



## **Mental Health Court**

**Report 28 February – 30 June 2002**

## **The Mental Health Court**

**Registry:**

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Brisbane**

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CHAMBERS OF JUSTICE MARGARET WILSON  
SUPREME COURT OF QUEENSLAND

8 October 2002

The Honourable Wendy Edmond, MP  
Minister for Health  
Queensland Health Building  
147-163 Charlotte Street  
BRISBANE QLD 4000

Dear Minister

I enclose my report, under s 435 of the *Mental Health Act 2000*, on the operation of the Mental Health Court and its registry for the period 28 February – 30 June 2002.

Yours sincerely

**The Hon. Justice Margaret Wilson**





## **Introduction**

The Mental Health Court came into being on 28 February 2002 when relevant provisions of the *Mental Health Act* 2000 commenced. It is the successor to the Mental Health Tribunal, which was established in 1985 under the *Mental Health Act* 1974.

## **The Court's Functions**

The functions of the Mental Health Court are:

- to decide references of the mental condition of persons;
- to hear appeals from the Mental Health Review Tribunal;
- to investigate the detention of patients in authorised mental health services.

Under transitional provisions in the *Mental Health Act* 2000, the Court has jurisdiction to deal with matters pending in the Mental Health Tribunal as at 28 February 2002.

## **Composition of the Court**

The Mental Health Court is constituted by a Supreme Court judge. The judge is assisted by two assisting psychiatrists. In each case, the decision is that of the judge.

The Honourable Justice Margaret Wilson was appointed as the constituting judge of the Mental Health Court for the three year period commencing on 28 February 2002.

## **Assisting Psychiatrists**

The assisting psychiatrists are drawn from a panel of psychiatrists appointed as such under the *Act*. The panel currently consists of:

Associate Professor D A Grant

Associate Professor J M Lawrence

Dr J F Wood.

Under the *Act* they are:

- to examine material received for a hearing to identify matters requiring further examination and to make recommendations to the Court about those matters;
- to make recommendations about the issuing of court examination orders;
- to assist the Court by advising it on the meaning and significance of clinical evidence and about clinical issues relating to the treatment and detention needs of persons under the *Act*.

Their functions are limited to matters within their professional expertise.

The assisting psychiatrists' role out of court in reviewing files (in the absence of the judge, but with the assistance of the registrar), making recommendations about matters requiring further examination and about orders by the Court for the examination of patients is onerous and indispensable. This is not to overlook the considerable time they spend in reading for hearings. In court they assist in the clarification of issues, they give advice which may assist in preferring one opinion over another, and they have input into orders about ongoing treatment.

## **References to the Mental Health Court**

The matter of a person's mental condition relating to an indictable offence may be referred to the Court if there is reasonable cause to believe the person is mentally ill or was mentally ill when the alleged offence was committed, or that he or she has an intellectual disability of such a degree that issues of unsoundness of mind, diminished responsibility or fitness for trial should be considered by the Court.

A reference may be made by the person or the person's legal representative, the Attorney-General, the Director of Public Prosecutions, the Supreme or District Court, or if the person is receiving treatment for mental illness, the Director of Mental Health.

A reference must be in relation to the commission of an indictable offence, although it may include a reference in relation to the commission of a simple offence.

On a reference being made, the criminal proceedings are suspended until the Court has made its decision on the reference.

The Court inquires into whether the person was of unsound mind at the time of the alleged offence or, in the case of murder, alternatively whether he or she was of diminished responsibility at that time.

In determining questions of unsoundness of mind and diminished responsibility, the Court is determining criminal responsibility for alleged offences. It must not make a decision on these questions if satisfied there is reasonable doubt the person committed the alleged offence or if satisfied that a fact substantially material to the opinion of an expert witness is so in dispute it would be unsafe to make the decision.

In the event of a finding of unsoundness of mind, the criminal proceedings are discontinued and further criminal proceedings may not be brought. In the event of a finding of diminished responsibility, criminal proceedings for murder are discontinued but proceedings for another offence constituted by the act or omission in question may be continued.

The Court must determine whether a person is fit for trial if it decides that he or she was not of unsound mind, or if it is satisfied that there is reasonable doubt the person committed the alleged offence, or if a fact substantially material to the opinion of an expert witness is so in dispute it would be unsafe to make the

decision. If it decides the person is unfit for trial, it must also decide whether the unfitness for trial is of a permanent nature.

Where the Court finds that a person was not of unsound mind at the time of the alleged offence and that he or she is fit for trial, it orders that proceedings continue according to law, and depending on the person's mental health and the circumstances of the case, it may order that he or she remain in hospital, be remanded in custody or be granted bail.

Where the Court finds that the patient was of unsound mind at the time of the offence or that he or she is unfit for trial, it may make a forensic order. The person then becomes an involuntary patient at an authorised mental health service. The Court may order that he or she be placed in a secure unit or other service for inpatient treatment and care, and it may approve limited community treatment.

A person found to be unfit for trial, but not permanently so, will be subject to regular reviews by the Mental Health Review Tribunal.

A non contact order may be made preventing someone charged with a personal offence from having any contact with the victim for a specified time.

### **Right to Trial**

If the Court decides a person charged with an offence was of unsound mind when the offence was committed, the person may nevertheless elect to be brought to trial by jury.

### **Right of Appeal**

The person to whose mental condition a decision on a reference relates or the Attorney-General may appeal to the Court of Appeal against a decision of the Mental Health Court.

### **Court Examination Orders**

The Court may order a patient to be examined by a nominated medical or other health practitioner at an authorised mental health facility, a correctional facility or in a medical practitioner's private rooms. The Court can make such an order on the recommendation of an assisting psychiatrist or at the request of the Director of Public Prosecutions.

The Court issued 63 court examination orders in the four months under review.

### **References to the Attorney-General**

If a person has been charged with an indictable offence and an involuntary treatment order or forensic order has been made, the matter of his or her mental condition may be referred to the Attorney-General by the Director of Mental Health, provided the Director of Mental Health is satisfied that the offence is not of a serious nature having regard to any damage, injury or loss concerned. She must



not do so where the patient is charged only with a simple offence. The Attorney-General may order that the proceedings against the patient for the offence continue according to law, that those proceedings be discontinued, or that the matter of the patient's mental condition be referred to the Mental Health Court. He must not refer the matter to the Court if the patient is charged only with a simple offence.

In the period under review the Director of Mental Health made 24 such references to the Attorney-General, and he referred five of them to the Court.

### **Appeals from the Mental Health Review Tribunal**

The Court may hear appeals against the following decisions of the Mental Health Review Tribunal:

- decisions reviewing a patient previously found unfit for trial;
- decisions on treatment applications;
- decisions approving removal of patients from Queensland.

As at 30 June 2002 the Court had not heard any appeal from the Mental Health Review Tribunal.

### **Inquiry into Detention**

The Court may exercise special inquiry and investigation powers, upon application or upon its own initiative, to decide whether the patient's detention is lawful.

As at 30 June 2002 no applications had been made to the Court, and it had not exercised these powers.

### **Procedural fairness**

The Mental Health Court is, of course, bound by the rules of procedural fairness, and it must respect parties' rights to be heard and to unbiased determinations.

The *Act* contains provisions requiring any advice given by the assisting psychiatrists to the judge before the hearing commences or during any adjournment (other than an adjournment for the Court to make its decision) to be conveyed to the parties and any advice given during the hearing to be audible. The judge must identify in the reasons for decision any advice tendered by the psychiatrists which materially contributed to the decision.

During the court hearing the assisting psychiatrists sit on the bench on either side of the judge. In order for the parties to hear their advice to the judge, there need to be three microphones on the bench.

In the period under review, the Court sat only in Brisbane where, thanks to the generosity of the Chief Justice, it was privileged to use the Banco Court. That courtroom has adequate microphone facilities, but it is regularly used by the Supreme Court, and the Mental Health Court cannot reasonably expect to continue

to use it. Funding has been approved for the installation of additional microphones in one of the trial courtrooms in the Supreme Court in Brisbane.

## **Procedures**

The Mental Health Court is inquisitorial in nature: in exercising its jurisdiction it must inquire into the matter before it and may inform itself of any matter relating to the inquiry in any way it considers appropriate. No party bears the onus of proof and matters must be decided on the civil standard of proof (that is, the balance of probabilities).

Hearings of references are generally open to the public. The Court may direct that a hearing or part of a hearing not be open to the public only if it satisfied it is in the interests of justice. A hearing relating to someone under the age of 17 must be in closed court.

Hearings of other proceedings (including appeals from the Mental Health Review Tribunal) are not open to the public unless the Court directs otherwise.

There are restrictions on the publication of reports of a proceeding in the Court and on a decision on a reference into a person's mental condition.

The Court has issued a number of Practice Notes for the guidance of persons appearing before it. They are reproduced in the appendix to this report.

## **Victims of Crime**

In determining a reference the Court may receive in evidence material from a non-party (such as a victim of crime), if it is sworn and relevant to the decision. It must be submitted through a party; a non-party does not have a right of appearance before the Court unless the Court otherwise orders. The Court must give reasons for receiving or refusing to receive the material.

## **Sittings**

The amount of time that could be allocated to Mental Health Court sittings in the four months under review was limited by the demands of the mainstream of the Supreme Court's work.

The Mental Health Court sat on 3 April 2002 when 20 matters were called over. Five of them were disposed of at the callover and another seven were disposed of during the subsequent sittings in May.

In the fortnight commencing 20 May 2002, the Court sat on nine days, when 74 matters came before it. That case load comprised:-

**Table 1: Matters heard by the Mental Health Court 28 February – 30 June 2002**

Type of Matter	Number
<b>References by:</b>	
• Director of Mental Health	47
• Director of Public Prosecutions	4
• Patient or Legal Representative	19
• Court of Law	3
• Attorney-General	1
Appeals against the Mental Health Review Tribunal:	-
Applications to inquire into detention:	-
<b>Total</b>	<b>74</b>

Those matters were disposed of as follows:

**Table 2: Matters disposed of by the Mental Health Court 28 February – 30 June 2002\***

Findings and orders of the Mental Health Court	Number
<b>References:</b>	
• unsound of mind (forensic order)	20
• unsound of mind (no forensic order)	4
• not of unsound mind and fit for trial	12
• not of unsound mind, not of diminished responsibility and fit for trial	1
• 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)	2
• not of unsound mind and unfit for trial (unfitness permanent and no forensic order made)	1
• facts in dispute (reasonable doubt) and fit for trial	5
• reference withdrawn	16
<b>Total</b>	<b>64</b>

\* includes four matters where two decisions were made.

Reserved judgments as at 30 June 2002 were as follows:

**Table 3: Decisions reserved by the Mental Health Court as at 30 June 2002**

References	3
<b>Total</b>	<b>3</b>

Matters adjourned from the May sittings were as follows:

**Table 4: Matters adjourned by the Mental Health Court and awaiting hearing as at 30 June 2002**

References	12
<b>Total</b>	<b>12</b>

### **Matters awaiting hearing**

As at 30 June 2002 there were 140 matters awaiting hearing in the Mental Health Court. Of those, 82 were commenced under the *Mental Health Act 1974* and were pending when the Mental Health Court replaced the Mental Health Tribunal. The remaining 58 were commenced under the *Mental Health Act 2000*.

**Table 5: Matters awaiting hearing by the Mental Health Court as at 30 June 2002**

<b>Type of Matter</b>	<b>Number</b>
<b>References by:</b>	
• Director of Mental Health	80
• Director of Public Prosecutions	4
• Patient or Legal Representative	41
• Court of Law	3
• Attorney-General	4
Appeals against the Mental Health Review Tribunal:	8
Applications to inquire into detention:	-
<b>Total</b>	<b>140</b>

There was one outstanding matter to be heard by the former Mental Health Tribunal (which is continued under a transitional provision for the purpose of disposing of certain matters).

The volume of cases dealt with in nine days in May does not truly reflect the intensity of the preparation required by the Court (including the assisting psychiatrists and registrar), the legal representatives and the psychiatrists who provided reports.

Six weeks (three fortnights) have been allocated to Mental Health Court sittings in the Supreme Court Trial Division calendar for the second half of the calendar year 2002. In order to afford each case the degree of preparation and proper consideration commensurate with its importance, sittings of one week rather than two week blocks would be preferable.

Although the Court sat only in Brisbane in the period under review, it intends sitting in other centres such as Townsville and Cairns where this is warranted by the volume and/or complexity of cases involving patients there.

## **Registry**

The registry was established in consultation with the Mental Health Court Reference Group – a committee chaired by the Director of Mental Health and having representation (both clinical and forensic) from the Mental Health Unit of Queensland Health, the Director of Public Prosecutions, Legal Aid Queensland, the Mental Health Review Tribunal, consumer groups and victim support groups.

It has premises in the Queensland Health Building in Charlotte Street, Brisbane. As at 30 June 2002 the only staff were the registrar Mr Barry Weychardt and his assistant Ms Tanya Nosworthy. Mr Weychardt is an officer of the Public Service at classification level AO6. He was the secretary of the former Mental Health Tribunal, and he has brought great experience and dedication to his new role. Ms Nosworthy is an officer of the Public Sector at classification level AO2. The court's gratitude to them both is acknowledged.

The workload of the registry warrants the employment of an additional staff member as deputy registrar.

## **Assistance of Supreme Court and State Reporting Bureau**

The Court records its appreciation of the assistance and courtesy rendered by the Court Administrator, the Principal Registrar, and the Sheriff and their officers within the Supreme Court structure.

Special mention should be made of Justice Wilson's associate, who has provided invaluable assistance with research and liaison with the Mental Health Court registry.

The State Reporting Bureau has provided recording and transcription services which are gratefully acknowledged.

## **Website**

With the encouragement of the Chief Justice, arrangements are being made with the Supreme Court Library to include information relating to the Mental Health Court on the Queensland Courts web page ([www.courts.qld.gov.au](http://www.courts.qld.gov.au)). It is expected that this material will be accessible before the end of 2002.

## **Outreach**

On 14 June 2002 Justice Wilson addressed the Royal Australian and New Zealand College of Psychiatrists Queensland Branch – Forensic Section. A copy of her address *Psychiatrists and the Mental Health Court* is available on the internet at [www.courts.qld.gov.au/publications/articles/speeches/2002/Wilson140602.pdf](http://www.courts.qld.gov.au/publications/articles/speeches/2002/Wilson140602.pdf)

Justice Wilson also attended a seminar on the *Mental Health Act 2000* arranged by the University of Queensland T C Beirne School of Law on 23 March 2002, and the National Forensic Mental Health Forum on the Treatment and Rehabilitation of Mentally Ill People who Commit Violent Offences, held in Brisbane on 29 May 2002.

Justice Wilson attended a meeting of the Mental Health Court Reference Group on 24 June 2002. She also met with the registrar, counsel who appear regularly for the Director of Mental Health, the Director of Public Prosecutions and Legal Aid Queensland and a representative of the Mental Health Unit of Queensland Health to discuss listing procedures and other matters of general application to the Court's processes. It is intended that such meetings be held several times a year.

**Appendix – Mental Health Court Practice Notes**

**Practice Note No 1 of 2002 - Court Dress**

1. The Judge constituting the Mental Health Court will wear a black gown over business attire.
2. Legal practitioners appearing before the Mental Health Court should wear business attire. They should not robe.

**JUSTICE MARGARET WILSON**

**Date: 15 March 2002**

**Appendix – Mental Health Court Practice Notes**

**Practice Note No 2 of 2002 - Proclamations in the  
Mental Health Court**

The following proclamations will be used in proceedings in the Mental Health Court.

- |   |   |
|---|---|
| (a) OPENING OF FIRST DAY OF SITTINGS<br><i>When Judge and Psychiatrists are seated</i>  | The Mental Health Court is in session. Any person having business before the Court come forward and announce your presence, and you will be heard. Please be seated.  |
| (b) OPENING ON SUBSEQUENT DAYS OF SITTINGS<br><i>Preliminary announcement</i><br><i>When Judge and Psychiatrists are seated</i> | Silence. All rise.<br>The Mental Health Court is in session.  |
| (c) ADJOURNMENT   | Silence. All rise. The Mental Health Court is adjourned until ...   |
| (d) ON RESUMPTION AFTER SHORT ADJOURNMENT<br><i>When Judge and Psychiatrists are seated</i>                                     | The Mental Health Court is resumed. Please be seated.   |
| (e) CLOSING   | Silence. All rise. The Mental Health Court is now closed.   |
| (f) PROCLAMATION TO WITNESSES   | All witnesses in this proceeding must leave the courtroom.<br>You must not re-enter the courtroom until you are called to give evidence.<br><br>Failure to comply with this direction without lawful excuse is contempt of court for which you may be punished. |

**JUSTICE MARGARET WILSON**

**Date: 15 March 2002**



## Appendix – Mental Health Court Practice Notes

### **Practice Note No 3 of 2002 - Facsimile filing**

1. Documents may be filed by facsimile transmission to the Mental Health Court Registry, subject to the following.
2. Any document that can be filed in the Mental Health Court may be lodged for filing by facsimile, provided that it is not more than twenty (20) pages long (including any annexure). Documents more than twenty (20) pages long may be filed by facsimile transmission with the prior approval of the Registrar.
3. The document to be filed must be sent to the Registry's facsimile number which is 07 3221 7535.
4. The document must be accompanied by a coversheet stating:
  - (a) the sender's name, postal address, email address (if any), telephone number and facsimile number; and
  - (b) the number of pages transmitted; and
  - (c) the type of the document; and
  - (d) a request to process the document; and
  - (e) the facsimile number or email address (if any) to which the sender wants the Registrar to return a copy of the filed document.

If the document is not sent with a coversheet, it may not be accepted for filing.
6. A document to be filed by facsimile must bear or be accompanied by the Mental Health Court proceeding number and title (or short title, as appropriate).
7. The original of a faxed document and the facsimile transmission record must be retained by the sender for subsequent production to the Mental Health Court if required.
8. Within one (1) business day after the receipt of the document, the Registrar will either:
  - (a) accept the document for filing – in which case the facsimile will be recorded, sealed and retained by the Registry, and a copy will be returned to the sender in the manner requested (either by fax or email); or
  - (b) refuse to file the document in which case a notice setting out the reason(s) for the refusal will be faxed by the Registry to the sender at the facsimile number from which the document was sent.
9. If a document is accepted by the Registrar for filing, it is taken to have been filed on the day it was sent, if the whole of the document was received by 4:00pm on a Registry business day. Where part of the document is received after 4:00pm, the document is taken to have been filed on the Registry's next business day.
10. A party files a document by facsimile at the party's risk.

**JUSTICE MARGARET WILSON**

**Date: 8 April 2002**

## Appendix – Mental Health Court Practice Notes

### **Practice Note No 4 of 2002 - Email Communications with the Registry**

1. The Mental Health Court encourages practitioners to use email in communicating with the Registry.
2. The email address of the Registrar of the Mental Health Court is [registrarmhc@health.qld.gov.au](mailto:registrarmhc@health.qld.gov.au).
3. All email contacts must clearly refer to the particular proceeding by Mental Health Court number and short title.
4. All emails must be signed off by the sender and identify the practitioner involved, eg Charles Kingsford, solicitor, Smith & Co.
5. Generally communications received after 4:00pm will not be considered until the Registry's next business day.
6. All endeavours will be made to reply to email within one (1) business day of receipt.
7. The requirements of relevant practice notes (if any) must be strictly adhered to if using email.
8. A document may be filed by attachment to an email sent to the email address of the Registrar of the Mental Health Court.
9. The original of a document sent by email attachment and a record of the email transmission must be retained by the sender for subsequent production to the Mental Health Court, if required.
10. Within one (1) business day after receipt of the email attachment, the Registrar will either –
  - (a) accept the document for filing – in which case the email attachment will be recorded, sealed and retained by the Registry, and a copy will be returned to the sender in the manner requested (either by fax or email); or
  - (b) refuse to file the document – in which case a notice setting out the reason(s) for the refusal will be emailed by the Registry to the sender at the email address from which the document was sent.
11. Practitioners should not consider the process completed by the Registry ie a document accepted for filing or a hearing date allocated, etc until receipt of the Registry's reply to their email.
12. A party files a document by email attachment at the party's risk.

**JUSTICE MARGARET WILSON**

**Date: 8 April 2002**

**Practice Note No 5 of 2002 - Court Proceeding  
Numbers**

1. The Registrar will give each proceeding before the Mental Health Court a distinguishing number (“the court proceeding number”).
2. Each document filed in the proceeding must show the court proceeding number at the top right-hand corner of the first page.
3. Unless the document starts a proceeding or is filed with a document starting a proceeding, the party filing the document must insert the court proceeding number on the document.

**JUSTICE MARGARET WILSON**

**Date: 15 April 2002**

**Practice Note No 6 of 2002 - Documents filed in the  
Mental Health Court**

1. Documents filed in the Mental Health Court are to be presented in a way that will facilitate the court's efficient and expeditious reference to them.
2. The following should appear on the first page or on a separate coversheet:
  - (i) Mental Health Court proceeding number and title (or short title, as appropriate);
  - (ii) a brief description of the document or documents;
  - (iii) the name, address, telephone number, facsimile number and email address of the person filing the document (if unrepresented) or of that person's lawyer (if represented).
3. When a group of documents (such as a police brief or medical records) is to be filed, then as far as practicable –
  - (a) the documents should be bound in one or more paginated or tabbed books;
  - (b) a coversheet should be bound at the front of each book; and
  - (c) an index to each book should be set out on the coversheet or bound immediately after the coversheet.
4. Affidavits should be prepared and sworn in conformity with the *Uniform Civil Procedure Rules* rr 430 – 441. Attention is drawn especially to r 435 in relation to exhibits -

**“435 Exhibits**

- (1) A document to be used with and mentioned in an affidavit is an exhibit.
- (2) Another thing to be used with and mentioned in an affidavit may be an exhibit, if practicable.
- (3) A group of different documents may form 1 exhibit.
- (4) If it is impracticable to exhibit the document to be used with and mentioned in an affidavit, a copy of the document may be an exhibit to the affidavit.
- (5) An exhibit to an affidavit must have —
  - (a) a letter, number or other identifying mark on it; and
  - (b) a certificate in the approved form on it or bound with it.
- (6) The certificate must be signed by the person who made the affidavit and the person who took the affidavit.
- (7) However, if an affidavit is taken under rule 433<sup>1</sup> only the person who took the affidavit must sign the certificate.
- (8) An exhibit to an affidavit must be filed at the same time as the affidavit.

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<sup>1</sup> Rule 433 (Certificate of reading or signature for person making affidavit)

**Appendix – Mental Health Court Practice Notes**

- (9) Subrules (10) and (11) apply if —
    - (a) an exhibit to an affidavit is comprised of a group of documents; or
    - (b) there is more than one documentary exhibit to an affidavit.
  - (10) The documents are to be presented in a way that will facilitate the court’s efficient and expeditious reference to them.
  - (11) As far as practicable —
    - (a) the documents are to be bound in 1 or more paginated books; and
    - (b) a certificate is to be bound —
      - (i) if there is 1 book—at the front of the book; or
      - (ii) if there is more than 1 book—at the front of each book dealing with the exhibits in the book; and
    - (c) an index to each book is to be bound immediately after the certificate.
  - (12) If a document or other thing has been filed in a proceeding, whether or not as an exhibit to an affidavit, in a subsequent affidavit filed in the proceeding —
    - (a) the document or thing must not be made an exhibit to the affidavit; and
    - (b) the document or thing may be referred to in the affidavit in a way sufficient to enable the document or thing to be identified.”
5. A person filing a document of which multiple copies will be required for the Court’s use is responsible for the production and filing of those multiple copies.

**JUSTICE MARGARET WILSON**

**Date: 15 April 2002**

