



Mental Health Court

**Annual Report
2011 – 2012**



QUEENSLAND
COURTS

SUPREME COURT
BRISBANE

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 2011 - 30 June 2012.

Yours faithfully

The Hon Justice A Lyons

The Mental Health Court

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TABLE OF CONTENTS

INTRODUCTION	1
SITTINGS	1
REFERENCES	2
APPEALS FROM MENTAL HEALTH REVIEW TRIBUNAL	4
APPLICATIONS FOR INQUIRIES INTO DETENTION	4
COURT EXAMINATION ORDERS	4
MATTERS PENDING AS AT 30 JUNE 2012.....	5
MATTERS ADJOURNED AS AT 30 JUNE 2012.....	5
DECISIONS RESERVED AS AT 30 JUNE 2012.....	6
REGISTRY	6
WEBSITE	6

INDEX TO TABLES

TABLE 1: MATTERS HEARD BY THE MENTAL HEALTH COURT 2011/2012.....	2
TABLE 2: MATTERS DISPOSED OF BY THE MENTAL HEALTH COURT 2011/2012 – REFERENCES	3
TABLE 3: MATTERS DISPOSED OF BY THE MENTAL HEALTH COURT 2011/2012 - APPEALS	4
TABLE 4: MATTERS PENDING IN THE MENTAL HEALTH COURT AS AT 30 JUNE 2012.....	5
TABLE 5: MATTERS ADJOURNED BY THE MENTAL HEALTH COURT AS AT 30 JUNE 2012.....	5
TABLE 6: DECISIONS RESERVED BY THE MENTAL HEALTH COURT AS AT 30 JUNE 2012.....	6

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 2011/2012 year, the Court sat on 80.5 days, (compared with 76 days the previous year).

During this period the Court heard a total of 335 matters (compared with 290 matters for the previous year).

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

Table 1: Matters heard by the Mental Health Court 2011/2012

	Number of Cases		
	Lodged	Finalised	Active
References			
Director of Mental Health	92	83	57
Director of Public Prosecutions	6	14	1
Director of Forensic Disability	1	1	0
Legal Representative	107	107	94
Defendant	1	3	2
Court of Law	1	3	1
Attorney General	0	0	0
Total References	217	205	155
Appeals			
Director of Mental Health	0	0	0
Legal Representative	1	2	0
Patient	45	57	4
Attorney General	50	60	9
Total Appeals	96	119	13
Applications			
Applications to enquire into detention	0	0	0
Application to move out of Queensland	1	1	0
Application to change forensic order type			
Director of Mental Health	6	5	1
Director of Forensic Disability	7	7	0
Total Applications	12*	11*	1
TOTAL	325	335	169

* includes 2 matters where a joint application between the Director of Mental Health and the Director of Forensic Disability was made

References

During the period under review the Court heard 205 references (compared with 226 references in the previous year).

The Court dealt with 12 references for persons charged with murder or attempted murder.

The Court dealt with references in respect of seven persons charged with murder. In three of these references, the Court found the defendants to be of unsound mind and made forensic orders. In one reference, a finding of diminished responsibility was made. In one reference, the Court determined that there was a dispute pursuant to s 268 of the *Mental Health Act 2000*. In one reference, 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 one matter the reference was withdrawn with the proceedings continuing in the criminal courts.

The Court also dealt with five references concerning persons charged with attempted murder. In all 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.

Table 2: Matters disposed of by the Mental Health Court 2011/2012 – references**

Findings and orders of the Mental Health Court	2011/2012
References:	
• Of unsound mind - forensic order (Mental Health Court)	97
• Of unsound mind - forensic order (Mental Health Court - Disability)	2
• Of unsound mind - no forensic order	12
• Not of unsound mind and fit for trial	44
• 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	1
• Not of unsound mind and unfit for trial (unfitness not permanent) – forensic order (Mental Health Court)	1
• Not of unsound mind and unfit for trial (unfitness not permanent) - forensic order (Mental Health Court - Disability)	0
• Not of unsound mind and unfit for trial (unfitness permanent) – forensic order (Mental Health Court)	3
• Not of unsound mind and unfit for trial (unfitness permanent) – forensic order (Mental Health Court - Disability)	6
• Not of unsound mind and unfit for trial (unfitness permanent) - no forensic order	4
• Reasonable doubt and fit for trial	22
• Reasonable doubt and fit for trial – custody order made	0
• Reasonable doubt and unfit for trial (unfitness not permanent) - forensic order (Mental Health Court)	3
• Reasonable doubt and unfit for trial (unfitness not permanent) - forensic order (Mental Health Court - Disability)	0
• Reasonable doubt and unfit for trial (unfitness permanent) - forensic order (Mental Health Court)	2
• Reasonable doubt and unfit for trial (unfitness permanent) - forensic order (Mental Health Court - Disability)	6
• Reasonable doubt and unfit for trial (unfitness permanent) - no forensic order	0
• Reasonable doubt and unfit for trial (unfitness permanent) - no forensic order – non contact order made	0
• Material dispute of facts and fit for trial	1
• Material dispute of facts and fit for trial – custody order made	1
• Material dispute of facts and unfit for trial (unfitness temporary) – forensic order	1
• Reference struck out	8
• Reference withdrawn	17
Total	232

** includes 19 matters where 2 decisions were made and 4 matters 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.

During the 2011/2012 year, the Court dealt with 119 appeals, (compared with 64 appeals in the 20/10/2011 year).

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

Table 3: Matters disposed of by the Mental Health Court 2011/2012 - appeals

Findings of the Mental Health Court	2011/2012
Appeals:	
• Withdrawn	23
• Dismissed	81
• Allowed	15
Total	119

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 2011/2012, 162 such orders were made, compared with 241 in 2010/2011.

Matters pending as at 30 June 2012

There are 169 matters pending as at 30 June 2012 compared with 200 matters pending as at 30 June 2011.

Table 4: Matters pending in the Mental Health Court as at 30 June 2012

Type of Matter	2010/2011
References by:	
• Director of Mental Health	57
• Director of Forensic Disability	0
• Director of Public Prosecutions	1
• Legal Representative	94
• Defendant	2
• Court of Law	1
• Attorney General	0
Appeals against the decisions of the Mental Health Review Tribunal by:	
• Director of Mental Health	0
• Legal Representative	0
• Patient	4
• Attorney-General	9
Applications	
• Applications to enquire into detention	0
• Application to move out of Queensland	0
• Application to change forensic order type by:	0
Director of Mental Health	1
Director of Forensic Disability	0
Total	169

Matters adjourned as at 30 June 2012

Table 5: Matters adjourned by the Mental Health Court as at 30 June 2012

Type of Matter	2011/2012
References:	
• Adjourned to a date to be fixed	9
Appeals:	
• Adjourned to a date to be fixed	4
Total	13

Decisions reserved as at 30 June 2012

Table 6: Decisions reserved by the Mental Health Court as at 30 June 2012

Type of Matter	2011/2012
Reference	0
Appeal	0

Registry

Ms Jade Madden, Senior Deputy Registrar assumed the role of Acting Registrar in March 2012, when Lisa Blackmore, Registrar took maternity leave.

The registry is also staffed by Ms Kerry Woods, who was appointed Deputy Registrar in March 2012, 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.

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/>).

