



**Mental Health Court  
Report 1 July 2008 – 30 June 2009**

**The Mental Health Court**

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CHAMBERS OF JUSTICE PHILIPPIDES  
SUPREME COURT  
BRISBANE

QUEENSLAND  
COURTS

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 2008 - 30 June 2009.

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 period under review the Court consisted of the President, the Honourable Justice Philippides and members, the Honourable Justice Dutney and the Honourable Justice Lyons. 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 Davidson.

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 2008/2009 year, the Mental Health Court sat on 71 days.

At each sitting video links with regional hospitals and correctional centres were utilised in the hearing of matters. This practice is cost effective, efficient and 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 2008/2009**

	Number of Cases		
	Lodged	Finalised	Active *
<b>References</b>			
Director of Mental Health	72	84	49
Director of Public Prosecutions	12	8	8
Defendant or Legal Representative	125	94	87
Court of Law	4	3	2
Attorney-General	0	6	0
<b>Total References</b>	<b>213</b>	<b>195</b>	<b>146</b>
<b>Appeals</b>			
Director of Mental Health	1	1	0
Attorney-General	28	26	6
Patient or Legal Representative	52	51	12
<b>Total Appeals</b>	<b>81</b>	<b>78</b>	<b>18</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>294</b>	<b>273</b>	<b>164</b>

\* includes two reference matters with reserved decisions

During the period under review the court heard a total of 273 cases. The amendments to the *Mental Health Act 2000*, that permit the Director of Mental Health to refer matters to the Director of Public Prosecutions, continue to facilitate the efficient disposition of matters. The number of cases waiting hearing currently stands at 164.

## References

**Table 2: Matters\*\* disposed of by the Mental Health Court 2008/2009 – references**

<b>Findings and orders of the Mental Health Court</b>	<b>2008/2009</b>
References:	
• Of unsound mind (forensic order)	86
• Of unsound mind (no forensic order)	22
• Not of unsound mind and fit for trial	48
• Not of unsound mind and fit for trial – custody order made	1
• Not of unsound mind, of diminished responsibility and fit for trial	0
• Not of unsound mind, not of diminished responsibility and fit for trial	0
• Not of unsound mind and unfit for trial (unfitness not permanent)	3
• 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)	7
• Reasonable doubt and fit for trial	21
• 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)	5
• 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	1
• Unfit for trial (unfitness permanent and no forensic order made)	0
• Fit for trial	1
• Reference struck out	2
• Reference withdrawn	20
<b>Total</b>	<b>231</b>

\*\* includes 29 matters where 2 decisions were made and 3 matters where 3 decisions were made

During the period under review the court heard 195 references.

The court heard references in respect of 5 persons charged with murder. In 3 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, the court determined that there was a dispute relating to substantially material facts under *s269 of the Mental Health Act* and ordered that the proceedings on the charge of murder continue according to law. In one reference involving murder, the judgment was reserved as at 30 June 2009.

In 94 referred cases the primary diagnosis was of a disorder in the schizophrenia group. In 15 references the primary diagnosis was of a substance related disorder, while in 29 references the primary diagnosis was affective disorders.

The primary diagnosis was one of intellectual disability in 32 references. In 3 of these cases the matters were referred back to the criminal court. In 11 cases the court made a finding of unsoundness of mind. In 17 of the matters there were findings of permanent unfitness for trial, with a forensic order made in 13 of those cases.

### **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 2008/2009, 154 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.

The appeals jurisdiction of the Court continues to expand, with increased court time being required to be allocated accordingly.

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.

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**

<b>Findings of the Mental Health Court</b>	<b>2008/2009</b>
<b>Appeals:</b>	
• Withdrawn	22
• Dismissed	43
• Allowed	13
<b>Total</b>	<b>78</b>

<b>Applications for Inquiries into Detention</b>
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In the year under review there were no applications filed.

<b>Matters pending as at 30 June 2009</b>
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**Table 4: Matters pending in the Mental Health Court as at 30 June 2009**

<b>Type of Matter</b>	<b>2008/2009</b>
<b>References by:</b>	
• Director of Mental Health	49
• Director of Public Prosecutions	8
• Defendant or Legal Representative	87
• Court of Law	2
• Attorney-General	0
<b>Appeals against the decisions of the Mental Health Review Tribunal by:</b>	
• Attorney-General	6
• Patient or Legal Representative	12
<b>Applications to inquire into detention:</b>	
• Patient	0
<b>Total</b>	<b>164</b>



## Matters adjourned as at 30 June 2009

**Table 5: Matters adjourned by the Mental Health Court as at 30 June 2009**

Type of Matter	2008/2009
<b>References:</b> <ul style="list-style-type: none"><li>• Adjourned to a date to be fixed</li></ul>	2
<b>Appeals:</b> <ul style="list-style-type: none"><li>• Adjourned to a date to be fixed</li></ul>	2
<b>Total</b>	<b>4</b>

## Decisions reserved as at 30 June 2009

**Table 6: Decisions reserved by the Mental Health Court as at 30 June 2009**

Type of Matter	2008/2009
Reference	2

## Registry

In May 2009, Registrar, Barry Weyhardt, commenced long service leave. The registry, under the leadership of Lisa Blackmore, Acting Registrar, manages the heavy workload of the Court through regular reviews and callovers of matters. In this regard, the Acting Registrar is ably assisted by Jade Madden – Acting Senior Deputy Registrar, Kerry Woods – Acting Deputy Registrar, Gizela Foldesi – Acting Court Services Officer and Amanda Button – Administration Officer, who 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) 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/>).

## **Recommendations**

Following the April 2007 release of the report *Challenging Behaviour & Disability* by Honorary William Carter QC, Disability Services Queensland has developed a Specialist Response Service and a Mental Health Assessment and Outreach team, to provide assessment and therapeutic interventions in behaviour management. Amendments to the Disability Services Act 2006 (QLD) and the Guardianship and Administration Act 2000 (QLD) from 1 July 2008, have provided for approval and regulation of restrictive practices. Disability Services Queensland has also continued to provide timely reports to the Court. While these developments are noted, the provision of suitable accommodation, support and therapeutic intervention remains an area in need of further attention.

