



**Mental Health Court**  
Report 1 July 2007 – 30 June 2008

**The Mental Health Court**

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CHAMBERS OF JUSTICE PHILIPPIDES  
SUPREME COURT  
BRISBANE

November 2008

The Honourable Stephen Robertson 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 2007 - 30 June 2008.

Yours faithfully

**The Hon Justice A Philippides**

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## Introduction

The Mental Health Court is constituted under the *Mental Health Act 2000*. For the first half of the period under review, the Court consisted of the Honourable Justice Philippides. From February 2008, Her Honour was appointed the President of the court, with the Honourable Justice Dutney and the Honourable Justice Lyons also being appointed as members of the court. During the year under review, Justice Philippides and Justice Dutney sat and the panel of assisting psychiatrists consisted of Dr J F Wood, Dr J M Lawrence AM, Dr E N McVie, Dr F T Varghese, Dr G J Byrne, Dr J N Chalk and Dr A S Davidson. Dr Wood retired on 12 October 2007.

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 2007/2008 year the Mental Health Court sat on 73 days as opposed to 62 the previous year. At least two days of each sitting was allocated to video links with regional hospitals and correctional centres. The court continued to find this practice cost effective, efficient and one that eliminates 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.

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

**Table 1: Matters heard by the Mental Health Court 2007/2008**

### Mental Health Court 2007-08

|  | Number of Cases |            |            | Clearance   |
|--|-----------------|------------|------------|-------------|
|  | Lodged          | Finalised  | Active **  | Rate        |
| References                             |                 |            |            |             |
| Director of Mental Health              |                 | 200        | 63         |             |
| Director of Public Prosecutions        |                 | 1          | 4          |             |
| Defendant or Legal Representative      |                 | 128        | 61         |             |
| Court of Law                           |                 | 3          | 1          |             |
| Attorney-General                       |                 | 0          | 6          |             |
| Total References                       | 243             | 332        | 135        | 136%        |
| Appeals                                |                 |            |            |             |
| Director of Mental Health              |                 | 0          | 0          |             |
| Attorney-General                       |                 | 19         | 4          |             |
| Patient or Legal Representative        |                 | 44         | 11         |             |
| Total Appeals                          | 62              | 63         | 15         | 101%        |
| Applications to enquire into detention |                 |            |            |             |
| Patient                                |                 | 1          | 0          |             |
| Total Patient                          | 1               | 1          | 0          | 100%        |
| <b>Total</b>                           | <b>306</b>      | <b>396</b> | <b>150</b> | <b>129%</b> |

\*\* Includes twenty adjourned decisions

During the period under review the court heard a total of 396 cases, which represents an increase in the number of matters, heard and disposed of by the court of approximately 34% from the year 2006/2007. To meet the increased work load an additional three weeks of sittings was scheduled. There was also an increase in the resourcing of the registry and the court introduced further case management strategies to expedite the listing and hearing of matters. Further, as a result of amendments to the *Mental Health Act 2000*, that permit the Director of Mental Health to refer matters to the Director of Public Prosecutions, there has more recently been some reduction in the number of references made to the court. The combination of these developments has resulted in a significant reduction in the number of cases waiting hearing, which currently stands at 150 as opposed to 241 at the corresponding time in the previous year. Presently, matters coming before the court are on average able to be heard within 6 months from filing.

## References

The court heard 332 references in respect of 1,865 charges (1,303 indictable and 562 simple) compared with 251 references concerning 1,383 charges for the previous year.

The court heard references in respect of 11 persons charged with murder. In four 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 another four references, the defendants were found not of unsound mind or diminished responsibility and fit for trial so that the proceedings for the charges of murder were ordered to continue according to law. In two references, the court determined that there was a reasonable doubt as to the commission of the alleged murder and ordered that the proceedings on the charge of murder continue according to law. Finally in one reference the court found the defendant to be not of unsound mind but of diminished responsibility and the proceedings on the charge of manslaughter were ordered to continue according to law.

In 162 referred cases the primary diagnosis was of a disorder in the schizophrenia group. In 46 references the primary diagnosis was of a substance related disorder, while in 39 references the primary diagnosis was affective disorders.

In 37 references the primary diagnosis was one of intellectual disability. Whilst in six of these cases the matters were referred back to the criminal court, in 19 cases the court made a finding of unsoundness of mind, two were temporarily unfit, and 10 were permanently unfit for trial, with a forensic order made in 11 of these cases. The question of what order should be made where a finding of unsoundness of mind or unfitness for trial is made in respect of an individual who suffers from intellectual impairment but no psychiatric disorder continues to be particularly problematic for the court.

Excluding references with co-existent mental illness and intellectual disability, since its inception in 2002, the Court has dealt with 154 references where the primary diagnosis was mental retardation, autism or Asperger's Disorder. Of those, in 52 cases, the principal finding was of unsoundness of mind, and in 56 cases, of permanent unfitness for trial. In 44 of these outcomes, a forensic order was made, 33 with community based limited community treatment, 10 with hospital based limited community treatment, and one (to a specially authorised mental health facility

managed by Disability Service Queensland) with no limited community treatment. In only one case was the person detained in a high secure facility.

In April 2006 the Honourable Bill Carter QC was appointed to make recommendations as to options for the support and care for adults with an intellectual/cognitive disability and who exhibit severely challenging behaviour. This report has been released and the Government's response to the 24 recommendations is available on the internet. The court takes particular note of Recommendation 22 of the report which proposes amendment to the *Mental Health Act 2000* in relation to the court's power in making a forensic order in respect of a person with an intellectual disability to order that the person be detained other than in a mental health service.

**Table 2: Matters\* disposed of by the Mental Health Court 2007/2008 – references**

| Findings and orders of the Mental Health Court   | 2007-08    |
|--|------------|
| References:  |            |
| • Of unsound mind (forensic order)   | 142        |
| • Of unsound mind (no forensic order)  | 42         |
| • Not of unsound mind and fit for trial  | 94         |
| • Not of unsound mind and fit for trial – custody order made   | 3          |
| • Not of unsound mind, of diminished responsibility and fit for trial  | 1          |
| • Not of unsound mind, not of diminished responsibility and fit for trial  | 4          |
| • Not of unsound mind and unfit for trial (unfitness not permanent)  | 10         |
| • Not of unsound mind and unfit for trial (unfitness permanent and forensic order made)                          | 4          |
| • Not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)                       | 6          |
| • Reasonable doubt and fit for trial   | 36         |
| • Reasonable doubt and fit for trial – custody order made  | 1          |
| • Reasonable doubt and unfit for trial (unfitness not permanent)   | 8          |
| • Reasonable doubt and unfit for trial (unfitness permanent and forensic order made)                             | 4          |
| • Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made)                          | 6          |
| • Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made) – non contact order made | 1          |
| • Material dispute of facts and fit for trial  | 3          |
| • Unfit for trial (unfitness permanent and no forensic order made)   | 1          |
| • Fit for trial  | 2          |
| • Reference struck out   | 11         |
| • Reference withdrawn  | 18         |
| <b>Total</b>   | <b>397</b> |

\* includes 49 matters where 2 decisions were made and 8 matters where 3 decisions were made

## 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 2007/2008, 164 such orders 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.

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

**Table 3: Matters disposed of by the Mental Health Court 2007/2008 - appeals**

| Findings of the Mental Health Court | 2007-08   |
|-------------------------------------|-----------|
| <b>Appeals:</b>                     |           |
| • withdrawn                         | 24        |
| • dismissed                         | 33        |
| • upheld                            | 6         |
| <b>Total</b>                        | <b>63</b> |

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.

## Applications for Inquiries into Detention

In the year under review there was one application filed by a patient for inquiry into detention. This was refused by the court.

**Table 4: Matters disposed of by the Mental Health Court as at 30 June 2008 – applications to inquire into detention**

| Type of Matter       | 2007-08  |
|----------------------|----------|
| <b>Applications:</b> |          |
| • refused            | 1        |
| <b>Total</b>         | <b>1</b> |



**Matters pending as at 30 June 2008****Table 5: Matters pending in the Mental Health Court as at 30 June 2008**

| Type of Matter  | 2007-08    |
|---|------------|
| <b>References by:</b>   |            |
| • Director of Mental Health   | 63         |
| • Director of Public Prosecutions   | 4          |
| • Defendant or Legal Representative   | 61         |
| • Court of Law  | 1          |
| • Attorney-General  | 6          |
| <b>Appeals against the decisions of the Mental Health Review Tribunal by:</b> |            |
| • Attorney-General  | 4          |
| • Patient or Legal Representative   | 11         |
| <b>Applications to inquire into detention:</b>                                |            |
| • Patient   | Nil        |
| <b>Total</b>  | <b>150</b> |

The significant decrease in the matters pending before the court is a consequence of increased sitting time and other strategies which commenced in 2008.

**Matters adjourned as at 30 June 2008****Table 6: Matters adjourned by the Mental Health Court as at 30 June 2008**

| Type of Matter                    | 2007-08   |
|-----------------------------------|-----------|
| <b>References:</b>                |           |
| • Adjourned to a date to be fixed | 17        |
| <b>Appeals:</b>                   |           |
| • Adjourned to a date to be fixed | 3         |
| <b>Total</b>                      | <b>20</b> |

**Decisions reserved as at 30 June 2008**

**Table 7: As at 30 June 2008 there were no reserved decisions.**

| Type of Matter | 2007-08 |
|----------------|---------|
|                | Nil     |

## Registry

The increasing demands on the registry staff, as recognised by the Honourable Brendan Butler AM SC in his report *Promoting Balance in the Forensic Mental Health Services* has necessitated an appropriate increase in funding and resources within the registry. Two additional staff members were appointed in 2008. Registry staff including Mr Barry Weychardt, Registrar, Mrs Lisa Blackmore, Senior Deputy Registrar, Ms Gizela Foldesi, administrative assistant and newly appointed Ms Jade Madden, Deputy Registrar and Ms Kerry Woods, Court Services Officer continue to provide 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 being significantly upgraded and will be 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/>).

## Summary of Recommendations

In its previous Annual Reports, the court has highlighted the need to consider whether the *Mental Health Act 2000* requires amendment to provide for a form of order specific to the needs of individuals suffering from an intellectual disability but not suffering from any psychiatric disorder who are found to be of unsound mind or unfit for trial. As mentioned earlier, the court takes particular note of Recommendation 22 of the report of the Honourable Bill Carter QC which proposes amendment to the *Mental Health Act 2000* in relation to the court's power in making a forensic order in respect of a person with an intellectual disability to order that the person be detained other than in a mental health service.

Currently at least 10% of references dealt with by the court are in regard to persons with intellectual disability and no mental disease. Of these few require secure care. Most require enhanced community support services. While the court commends Disability Services Queensland for its increased responsiveness in providing reports to the court, legislation and supportive services to meet the needs of this group is required. In this respect the court reiterates the recommendation made in its previous report that timely consideration be given to this matter which continues to be problematic for the court.