsound mind (forensic order)	113
• Of unsound mind (no forensic order)	16
• Not of unsound mind and fit for trial	37
• Not of unsound mind and fit for trial – custody order made	0
• Not of unsound mind, of diminished responsibility and fit for trial	1
• Not of unsound mind, not of diminished responsibility and fit for trial	3
• Not of unsound mind and unfit for trial (unfitness not permanent)	6
• Not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	9
• Not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	6
• Reasonable doubt and fit for trial	19
• Reasonable doubt and fit for trial – custody order made	0
• Reasonable doubt and unfit for trial (unfitness not permanent)	3
• Reasonable doubt and unfit for trial (unfitness permanent and forensic order made)	8
• Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made)	3
• Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made) – non contact order made	0
• Material dispute of facts and fit for trial	3
• Unfit for trial (unfitness permanent and no forensic order made)	1
• Fit for trial	0
• Reference struck out	6
• Reference withdrawn	22
<b>Total</b>	<b>256</b>

\*\* includes 23 matters where 2 decisions were made and 1 matter where 3 decisions were made

## 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.

Case management and review procedures initiated by the Court have resulted in a reduction in appeals requiring hearing. During the 2010/2011 year, the Court dealt with 64 appeals, (compared with 96 appeals in the 2009/2010 year; 78 appeals in the 2008/2009 year, 63 appeals for the 2007/2008 year and 40 for the 2006/2007 year). It is expected that this trend will continue.

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

**Table 3: Matters disposed of by the Mental Health Court 2010/2011 - appeals**

Findings of the Mental Health Court	2010/2011
<b>Appeals:</b>	
• Withdrawn	22
• Dismissed	31
• Allowed	11
<b>Total</b>	<b>64</b>

## Applications for Inquiries into Detention

In the year under review there were no applications filed.

## 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 2010/2011, 241 such orders were made, compared with 203 in 2009/2010.

### **Matters pending as at 30 June 2011**

There are 200 matters pending as at 30 June 2011 compared with 173 matters pending as at 30 June 2010.

It is anticipated that by December 2011, as a result of an increased number of sittings compared with those in the six months to 30 June 2011, the number of matters pending will be reduced further.

**Table 4: Matters pending in the Mental Health Court as at 30 June 2011**

<b>Type of Matter</b>	<b>2010/2011</b>
<b>References by:</b>	
• Director of Mental Health	48
• Director of Public Prosecutions	9
• Legal Representative	100
• Defendant	4
• Court of Law	3
<b>Appeals against the decisions of the Mental Health Review Tribunal by:</b>	
• Director of Mental Health	0
• Legal Representative	19
• Patient	17
• Attorney-General	36
<b>Applications to inquire into detention:</b>	
• Patient	0
<b>Total</b>	<b>200</b>

### **Matters adjourned as at 30 June 2011**

**Table 5: Matters adjourned by the Mental Health Court as at 30 June 2011**

<b>Type of Matter</b>	<b>2010/2011</b>
<b>References:</b>	
• Adjourned to a date to be fixed	9
<b>Appeals:</b>	
• Adjourned to a date to be fixed	4
<b>Total</b>	<b>13</b>



<b>Decisions reserved as at 30 June 2011</b>
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**Table 6: Decisions reserved by the Mental Health Court as at 30 June 2011**

Type of Matter	2010/2011
Reference	1

<b>Registry</b>
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Ms Jade Madden, Senior Deputy Registrar assumed the role of Acting Registrar until 1 June 2011, when Lisa Blackmore, Registrar returned from maternity leave.

The registry is also staffed by Ms Kerry Woods, Acting Deputy Registrar, Ms Amanda Button, Acting Court Services Officer and Ms Nicole Reeves, Acting Administration Officer. All of whom have provided dedicated and effective assistance to the Court.

<b>Website</b>
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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/>).

## **The Mental Health Court**

*Registry:  
Level 3, Forestry House  
160 Mary Street  
Brisbane Qld 4000*

*GPO Box 48  
Brisbane Qld 4001*

*Telephone: (07) 3234 0703*

*Facsimile: (07) 3235 9566*

*Email: [registrarmhc@health.qld.gov.au](mailto:registrarmhc@health.qld.gov.au)*

*Web: [www.courts.qld.gov.au/courts/mental-health-court](http://www.courts.qld.gov.au/courts/mental-health-court)*

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