

MENTAL HEALTH COURT

ANNUAL REPORT

1 July 2015 to 30 June 2016

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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 Boddice was President of the Mental Health Court, while the Honourable Justice Dalton was an additional member of the Court.

During the relevant period the panel of assisting psychiatrists consisted of Dr E N McVie, Dr F T Varghese, Dr Dr J Sundin, Dr J Reddan, Dr S Harden, Dr R Phillipson and Dr C Gray.

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 hearing 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 which are not delivered *ex tempore* are generally delivered within one month of hearing.

During the 2015/2016 year, the Court sat on ~~51~~⁵² days (compared with 49 days the previous year). During this period the Court heard a total of ~~266~~²⁶⁸ matters (compared with 252 matters for the previous year), consisting of ~~217~~²¹⁸ references and ~~49~~⁵⁰ appeals.

Table 1: Matters filed in the Mental Health Court during 2015/2016:

	Number of Cases	
	Filed	
References		
Director of Mental Health	98	97
Director of Public Prosecutions	11	9
Director of Forensic Disability	0	
Legal Representative	113	114
Defendant	2	3
Court of Law	1	0
Attorney General	0	
Total References	225	223
Amended References		
Director of Mental Health	61	59
Director of Public Prosecutions	1	
Director of Forensic Disability	0	
Legal Representative	53	55
Defendant	1	0
Court of Law	0	
Attorney General	0	
Total Amended References	116	115
Appeals		
Director of Mental Health	0	
Legal Representative	2	
Patient	42	
Attorney General	6	
Total Appeals	50	
Amended Appeals		
Director of Mental Health	0	
Legal Representative	0	
Patient	0	1
Attorney General	0	
Total Amended Appeals	0	1
Applications		
Applications to enquire into detention	0	
Application to move out of Queensland	0	
Application to change forensic order type	0	
Director of Mental Health	0	
Director of Forensic Disability	0	
Total Applications	0	
TOTAL	391	389

References

During the period under review the Court heard ²¹⁸ 217 references (compared with 199 references in the previous year). There were 49 adjournments during the sittings for the ~~2015/2016 financial year.~~

The Court dealt with references in respect of six (6) persons charged with murder (compared to one (1) case in ^{2014/2015} 2015/2016). In four (4) of the references, the Court found the defendant was of unsound mind and a forensic order was made for the defendant's detention to an authorised mental health service. In one (1) reference, the Court found the defendant was of unsound mind and ^{was fit for trial} no forensic order was made. In one (1) reference, the decision has been reserved.

The Court dealt with references in respect of four ^{three (3)} (4) persons charged with attempted murder (compared to one (1) case in 2014/2015). In one (1) reference, the Court found the defendant to be of unsound mind and a forensic order was made for the defendant's detention to an authorised mental health service. In two (2) references, the Court found the defendant to not be of unsound mind and fit for trial. In one (1) reference, the Court found there was reasonable doubt the defendant allegedly committed the offence and the doubt did not exist as a consequence of the defendant's mental condition. The Court also found the defendant fit for trial.

The Court also dealt with one (1) reference in respect of a person charged with manslaughter. In this reference, the Court found the defendant was of unsound mind. A forensic order was made for the defendant's detention to an authorised mental health service.

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. The practice of the Director of Mental Health in electing to become a party on appeals also assists the Court.

During the 2015/2016 year, the Court dealt with ⁵⁰ 47 appeals, (compared with 52 appeals in the 2014/2015 year). The Court allowed 5 appeals and dismissed 31 appeals, ⁹ Eleven appeals were withdrawn prior to hearing, and 5 appeals were struck out.

Table 2: Matters disposed of by the Mental Health Court 2015/2016 – references

Findings and orders of the Mental Health Court	2015/2016
References	
• Of unsound mind - forensic order (Mental Health Court)	91 88
• Of unsound mind - forensic order (disability)	2 6
• Of unsound mind - no forensic order	18
• Of unsound mind - non contact order	0
• Not of unsound mind and unfit (unfitness not permanent) no forensic order	5 0
• Not of unsound mind and unfit (unfitness not permanent) forensic order	2 3
• Not of unsound mind and unfit (unfitness permanent) forensic order	8 6
• Not of unsound mind and unfit (unfitness permanent) forensic order (disability)	7 10
• Not of unsound mind and unfit (unfitness permanent) no forensic order	5
• Not of unsound mind and fit for trial	69 70
• Reasonable doubt and fit for trial	21
• Reasonable doubt and unfit for trial (unfitness not permanent) - forensic order	0 1
• Reasonable doubt and unfit for trial (unfitness not permanent) - forensic order (disability)	0
• Reasonable doubt and unfit for trial (unfitness permanent) - forensic order	0 3
• Reasonable doubt and unfit for trial (unfitness permanent) - forensic order (disability)	3 5
• Reasonable doubt and unfit for trial (unfitness permanent) - no forensic order	2 3
• Material dispute of facts and fit for trial	2
• Reference struck out	7 8
• Reference withdrawn	11 12
Total	200 261

** includes ~~28~~ matters where 2 or more decisions were made.

~~39~~

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

Table 3: Matters disposed of by the Mental Health Court 2015/2016 - appeals

Findings of the Mental Health Court	2015/2016
Appeals:	
• Withdrawn	11 9
• Dismissed	31
• Allowed • struck out	5 5
Total	47 50

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 2015/2016, ²⁸⁰~~283~~ orders were made, compared with 278 in 2014/2015. However, ongoing budgetary constraints limit the number of orders that can be processed by the Registry each month. This limitation impacts adversely on the timely disposition of matters by the Court and will inevitably lead to a delay in the hearing of matters in the coming year.

Matters adjourned as at 30 June 2016

Table 4: Matters adjourned by the Mental Health Court as at 30 June 2016

Type of Matter	2015/2016
References	36 27
Appeals	13 3
Total	49 30

Number of Matters

Decisions reserved as at 30 June 2016

Table 5: Decisions reserved by the Mental Health Court as at 30 June 2016

Type of Matter	2015/2016
Reference	9 1
Appeal	2 0

number
of decisions

Matters pending as at 30 June 2016

There are ~~340~~³¹¹ matters pending as at 30 June 2016 (compared with 332 matters pending as at 30 June 2015), consisting of ~~300~~³⁰¹ references, 10 appeals.

Registry

The Registry structure consists of four full time positions. Three are filled by Queensland Health employees. The senior position, Registrar, continues to be filled on an acting basis only, by secondment from the Department of Justice and Attorney-General.

Members of the Registry are thanked for their ongoing dedication and assistance to the Court. Budgetary constraints and limitations on available support have provided significant challenges for the Registry in addressing the backlog of Court examination orders and the proper preparation of Court sittings.

Whilst the Registry continues to look at ways to improve its processes and procedures, these constraints adversely impact upon the Court's ability to dispose of matters in the most timely way. The consequent delays are detrimental to the efficient administration of the criminal justice system.

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* (Qld) (<http://www.sclqld.org.au/qjudgment/>).