



**Mental Health Court
Report 1 July 2009 – 30 June 2010**

The Mental Health Court

Registry:

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QUEENSLAND
COURTS

SUPREME COURT
BRISBANE

25 November 2010

The Honourable Paul Lucas 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 2009 - 30 June 2010.

Yours faithfully

The Hon Justice A Philippides

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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.

For the period under review the Court consisted of the President, the Honourable Justice Philippides and members, the Honourable Justice Dutney and the Honourable Justice A Lyons. Justice Dutney died on 4 September 2009 while in office. His Honour served on the Court with distinction and contributed enormously to the efficient disposition of the work of the Court.

The panel of assisting psychiatrists for the period comprised 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 Davison.

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 2009/2010 year, the Court sat on 81 days.

During this period the Court heard a total of 305 matters (compared with 273 matters for the previous year).

The Court has continued to implement initiatives to reduce the number of cases awaiting hearing. The increase in sittings, scheduled over a three year period (commencing in the calendar year 2008), has assisted in reducing the number of matters awaiting hearing significantly as detailed below (see Table 4).

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

Table 1: Matters heard by the Mental Health Court 2009/2010

	Number of Cases		
	Lodged	Finalised	Active
References			
Director of Mental Health	88	81	57
Director of Public Prosecutions	11	12	7
Legal Representative	120	112	91
Defendant	3	2	2
Court of Law	1	2	1
Attorney General	0	0	0
Total References	223*	209**	158***
Appeals			
Director of Mental Health	0	0	0
Legal Representative	4	3	1
Patient	48	53	8
Attorney General	40	40	6
Total Appeals	92	96	15
Applications to enquire into detention	0	0	0
Total Applications	0	0	0
TOTAL	315	305	173

* includes 3 matters referred by 2 different parties

** includes 3 matters referred by 2 different parties

*** includes 1 matter referred by 2 different parties and 1 matter with reserved decision

References

During the period under review the Court heard 209 references (compared with 195 references in the previous year).

The Court dealt with 22 references for persons charged with murder or attempted murder.

The Court dealt with references in respect of 14 persons charged with murder. In three 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 one reference a finding of permanent unfitness for trial was made with a forensic order also being 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 four matters the reference was withdrawn with the proceedings continuing in the criminal courts.

The Court also dealt with eight references concerning persons charged with attempted murder where the finding was unsoundness of mind, with forensic orders also being made.

In 115 of the referred matters, the primary diagnosis was of a disorder in the schizophrenia group. In six references, the primary diagnosis was of a substance related disorder, while in 32 references the primary diagnosis was an affective disorder.

The primary diagnosis was intellectual disability in 28 references. In two of these cases, the matters were referred back to the criminal court. In nine references, the Court made a finding of unsoundness of mind. In 15 references, there were findings of permanent unfitness for trial. A forensic order was made in seven references.

Table 2: Matters disposed of by the Mental Health Court 2009/2010 – references**

Findings and orders of the Mental Health Court	2009/2010
References:	
• Of unsound mind (forensic order)	105
• Of unsound mind (no forensic order)	20
• Not of unsound mind and fit for trial	29
• Not of unsound mind and fit for trial – custody order made	1
• 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)	1
• Not of unsound mind and unfit for trial (unfitness permanent and forensic order made)	8
• Not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	9
• Reasonable doubt and fit for trial	22
• Reasonable doubt and fit for trial – custody order made	1
• Reasonable doubt and unfit for trial (unfitness not permanent)	2
• Reasonable doubt and unfit for trial (unfitness permanent and forensic order made)	7
• Reasonable doubt and unfit for trial (unfitness permanent and no forensic order made)	5
• 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	0
• Unfit for trial (unfitness permanent and no forensic order made)	0
• Fit for trial	1
• Reference struck out	7
• Reference withdrawn	21
Total	243

** includes 31 matters where 2 decisions were made and 3 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.

Over the last three years, an increasing amount of the Court's time has been taken up with hearing appeals. During the 2009/2010 year, the Court dealt with 96 appeals (compared with 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 case management and review procedures initiated by the Court will result in a reduction in appeals requiring hearing.

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

Table 3: Matters disposed of by the Mental Health Court 2009/2010 - appeals

Findings of the Mental Health Court	2009/2010
Appeals:	
• Withdrawn	31
• Dismissed	50
• Allowed	15
Total	96

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 2009/2010, 203 such orders were made.

Matters pending as at 30 June 2010

Notwithstanding an increase in the number of matters brought before the Court, there has been a substantial reduction in the number of matters awaiting hearing over recent years. This has been facilitated by initiatives in the review and listing of matters and the increase in the sittings of the Court since 2008.

There are 173 matters pending as at June 2010 (compared with a peak of 253 matters pending as at January 2008).

It is anticipated that in the ensuing six month period, the number of matters pending will be reduced further, with the result that by December 2010 the number of matters pending will be restored to the levels that prevailed as at June 2002, soon after the inception of the Mental Health Court (in February 2002), when there were 140 matters pending.

Table 4: Matters pending in the Mental Health Court as at 30 June 2010

Type of Matter	2009/2010
References by:	
• Director of Mental Health	57
• Director of Public Prosecutions	7
• Legal Representative	91
• Defendant	2
• Court of Law	1
Appeals against the decisions of the Mental Health Review Tribunal by:	
• Director of Mental Health	0
• Legal Representative	1
• Patient	8
• Attorney-General	6
Applications to inquire into detention:	
• Patient	0
Total	173

Matters adjourned as at 30 June 2010

Table 5: Matters adjourned by the Mental Health Court as at 30 June 2010

Type of Matter	2009/2010
References: <ul style="list-style-type: none">Adjourned to a date to be fixed	8
Appeals: <ul style="list-style-type: none">Adjourned to a date to be fixed	6
Total	14

Decisions reserved as at 30 June 2010

Table 6: Decisions reserved by the Mental Health Court as at 30 June 2010

Type of Matter	2009/2010
Reference	1

Registry

In May 2009, Registrar, Mr Barry Weyhardt, commenced long service leave preceding his retirement in April 2010 after many years of outstanding service.

Ms Lisa Blackmore was appointed as Registrar in April 2010, having previously undertaken the role of Acting Registrar. She subsequently took maternity leave, during which period Ms Jade Madden assumed the role of Acting Registrar. She has been ably assisted by Ms Georgina Pointing, Acting Senior Deputy Registrar, Ms Kerry Woods, Acting Deputy Registrar, Ms Gizela Foldesi, Acting Court Services Officer, Ms Bridget Arnold, Acting Court Services Officer, Ms Amanda Button, Acting Court Services Officer and Administration Officer and Ms Pauline Chadwick, 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) has been significantly upgraded and 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/>).

